TWENTY-FIFTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

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NATIONAL LABOR RELATIONS BOARD

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Division of Law

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

[1] Appointed Mar. 7, 1961, to succeed Arthur A. Kimball.
[2] Appointed Apr. 14, 1961, to succeed Joseph Alton Jenkins.
[3] Appointed May 29, 1961, to succeed Thomas B. Sweeney.
[4] Appointed May 29, 1961, to succeed Elihu Platt.
[5] Appointed June 5, 1961, to succeed James V. Constantine.
[6] Appointed Mar. 24, 1961, to succeed James R Beaird.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 3, 1961.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Twenty-fifth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1960, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year, and the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board.

Respectfully submitted.

BOYD LEEDOM, *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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I

Operations in Fiscal Year 1960

Three significant developments during fiscal 1960 marked the National Labor Relations Board's administration of the Nation's principal labor relations law:

- The Labor Management Relations Act, 1947,[1] underwent its first comprehensive change since enactment, through amendments effected by the Labor-Management Reporting and Disclosure Act of 1959.[2] New concepts were created in the act. The Board's interpretative responsibility was broadened.
- The five-member Board issued decisions in more cases than in any other year in NLRB history, as the agency expanded its staff to meet a growing workload and stepped up case-handling activity. Three new regional offices were created. Record numbers of complaints were issued, injunctions sought, hearings conducted, and trial examiner reports written.
- The General Counsel, through an extensive administrative and management improvement program, achieved substantial reduction in the time required to process cases in regional offices. He emphasized case settlement efforts, directing that every avenue of amicable settlement consistent with the act be explored before the issuance of a formal complaint in an unfair labor practice case.

1. Amendments to the Act

Although occupying less than five printed pages, the amendments posed many difficult questions of interpretation and wrought major alterations in the basic statute that governs relations between employers and labor organizations.

The principal new provisions:

1. Divide case jurisdiction between the Federal Government and the States to eliminate the "no man's land" in labor-management relations for businesses which do not substantially affect interstate commerce. The Board followed through by establishing an "advisory

[1] Public Law 101, 61 Stat. 136, 80th Congress (1947).
[2] Public Law 86-257, 73 Stat. 519 (1959).

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opinion" procedure to inform parties to labor relations proceedings before State and Territorial courts who petition for opinions whether the Board would assert jurisdiction in their cases.

2. Impose limitations on picketing an employer for recognition or organizational purposes by unions not certified by the NLRB as collective-bargaining representative. Coupled with the picketing curb was a special exception allowing informational picketing or other publicity under certain circumstances and a provision for the NLRB to conduct representation elections on an expedited basis.

3. Broaden the reach of the secondary boycott ban. Truthful publicity other than picketing is permissible under certain conditions.

4. Give replaced economic strikers voting privileges in NLRB elections.

5. Outlaw "hot cargo" contract clauses, but allow unions in the apparel and clothing and construction industries to make contracts which place restrictions on subcontracting.

6. Permit prehire contracts along with the 7-day union shop and hiring halls in the building and construction industry.

7. Extend priority handling to cases of organizational and recognition picketing, "hot cargo" agreements, and employee discrimination cases.

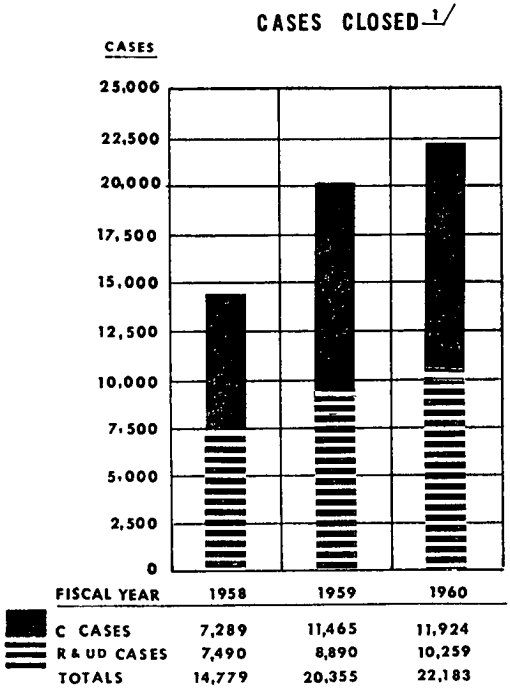
8. Extend to "hot cargo" and organizational and recognition picketing cases the requirement that a Federal court injunction be sought to stay the alleged illegal conduct until the Board completes action on the case. Previously the mandatory injunction procedure applied principally in boycott cases and in strikes against Board election certifications. In organizational and recognition picketing cases, no injunction may be sought where an employer is charged with illegally assisting a "sweetheart union" to block genuine union bargaining for employees and investigation indicates the charge is true.

The agency began receiving cases arising under the new provisions of the act shortly after they became effective on November 14, 1959. By the end of the fiscal year, June 30, 1960, only a small number of these cases had carried through to Board decisions interpreting portions of the amendment. However, at the expiration of the period, a substantial volume of such cases were advancing through the decisional process.

2. Highlights of Agency Activities

Fiscal 1960 brought an expansion in NLRB activities in virtually all areas of its operations. The agency was able to process a greater volume of cases on an accelerated schedule.

Chart No. 1



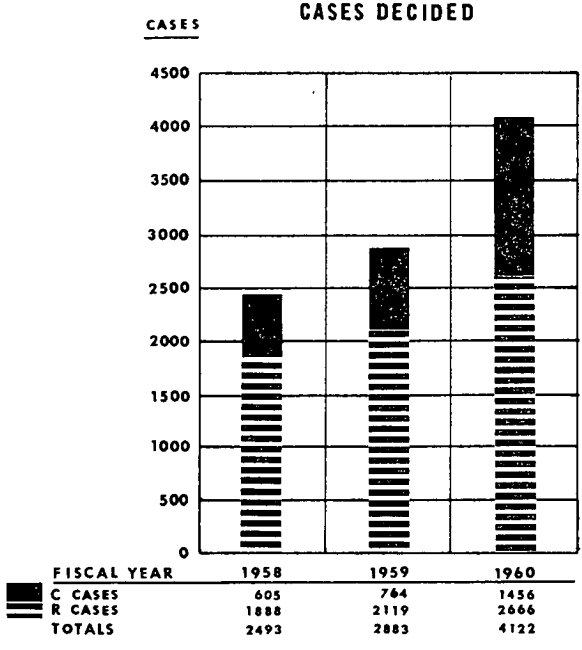
[1] C Cases—By settlements, withdrawals, and dismissals in field offices obviating formal action; by adjustments, withdrawals, and compliance with stipulation orders and consent decrees obviating Board decisions, and by Board dismissals and compliance with Board decisions and orders and court opinions and orders. R Cases—By consent elections, stipulated elections, withdrawals, dismissals, and Board-ordered elections.

By increasing the number of cases brought to a close during the year—22,183 compared with 20,355 in the preceding year—the NLRB reached the end of fiscal 1960 with a smaller backlog of pending cases of all types in all stages of processing. This total of 7,007 cases was down 9 percent from the 7,663 pending at the conclusion of fiscal 1959. The reduction reversed a 3-year trend of an increasing total backlog.

The 21,527 new cases brought to the agency during the year consisted of 11,357 charges of unfair labor practices on the part of employers, labor organizations, or both; 10,130 representation election cases; and 40 requests to conduct union-shop deauthorization polls (UD cases).

As the NLRB neared the 25th anniversary of its establishment, August 27, 1935, the five-member Board achieved an alltime record for issuing decisions. A total of 4,122 cases of all types went to decision by the Board Members, by far the largest number in a single fiscal year. The figure was 43 percent above the 1959 total.

Chart No. 2



The great bulk of cases filed with the NLRB are handled to conclusion in various stages without reaching the Board Members for their consideration and decision. For those cases which go to Board decision, the rate of reaching that final step has been advanced and the overall time from filing to decision has been shortened. (See chart No. 3.)

Another alteration of a trend was noted during fiscal 1960. During the immediately preceding 2 years, for the first time in NLRB history, individuals brought the majority of the unfair labor practice charges. In the most recent 12-month period, individuals filed 47 percent of these charges, unions 40 percent, and employers 13 percent.

The year was a record-setting one in several aspects. In addition to the unprecedented number of case decisions, there were these alltime marks established by the five-member Board, the General Counsel, and their staffs:

A. Decisions in the greatest number of contested cases disputing the facts or the law—3,239—were handed down.

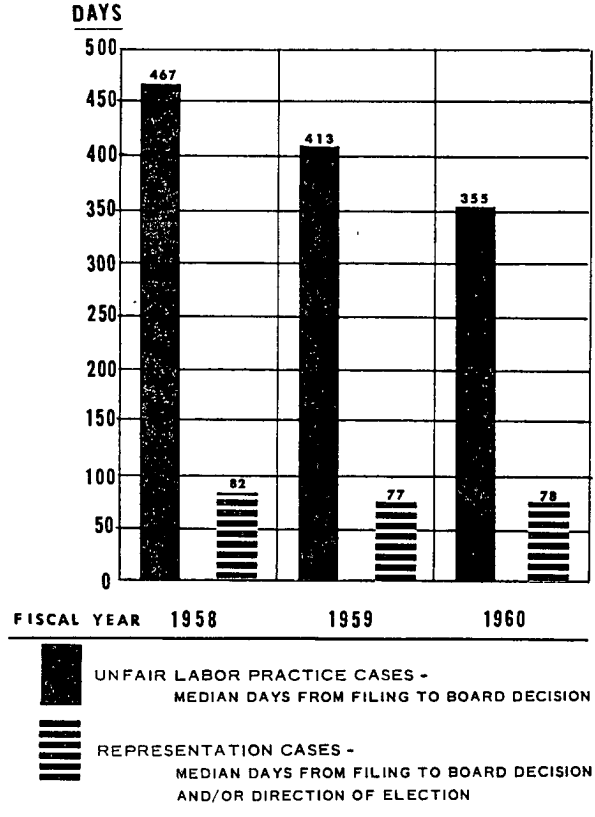
B. Decisions in more unfair labor practice cases—1,456—were issued.

C. More unfair labor practice cases were handled to conclusion—11,924—by decision, settlement, withdrawal, or dismissal.

Chart No. 3

TIME IMPROVEMENT IN CASE PROCESSING

(FILING TO BOARD DECISION)



D. More hearings in all classes of cases—4,420—were held.

E. Trial examiners conducted hearings in more unfair labor practice cases—1,474—and issued findings and recommendations of remedies in more cases—1,226. (See chart No. 9.)

F. Formal complaints were issued by the General Counsel in more unfair labor practice cases—2,141—than in any other year.

G. More petitions for injunctions—224—were filed, 219 mandatory filings required under the act and 5 discretionary petitions. A year earlier the breakdown was 129 and 5.

H. More backpay—$683,030—was recovered for employees by voluntary settlement of discrimination cases. The increase over fiscal 1959 was 48 percent.

To facilitate case processing and provide increased service to the public, three new regional offices of the NLRB were established during the fiscal year, and the legal staffs of the Board Members and the Office of the General Counsel were augmented. The Division of Trial Examiners reached its greatest strength, and for the first time in the agency's history a woman trial examiner was appointed.

Regional offices were created as follows: Houston, Texas, on September 1, 1959; Indianapolis, Indiana, on March 7, 1960; and Memphis, Tennessee, on April 19, 1960. Previously, these cities had been the locations of subregional offices. The NLRB at the close of fiscal 1960 had 26 regional offices and 4 subregional offices.

It is in the regional offices that unfair labor practice charges and representation petitions are filed. The regional office staffs, among other responsibilities, make case investigations and conduct representation elections. The heavy majority of these elections are for the purpose of determining whether employees in appropriate units shall have a collective-bargaining representative.

During fiscal 1960 NLRB agents supervised the greatest number of representation elections in 8 years. The trend in recent years has been upward in elections conducted and employees participating. (See chart No. 10.)

3. Management Improvement Program

On the premise that swift processing of cases is essential to sound administration of justice, the Office of the General Counsel during fiscal 1960 conceived and implemented a program of new management methods to improve case-processing techniques and eliminate administrative delay.

The General Counsel established operating schedules for the handling of cases in Washington and in the field offices. These time objectives cover each phase of case handling. They are based on actual agency experience and embrace reasonable objectives which are neither arbitrary nor inflexible.

At the same time, to insure that the quality of case handling would not suffer, a new branch was established in Washington to devise standards and techniques for measuring production and quality of work in the national and regional offices.

Chart No. 4

THE GENERAL COUNSEL'S TIME TARGETS FOR PROCESSING UNFAIR LABOR PRACTICE CASES FROM FILING OF CHARGE TO CLOSE OF HEARING

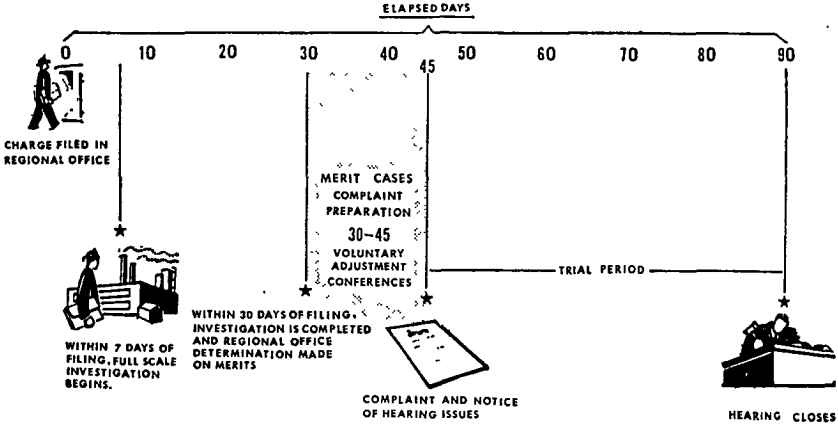
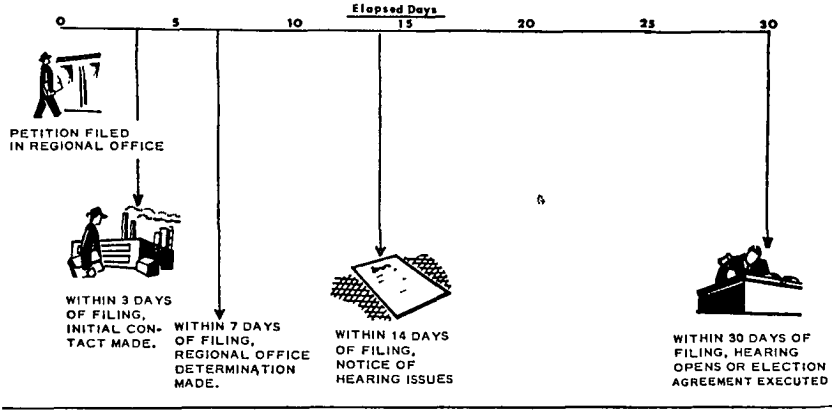


Chart No. 4A

THE GENERAL COUNSEL'S TIME TARGETS FOR PROCESSING REPRESENTATION CASES

1 FROM FILING OF PETITION TO OPENING OF HEARING OR ELECTION AGREEMENT EXECUTED.



2 FROM FILING OF OBJECTIONS AND/OR CHALLENGES TO REGIONAL DIRECTOR'S DETERMINATION

WITHIN 45 DAYS OF FILING OBJECTIONS AND/OR CHALLENGES, REGIONAL DIRECTOR'S REPORT OR DETERMINATION ISSUES

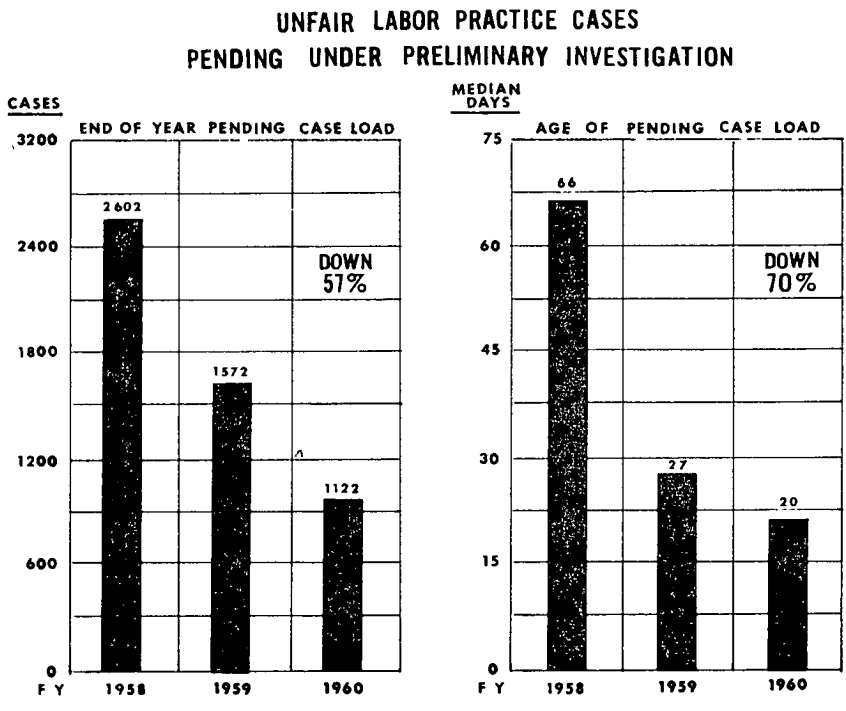
3. FROM HEARING ON OBJECTIONS AND/OR CHALLENGES TO ISSUANCE OF HEARING OFFICER'S REPORT

WITHIN 18 DAYS OF HEARING ON OBJECTIONS AND/OR CHALLENGES, HEARING OFFICER'S REPORT ISSUES.

The new operating schedules enabled the regions in 1960 to reduce substantially the large number of cases backed up in various stages of case handling and to process new cases in record fashion.

At the end of fiscal 1959, there were pending under preliminary investigation in the 23 regional offices 1,572 cases having a median age of 27 days, whereas at the end of fiscal 1960 there were 1,122 such cases having a median age of 20 days. As of the end of fiscal 1960, approximately 87 percent of all cases brought before the agency were disposed of by way of dismissal, withdrawal, or settlement, on an average within 30 days of the filing of the charge—a record accomplishment.

Chart No. 5

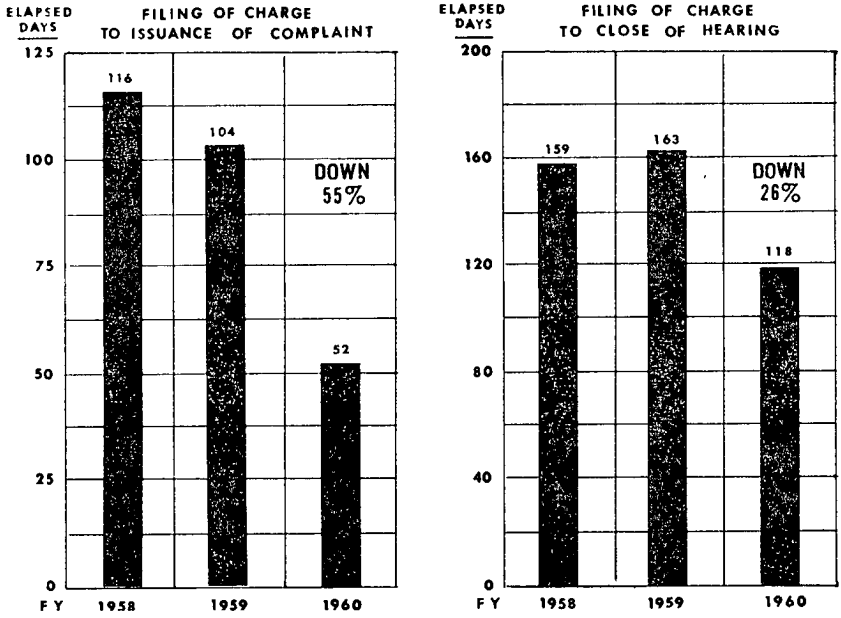


Expeditious case handling was reflected in the fact that during fiscal 1960 the average time required to proceed from the filing of a charge to the issuance of complaint took only 52 days—half the 104 days required during the preceding fiscal year. The average time required to move from the issuance of complaint to the close of hearing was 66 days during fiscal 1960 as compared with 59 days during fiscal 1959.

Thus, in fiscal 1960 the average elapsed time from the filing of a charge to the close of hearing was 118 days as compared with 163 days during the preceding fiscal year.

Chart No. 6

TIME IMPROVEMENT IN PROCESSING
UNFAIR LABOR PRACTICE CASES



Cognizant that litigation in unfair labor practice cases should be only a last resort, fiscal 1960, particularly the second half, saw a greater emphasis placed on the amicable and voluntary adjustment of such disputes. The result was that 2,228 cases were settled in fiscal 1960, compared with 1,590 during the preceding fiscal year. The achievement of fiscal 1960 has been exceeded only by the number of settlements obtained in 1939 and 1942.

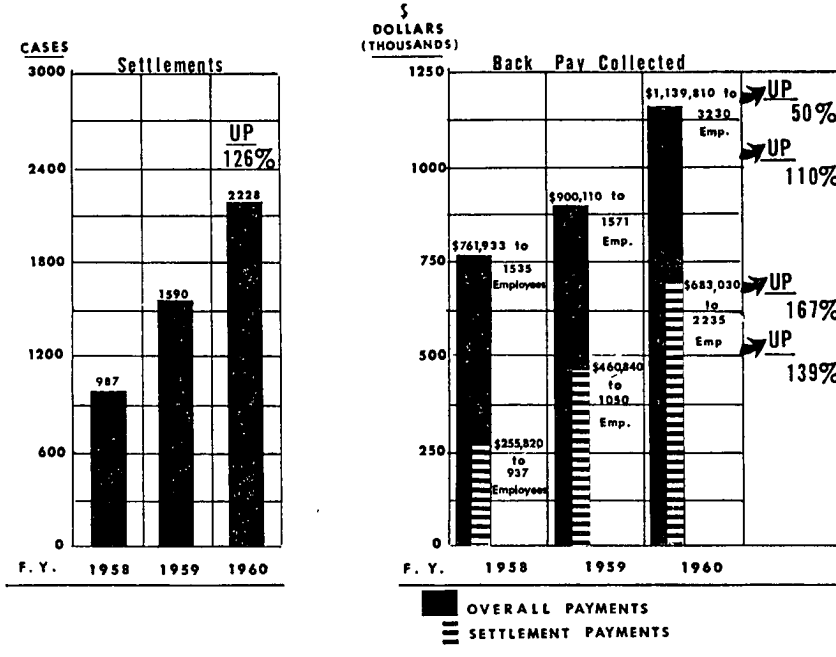
During fiscal 1960, $683,030 in backpay was obtained by settlements going to 2,235 employees—an alltime record—as compared with $460,840 to 1,050 employees in fiscal 1959.

On an overall basis, fiscal 1960 saw $1,139,810 in backpay go to 3,230 employees while in the preceding fiscal year $900,110 was paid to 1,571 employees.

Chart No. 7

UNFAIR LABOR PRACTICE CASES

SETTLEMENTS AND BACK PAY



During fiscal 1960 the litigation efforts by the regional offices were successful in approximately 85 percent of the cases litigated before the trial examiners and the five-member Board, indicating that the quality of work in the regions was not adversely affected by the reduction in the time required to process cases.

Although the agency's past record as to the time required to process representation cases has been good, the time was somewhat shortened during fiscal 1960. The elapsed time from filing of a petition to the issuance of a notice of hearing was 9 days as contrasted with the 12 days required in fiscal 1959. Also, the elapsed time between the issuance of a notice of hearing and the transfer of the case to the Board for decision was 15 days as compared with 16 days the previous fiscal year. In sum, in fiscal 1960 the elapsed time required to go from the filing of a petition to the transfer of the case to the Board was 24 days compared with 28 days in fiscal 1959.

Elections which result in determinative challenges or in objections to the actual conduct of the election must be investigated and a report issued by the regional director before the results may be certified. In fiscal 1959, the average time required to produce such reports was 58.7 days; in 1960, the time was reduced to 42 days.

Average Calendar Days Elapsed in Processing Representation Cases

Stage of case processing	Fiscal year 1958	Fiscal year 1959	Fiscal year 1960
Contested representation cases:			
From filing of petition to issuance of notice of hearing	11	12	
From issuance of notice of hearing to close of hearing	17	16	15
Representation cases disposed of by consent of stipulated election: Time from filing of petition to election	30	30	29
Time to produce regional director's report on objections and challenges	63	59	42

Regional Advisory Conferences

Fiscal 1960 saw something of an innovation by the Office of the General Counsel in that apparently for the first time a Federal administrative agency convened an advisory conference on administration. Patterned after the Federal Judicial Conferences, the NLRB conferences brought together practitioners who represent management and labor before the agency, professors and others from the academic circles interested in labor law and industrial relations, and NLRB regional officials. They explored various ways and means by which the administrative processes of the agency could be improved. The frank and constructive exchange of ideas and the suggestions made have been most beneficial to the agency.

4. Decisional Activities of the Board

The Board Members issued decisions in 4,122 cases of all types. Of these cases, 3,239 were brought to the Board on contest over either the facts or the application of the law; 781 were unfair labor practice cases; and 2,458 were representation cases. The remaining 883 cases were uncontested; in these, the Board issued orders to which the parties had consented or made rulings as to conduct of elections held by agreement of the parties.

In the representation cases, the Board directed 2,167 elections; the remaining 291 petitions for elections were dismissed.

Of the 781 contested unfair labor practice cases, 544, or 70 percent, involved charges against employers; 237, or 30 percent, involved charges against unions. The Board found violations in 655 cases, or 84 percent.

The Board found violations by employers in 492, or 90 percent of the 544 cases against employers. In these cases, the Board ordered employers to reinstate a total of 929 employees and to pay backpay to a total of 1,310 employees. Illegal assistance or domination of labor organizations was found in 82 cases and ordered stopped. In 53 cases the employer was ordered to undertake collective bargaining.

The Board found violations by unions in 163 cases, or 69 percent of the 237 cases against unions. In 71 of these cases the Board found illegal secondary boycotts and ordered them halted. In 53 cases the Board ordered unions to cease requiring employers to extend illegal assistance. Thirty-three other cases involved the illegal discharge of employees, and backpay was ordered for 88 employees. In the case of 60 of these employees found to be entitled to backpay, the employer, who made the illegal discharge, and the union, which caused it, were held jointly liable.

5. Activities of the General Counsel

The statute gives the General Counsel the sole and independent responsibility for investigating charges of unfair labor practices, issuing complaints and prosecuting cases where his investigators find evidence of violation of the act.

Also, under an arrangement between the five-member Board and the General Counsel,[3] members of the agency's field staff function under the General Counsel's supervision in the preliminary investigation of representation and union-shop deauthorization cases. In the latter capacity, the field staffs in the regional offices have authority to effect settlements or adjustments in representation and union-shop deauthorization cases and to conduct hearings on the issues involved in contested cases. However, decisions in contested cases of all types are ultimately made by the five-member Board.

Dismissals by regional directors of charges in unfair labor practice cases may be appealed to the General Counsel in Washington. Regional directors' dismissals in representation cases may be appealed to the Board Members.

a. Representation Cases

The field staff closed 7,632 representation cases during the 1960 fiscal year without necessity of formal decision by the Board Mem-

[3] See Board memorandum describing authority and assigned responsibilities of the General Counsel (effective Apr 1, 1955), 20 Federal Register 2175 (Apr. 6, 1955).

bers. This comprised 75 percent of the 10,218 representation cases closed by the agency.

Of the representation cases closed in the field offices, consent of parties for holding elections was obtained in 4,593 cases. Petitions were dismissed by the regional directors in 713 cases. In 2,326 cases, the petitions were withdrawn by the filing parties.

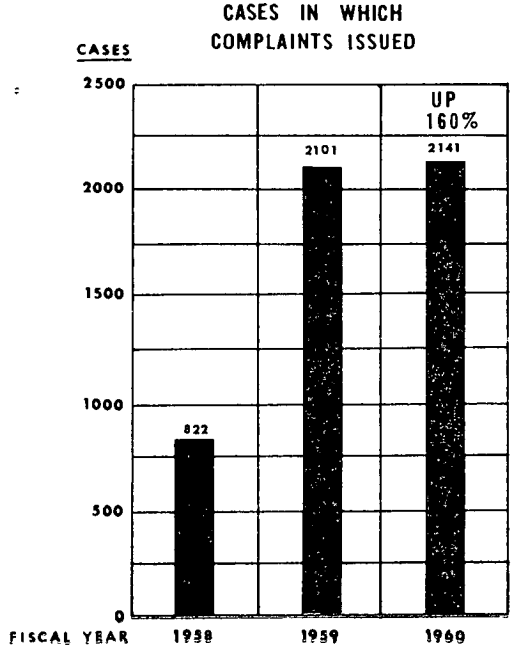
b. Unfair Labor Practice Cases

The General Counsel's staff in the field offices closed 10,309 unfair labor practice cases without formal action, and issued complaints in 2,141 cases.

Of the 10,309 unfair labor practice cases which the field staff closed without formal action, 1,480, or 14 percent, were adjusted by various types of settlements; 3,963, or 39 percent, were administratively dismissed after investigation. In the remaining 4,866 cases, or 47 percent of the cases closed without formal action, the charges were withdrawn; in many of these cases, the withdrawals actually reflected settlement of the matter at issue between the parties.

During fiscal 1960, the regional offices issued complaints in 661 cases against unions, and in 1,480 cases against employers. This all-time high of complaints covering 2,141 cases compared with the complaints in 2,101 cases issued in fiscal 1959, when complaints in 818 cases were issued against unions, and in 1,283 cases against employers.

Chart No. 8



c. Types of Unfair Labor Practices Charged

The most common charge against employers continued to be that of illegally discriminating against employees because of their union activities or because of their lack of union membership. Employers were charged with having engaged in such discrimination in 6,044 cases filed during the 1960 fiscal year. This was 78 percent of the 7,723 cases filed against employers.

The second most common charge against employers was refusal to bargain in good faith with representatives of their employees. This was alleged in 1,753 cases, or 23 percent of the cases filed against employers.

A major charge against unions was illegal restraint or coercion of employees in the exercise of their rights to engage in union activity or to refrain from it. This was alleged in 2,196 cases, or 61 percent of the 3,608 cases filed against unions.

Discrimination against employees because of their lack of union membership was also alleged in 1,953 cases against unions, or 54 percent. Other major charges against unions alleged secondary boycott violations in 644 cases, or 18 percent, and refusal to bargain in good faith in 282 cases, or 8 percent.

d. Division of Litigation

The Division of Litigation, which is located in the Washington Office of the General Counsel, is responsible for the handling of all court litigation involving the agency—in the Supreme Court, in the courts of appeals, and in the district courts.

During fiscal 1960, the Supreme Court handed down decisions in six cases involving Board orders. One Board order was enforced with modification, four were set aside, and one contempt case was remanded to the court of appeals.

The courts of appeals reviewed 125 Board orders during fiscal 1960. Of these 125 orders, 54 were enforced in full and 38 with modification; 1 was partially enforced and partially remanded to the Board; 12 were remanded to the Board; 20 orders were set aside.

Petitions for injunction in the district court reached an alltime high for the third consecutive year. Of the 224 petitions filed during the year, 219 were filed under the mandatory provision, section 10(l), of the act. Five petitions were filed under the discretionary provision, section 10(j).

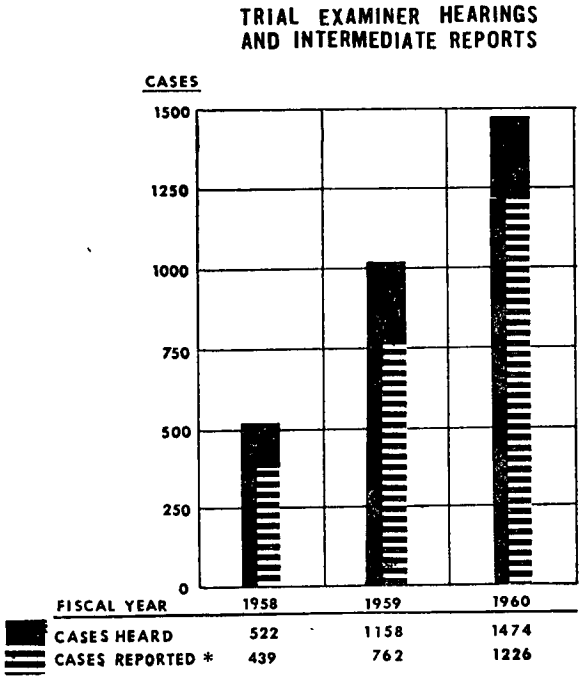
During the year, 81 petitions for injunctions were granted, 8 petitions were denied, 126 petitions were settled or placed on the courts' inactive docket, and 9 petitions were awaiting action at the end of the fiscal year.

6. Division of Trial Examiners

Trial examiners, who conduct hearings in unfair labor practice cases, held hearings in 1,474[4] cases during fiscal 1960, an increase of 27 percent over the 1,158 cases in 1959. Intermediate reports and recommended orders were issued by the trial examiners in 1,226 cases, an increase of 61 percent over the 762 in 1959.

In 233 unfair labor practice cases which went to formal hearing, the trial examiners' findings and recommendations were not contested; these comprised 19 percent of the 1,226 cases in which trial examiners issued reports. In the preceding year, trial examiners' reports which were not contested number 78, or 10 percent of the 762 cases in which reports were issued.

Chart No. 9



* CASES IN WHICH TRIAL EXAMINERS ISSUED REPORTS OF FINDINGS AND RECOMMENDATIONS.

[4] During the year 155 cases were closed by settlement agreements reached after the hearing opened but before issuance of intermediate report

7. Results of Representation Elections

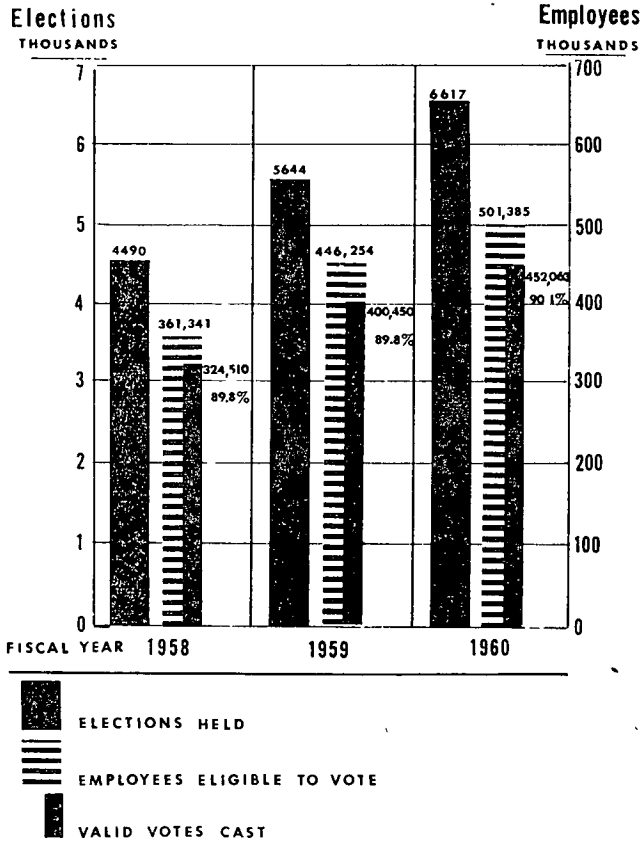
The Board conducted a total of 6,617 representation elections during the 1960 fiscal year. This was an increase of 17 percent over the 5,644 representation elections conducted in fiscal 1959.

Employees selected collective-bargaining agents in 3,814 of these elections. This figure represented 58 percent of the elections held. In fiscal 1959 employees selected collective-bargaining agents in 62 percent of elections.

In these representation elections, bargaining agents were chosen to represent units totaling 294,774 employees, or 59 percent of those eligible to vote. This compares with 60 percent in fiscal 1959, and 56 percent in fiscal 1958.

Chart No.-10

REPRESENTATION ELECTIONS



Of the 501,385 who were eligible to vote, 90 percent cast valid ballots.

Of the 452,063 employees actually casting valid ballots in Board representation elections during the year, 288,663, or 64 percent, voted in favor of representation.

Unions affiliated with the American Federation of Labor-Congress of Industrial Organizations won 2,451 of the 4,666 elections in which they took part. This was 53 percent of the elections in which they participated. In 1959 and 1958 AFL-CIO-affiliated unions won 57 percent of the elections in which they participated.

Unaffiliated unions won 1,363 of 2,597 elections in which they participated. This was 52 percent of the elections in which the unaffiliated unions took part. This compared with 54 percent in 1959, and 56 percent in 1958.

8. Fiscal Statement

The expenditures and obligations of the National Labor Relations Board for fiscal year ended June 30, 1960, are as follows:

Personnel compensation	$11,479,151
Personnel benefits	705,330
Travel and transportation of persons	926,542
Transportation of things	49,872
Communication services	401,944
Rents and utility services	139,898
Printing and reproduction	292,124
Other services	627,755
Supplies and materials	206,286
Equipment	277,025
Total, obligations and expenditures	15,105,927

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II

Jurisdiction of the Board

The Board's jurisdiction under the act extends to all enterprises whose operations "affect" commerce.[1] However, the courts have long recognized,[2] and Congress in its 1959 amendments of the act specifically provided for, the Board's discretion to limit the exercise of the broad statutory jurisdiction to enterprises whose effect on commerce, in the Board's opinion, is substantial. Under the new subsection (c) (1) of section 14 of the act—

> The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

As noted by the Board,[3] this provision modifies the Supreme Court's rulings in the *Office Employees* and *Hotel Employees* cases[4] in that it vests the Board with authority to adopt a policy of nonassertion of jurisdiction as to an entire class or category of employers, subject only to the limitation that jurisdiction may not be declined where it would be asserted under the jurisdictional standards in effect on August 1, 1959.

1. Advisory Opinions

The new section 14(c) permits the Board to decline to exercise its statutory jurisdiction as provided in subsection (1) and, in subsection

[1] See secs. 9(c) and 10(a) of the act. The Board has no jurisdiction over railways and airlines, which come under the Railway Labor Act; and a rider to the Board's appropriation denies it jurisdiction over "mutual nonprofit" water systems of which 95 percent of the water is used for farming, and over agricultural laborers as defined in sec. 3(f) of the Fair Labor Standards Act.

[2] See *N.L.R.B.* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 684. Compare *Office Employees International Union* v. *N.L.R.B.*, 353 U.S. 313, 320, and *Hotel Employees Local 255, Hotel, Restaurant Employees and Bartenders International Union, AFL–CIO* v. *Leedom et al.*, 358 U.S. 99.

[3] *Hialeah Race Course, Inc.*, 125 NLRB 388, 390

[4] *Supra*, footnote 2; Twenty-fourth Annual Report, pp 114–115

(2), empowers State and Territorial agencies and courts to assert jurisdiction in labor relations matters over which the Board has declined jurisdiction. These parallel provisions are intended to bridge the "no man's land" between Federal and State jurisdictions, which formerly existed because State authorities had been held without power to act in cases in which the Board had, but did not, exercise jurisdiction under its established standards.[5] To further implement the intended elimination of the jurisdictional "no man's land," the Board has adopted procedural rules, effective November 13, 1959, providing that, where a proceeding is pending before a State or Territorial tribunal, and where a party to the proceeding or the tribunal is in doubt whether the Board would assert or exercise jurisdiction under current jurisdictional standards, the party or tribunal may seek an advisory opinion as to whether the Board would decline jurisdiction in the case.[6] These provisions were invoked and acted upon by the Board in a number of cases during fiscal 1960.[7] One petition was dismissed because it failed to supply data required by rule 102.99 without which the Board was unable to form an opinion regarding the application of its jurisdictional standards.[8]

2. Statutory Jurisdiction v. Jurisdictional Standards

In order for the Board to take cognizance of a case, it must be shown first that the Board has statutory, or legal, jurisdiction, i.e., that the business operations involved "affect" commerce as required by the act,[9] and that the effect on commerce is not so small as to preclude a finding of statutory jurisdiction under the *de minimis* rule.[10] Secondly, it must appear that the business operations meet applicable jurisdictional standards. Noting the distinction between statutory jurisdictional requirements and the self-imposed discretionary jurisdictional standards, the Board made clear during the past year that a mere showing that the Board's standards are met is insufficient, except

[5] The amended act continues to provide for cession of jurisdiction by the Board to State or Territorial authorities in unfair labor practice cases with certain exceptions See sec. 10(a).

[6] Secs. 102.98–102.104, Rules and Regulations, Series 8.

[7] *Knoxville News-Sentinel Co., Inc.*, 125 NLRB 672; *H. W. Woody, Jr. and Local 46, Intl. Assn. of Heat and Frost Insulators and Asbestos Workers*, 125 NLRB 1172; *Westside Market Owners Assn.*, 126 NLRB 167; *Milk Co-Op of Cal., Inc.*, 126 NLRB 672; *Jackson's Party Service*, 126 NLRB 875; *Piedmont Shirt Co.*, 126 NLRB 674; *Midwest Piping Co., Inc.*, 127 NLRB 408; *International Brotherhood of Electrical Workers, Local No. 349 (Frank Schafer, Inc.)*, 127 NLRB 210; *New Bedford, Woods Hole, Martha's Vineyard and Nantucket Steamship Authority*, 127 NLRB 155.

[8] *H. W. Woody, Jr., et al., supra.*

[9] *International Longshoremen & Warehousemen's Union, and Local No. 13 et al. (Catalina Island Sightseeing Lines)*, 124 NLRB 813.

[10] See *Lamar Hotel*, 127 NLRB 885, where the Board held that the hotel's annual direct inflow of out-of-State goods valued at $4,900 was sufficient and did not come within the ***de minimis*** doctrine.

in the case of such standards as "inflow" and "outflow" which, being based on a substantial movement of goods or services across State lines, "already embody the conclusion that the Board's legal jurisdiction has been proved." [11] On the other hand, it was pointed out, standards expressed in terms of gross volume of business do not involve such a conclusion, and become operative only upon an initial showing that the operations involved affect commerce in the statutory sense.

3. Enterprise on Indian Reservation

During fiscal 1960 the Board was faced with the question whether the act applied to a commercial enterprise—a uranium concentrate mill—located on a Navajo Indian Reservation, and whether it was proper for the Board to direct a representation election among the mill's employees.[12] The Board, two members dissenting,[13] concluded that the act applied and that pertinent congressional, administrative, and judicial pronouncements revealed no Federal policy inconsistent with the exercise of the jurisdiction which the Board might otherwise have over the employer. Finding that the employer's operations affected commerce within the meaning of the act, and met jurisdictional standards in view of their substantial impact on interstate commerce and national defense, the Board directed an election.

An action for declaratory relief from the Board's assertion of jurisdiction and for injunctive relief against the holding of an election instituted by the Navajo Tribe and the company was dismissed by the United States District Court for the District of Columbia on May 10, 1960.[14] An appeal from the judgment of the district court is now pending in the Court of Appeals for the District of Columbia.

[11] *Southwest Hotels, Inc.*, 126 NLRB 1151.
[12] *Texas-Zinc Minerals Corp.*, 126 NLRB 603.
[13] Members Rodgers and Jenkins.
[14] *Navajo Tribe, et al.* v. *N.L.R.B.*, 46 LRRM 2130 (D.C.D.C.).

III

Representation Cases

The act requires that an employer bargain with the representative selected by a majority of his employees in a unit appropriate for collective bargaining. But the act does not require that the representative be selected by any particular procedure, as long as the representative is clearly the choice of a majority of the employees.

As one method for employees to select a majority representative, the act authorizes the Board to conduct representation elections. The Board may conduct such an election after a petition has been filed by the employees or any individual or labor organization acting in their behalf, or by an employer who has been confronted with a claim of representation from an individual or a labor organization.

Once a petition has been properly filed, the Board has the statutory authority to determine the employees' choice of collective-bargaining representative in any business or industry affecting interstate commerce, with the major exceptions of agriculture, railroads, airlines, nonprofit hospitals, and governmental bodies.[1] It also has the power to determine the unit of employees appropriate for collective bargaining.

The Board may formally certify a collective-bargaining representative in a representation case only upon the basis of the results of a Board-conducted election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

The act also empowers the Board to conduct elections to decertify incumbent bargaining agents which have been previously certified or which are being currently recognized by the employer. Decertification petitions may be filed by employees, or individuals other than

[1] The Board does not exercise that power where the enterprises involved have relatively little impact upon interstate commerce. *Supra*, pp. 19–20. See the Board's standards for asserting jurisdiction, discussed in the Twenty-third Annual Report, pp. 8–9. See also Twenty-first Annual Report, pp. 7–28, and Twenty-second Annual Report, pp. 7–9.

management representatives, or by labor organizations acting on behalf of employees.

Petitions for elections are filed in the regional office in the area in which the plant or business involved is located. The Board provides standard forms for filing petitions in all types of cases.

This chapter deals with the general rules which govern the determination of bargaining representatives, and the Board's decisions during the past fiscal year in which those rules were adapted to novel situations or changed upon reexamination.

1. Showing of Employee Interest To Justify Election

It is the Board's practice to require that a petitioner, other than an employer, seeking an election under section 9(c)(1) show that at least 30 percent of the employees favor an election.[2] This showing must relate to the appropriate bargaining unit in which the employees are to be represented.[3] Where the unit found by the Board is larger than the proposed unit and the petitioner's interest in the larger unit is not clear, the regional director will be instructed not to proceed with the election without first ascertaining the adequacy of the petitioner's interest among the employees in the appropriate unit.[4] And where an employer's development operations were to cease and production was to begin within 30 to 90 days after the date of the hearing—or about 1 month after the Board's decision—and a substantial and representative production force was not presently employed, the Board directed that the election be held as soon as the regional director determines that a substantial and representative production force has been employed, but not later than 3 months after the hearing date, subject to submission of an adequate current showing of interest. In one case where the Board found separate single-employer units or voting groups, rather than a single multiemployer unit, the petitioner was requested to show sufficient interest in each unit or voting group, and the regional director was directed to conduct an election only in those units or groups in which the petitioner had the required interest.[5]

Intervening parties are permitted to participate in representation elections upon a showing of a contractual or other representative interest.[6] Posthearing intervention will be permitted provided the in-

[2] See NLRB Statements of Procedure, sec. 101.18(a).

[3] See *Esso Standard Oil Co.*, 124 NLRB 1383.

[4] *Southern Steel & Stove Co., Inc.*, 124 NLRB 577; *Idaho Power Co.*, 126 NLRB 547; *Swift & Co.*, 127 NLRB 87.

[5] *Andes Fruit Co.*, 124 NLRB 781.

[6] Twenty-fourth Annual Report (1959), p. 14 Compare *Jewel Tea Co., Inc., Eisner Food Stores Division*, 124 NLRB 319. Here, a panel majority held that a union was not

tervenor's interest was acquired before the close of the hearing.[7] However, the Board made clear that this rule applies only in representation cases filed by unions.[8] In cases filed by employers, where no showing of interest by the participating unions is required, post-hearing intervention will be granted if justified under the circumstances.

a. Sufficiency of Showing of Interest

The Board has adhered to the rule that the sufficiency of a showing of interest is a matter for administrative determination and may not be litigated at the representation hearing.[9] However, where a petitioner's showing is challenged on grounds which warrant an investigation, such as forgery or fraud, the Board will conduct an administrative investigation and will dismiss the petition if it is found that the interest showing is inadequate.[10]

2. Existence of Question of Representation

Section 9(c)(1) empowers the Board to direct an election and certify the results thereof, provided the record of the hearing before the Board [11] shows that a question of representation exists.

a. Certification Petitions

Petitions for certification of representatives, whether filed by a representative (section 9(c)(1)(A)(i)) or by an employer (section 9(c)(1)(B)), will be held to raise a question of representation if they are based on the representative's demand for recognition and the employer's denial thereof, be it before or during the hearing.[12] The demand for recognition need not be made in any particular form.[13] Moreover, the filing of a petition by a representative itself is consid-

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entitled to intervene on the basis of a showing of 1 card in a unit of 70 employees on the eve of the election. Chairman Leedom, dissenting, pointed out, however, that an intervenor is not required to show a "substantial" interest, and that customarily a single authorization card has been deemed sufficient.

[7] See *Southwest Hotels, Inc.*, 126 NLRB 1151; compare *Gary Steel Products Corp.*, 127 NLRB 1170.

[8] *Siemons Mailing Service*, 124 NLRB 594.

[9] See *Southeastern Concrete Products Co*, 127 NLRB 1024. See also *Shreveport-Bossier Cleaners & Laundries, Inc.*, 124 NLRB 534; *Vent Control, Inc., of Ohio*, 126 NLRB 1134.

[10] See, e.g, *Columbia Records*, 125 NLRB 1161. Compare *Indiana Hotel Co.*, 125 NLRB 629, and *Watchmanitors, Inc.*, 128 NLRB No. 98.

[11] A hearing must be conducted "if [the Board] has reasonable cause to believe that a question of representation exists."

[12] *Edward Small Productions, Inc.*, 127 NLRB 283.

[13] See, e.g., *Dade Drydock Corp.*, 124 NLRB 532; *Pennsylvania Garment Manufacturers Association, Inc.*, 125 NLRB 185.

ered a demand for recognition.[14] A section 9(c)(1) petition for certification also will be held to raise a question of representation even though the representative named in the petition is currently recognized, provided it has not previously been certified. The Board has held that nonrecognition is not a mandatory element under section 9(c)(1)(A)(i) and that, notwithstanding recognition, the representative,[15] as well as the employer,[16] may seek the special benefits of certification.

b. Decertification Petitions

A question of representation is also raised by a petition under section 9(c)(1)(A)(ii) which challenges the representative status of a bargaining agent previously certified or currently recognized by the employer. However, under the act a decertification petition filed by a supervisor does not raise a valid question of representation and must be dismissed.[17] Thus, where the issue of the petitioner's supervisory status is raised, it must necessarily be determined in the decertification proceeding. Such a determination, the Board pointed out in *Modern Hard Chrome*, is not in conflict with the *Union Manufacturing*[18] rule against litigation of issues of "employer instigation of, or assistance in, the filing of the decertification petition . . . in the representation proceeding." The Board further noted that where the petitioner allegedly is a supervisor, immediate ascertainment of his status is also necessary because, if not a supervisor, the petitioner may belong in the bargaining unit and may be entitled to vote in the election.

The Board has continued to require that the unit in which the decertification election is to be held must be coextensive with the certified or recognized unit.[19] However, where the previously certified unit allegedly contained employees outside the act's coverage, *viz*, agricultural laborers and supervisors, employees found to come within the statutory exemptions were excluded from the decertification unit.[20] The Board held that the exclusion of individuals required by the act does not change the unit for decertification purposes.

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[14] *Gary Steel Products Corp.*, 127 NLRB 1170.

[15] *General Box Co.*, 82 NLRB 678; *Central Coat, Apron, & Linen Service, Inc.*, 126 NLRB 958, and cases there cited.

[16] *Pennsylvania Garment Manufacturers Asso., Inc., supra.*

[17] *Modern Hard Chrome Service Co.*, 124 NLRB 1235.

[18] *Union Manufacturing Co.*, 123 NLRB 1633; Twenty-fourth Annual Report, p. 16.

[19] See, e.g., *The Root Dry Goods Co., Inc.*, 126 NLRB 953.

[20] *The Illinois Canning Co.*, 125 NLRB 699.

3. Qualification of Representative

Section 9(c)(1) provides that employees may be represented "by any employee or group of employees or any individual or labor organization."

It is the Board's policy to direct an election and to issue a certification unless the proposed bargaining agent fails to qualify as a bona fide representative of the employees. However, the Board will not inquire into a labor organization's constitution or charter, absent proof that the organization will not accord effective representation to all employees within the bargaining unit.[21] The Board reiterated in one case that in determining a union's qualification as bargaining agent its willingness to represent the employees rather than its constitutional ability to do so is the controlling factor.[22]

In one case the Board held that the petitioning union had no standing to seek an election, because at the time when the petition was filed the union was the beneficiary of unlawful employer assistance as found by the Board in an intervening unfair labor practice proceeding.[23]

a. Craft Representatives

The Board has continued to require that a union seeking to sever a craft or craftlike departmental group from a broader unit must show either that it "has traditionally devoted itself to serving the special interests of the [particular] employees," [24] or that it was organized for the exclusive purpose of representing members of the particular craft.[25] In one case where the severance petitioner was held not qualified to represent the craft involved,[26] the Board pointed out that a union which, by its constitution, does not purport to represent a specific craft but may represent a multitude of crafts, or even nonskilled tradesmen, does not satisfy the "traditional representative" test. The Board here also reiterated that a petitioner's "traditional representative" status cannot be established by the fact that another affiliate of the petitioner's international has such status.

A severance petition was denied where it was found that the petitioner was not an independent, autonomous organization devoted to the representation of the craft involved, but had been formed by, and

[21] *Ditto, Inc.*, 126 NLRB 135.
[22] *Mayfair Industries, Inc.*, 126 NLRB 223.
[23] *Halben Chemical Co., Inc.*, 124 NLRB 1431.
[24] *American Potash & Chemical Corp.*, 107 NLRB 1418. The "traditional union" qualification does not apply where severance is not sought, that is, where the craft group involved has no bargaining history on a broader basis. See *Container Corp. of America*, 121 NLRB 249; *Plastic Film Co., Inc.*, 123 NLRB 1635.
[25] *Friden Calculating Machine Co., Inc.*, 110 NLRB 1618; *Puerto Rico Glass Corp.*, 126 NLRB 102; *General Electric Co.*, 125 NLRB 718.
[26] *Robertson Paper Box Co., Inc.*, 124 NLRB 348.

was fronting for, an organization whose attempt to sever the same craft group had failed because it lacked the qualification of traditional representative of the craft.[27]

b. Statutory Qualifications

The Board's power to certify a labor organization as bargaining representative is limited by section 9(b)(3) which prohibits certification of a union as the representative of a unit of plant guards if the union "admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." [28]

In one case, the Board rejected a contention that the petitioner, being governed under a trusteeship, was disqualified from acting as statutory bargaining representative under section 304(c) of Title III of the Labor-Management Reporting and Disclosure Act of 1959, which provides that for the purposes there such a trusteeship is presumed invalid after the expiration of 18 months.[29] It was pointed out that the Board is not the proper forum for litigating issues arising under section 304. It was also found that nothing in the internal affairs of the petitioning trusteed local affected its capacity to act as a bargaining representative.

The Board also held in another case that compliance with the requirements of the Labor-Management Reporting and Disclosure Act of 1959 is not, as was contended, a condition precedent to the filing of a representation petition by a labor organization.[30]

(1) Repeal of Filing Requirements

The provisions of the 1947 act, precluding Board certification of a labor organization which had not complied with the non-Communist affidavit and other filing requirements of section 9 (f), (g), and (h), were repealed by Congress effective September 14, 1959.[31] The Board had occasion to consider the effect of the repeal in previously instituted representation proceedings. One case[32] involved a noncomplying labor organization which under prerepeal practice had

[27] *Iowa Packing Co.*, 125 NLRB 1408; see also *Swift & Co.*, 126 NLRB 398.

[28] See *Pinkerton's National Detective Agency, Inc.*, 124 NLRB 1076 Here a guard union was certified over the employer's objection that the union, having also sought an election in a nonguard group, did not qualify as a statutory guard union. The Board found that in view of the union's policies and practices, and in the absence of other evidence, the mere filing of this petition was insufficient to show that the union admitted nonguard employees to membership. However, the Board stated that the union's certification would be revoked if it should continue to organize the employees who had been fount to have no guard status.

[29] *Terminal System, Inc.*, 127 NLRB 979; Member Jenkins dissented in another respect.

[30] *The Wright Line, Inc.*, 127 NLRB 849.

[31] Labor-Management Reporting and Disclosure Act of 1959, section 201(d).

[32] *Whaley Coal Co.*, 124 NLRB 1113.

been permitted to intervene and was eligible for certification if it achieved compliance.[33] Another case [34] was concerned with a petitioning international union which indicated its intention to form a new local to represent the employees should the international win the election. In such situations it had been the Board's practice not to certify the international if a new local was in fact formed unless the local was in compliance.[35] The Board held in both cases [36] that certification was proper without regard to any questions of compliance because Congress had not only dispensed with the requirement of compliance as a condition to Board certification, but had also withdrawn the very machinery by which compliance could be achieved.

4. Contract as Bar to Election

The Board has adhered to the policy not to direct an election among employees presently covered by a valid collective-bargaining agreement except under certain circumstances. The question whether a present election is barred by an outstanding contract is determined according to the Board's "contract bar" rules. The basic rules, which were substantially revised during fiscal 1959, are set out in the Twenty-fourth Annual Report.[37] The more important applications of these rules during fiscal 1960 are discussed below.

Generally, a contract will be held to bar an election only if it is in writing [38] and properly executed and binding on the parties and if it contains substantive terms and conditions of employment which are consistent with the policies of the act.[39] A contract to constitute a bar must be sufficient on its face, without resort to parol evidence.[40]

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[33] See *Illinois Farm Supply Co.*, 123 NLRB 52, 53, footnote 2

[34] *Glass Arts, Inc.*, 124 NLRB 1423.

[35] See *Trade Winds Co., Inc.*, 115 NLRB 860, footnote 2.

[36] Members Rodgers and Jenkins who dissented in *Whaley Coal* did not participate in *Glass Arts*.

[37] Pp. 19–34.

[38] An oral agreement will not be given such effect. *Miratile Manufacturing Co., Inc.*, 124 NLRB 48.

[39] In amending the act during fiscal 1960, Congress, *inter alia*, added two sections—secs. 8(e) and 8(f)—which concern the validity of certain types of collective-bargaining agreements, and which became effective November 13, 1959. The new sec. 8(e) outlaws "hot cargo" type agreements with certain exceptions. Sec. 8(f) relaxes certain requirements of the union-security proviso of sec. 8(a)(3), insofar as union-security agreements in the building and construction industry are concerned. Among other things, sec. 8(f) permits a construction trades union to enter into a union-security agreement without first establishing it majority status among the employees. But sec. 8(f) also provides that the union-security agreement of such a union shall not bar an election under sec. 9(c) or 9(e).

No contract-bar issues under the new secs. 8(e) and 8(f) arose during fiscal 1960. After the close of the year the Board decided that a contract containing a "hot cargo" clause which is violative of sec. 8(e) does not bar an election. *Pilgrim Furniture Co., Inc.*, 128 NLRB No. 92; *American Feed Co.*, 129 NLRB No. 35.

[40] *Benjamin Franklin Paint & Varnish Co.*, 124 NLRB 54; *Consolidated Brick Co.*, 127 NLRB 914. See also *infra*, p. 31.

a. Coverage of Contract

To bar a petition an asserted contract must clearly cover the employees sought in the petition and must embrace an appropriate unit.[41] A contract for members only does not operate as a bar.[42]

The effectiveness of a contract as a bar where changes in the employer's operations have occurred before the filing of the petition is governed by certain rules announced during the preceding year in the *General Extrusion* case.[43]

Applying these rules, the Board held in one case that the asserted contract was no bar because at the time of its execution the plant did not have a substantial and representative work force, less than 30 percent of the employee complement as of the hearing having been employed.[44] In another case, the intervenor's contract, purporting to cover a new plant of the employer, was held ineffective as a bar under the *General Extrusion* rules, whether the plant was considered a new operation or a mere relocation of the employer's former operations.[45] For if the plant was a new operation, the contract was not a bar under *General Extrusion* because it had been executed before any employees were hired. On the other hand, even if the new plant was but a relocation of operations, the contract was removed as a bar because the new plant was opened only after the old plant had been closed for more than 6 months, and because less than a "considerable proportion" of the former employees were presently employed at the new plant. The Board had held in *General Extrusion* that, while a mere relocation of operations accompanied by a transfer of a considerable proportion of the employees to another plant, without changes in the character of the jobs and the functions of the employees, does not remove the contract as a bar, the contract would be removed as a bar if, between its execution and the filing of the petition, there had been a resumption of operations at a new location, after an indefinite period of closing, with new employees.

In one case,[46] the Board reaffirmed the rule that where a contract is ineffective as a bar because it was executed before the employer had a representative and substantial complement of employees, an amendment which does not constitute a new contract is insufficient to correct

[41] Twenty-fourth Annual Report, p. 21, discussing *Appalachian Shale Products Co.*, 121 NLRB 1160.

[42] Cf. *Aluminum Furniture Manufacturers Assn.*, 124 NLRB 882. The contract here was held not a "members only" contract and not invalid for contract-bar purposes.

[43] *General Extrusion Co., Inc.*, 121 NLRB 1165; Twenty-fourth Annual Report, pp. 21–22.

[44] *Western Rolling Mills Division of Yuba Consolidated Industries, Inc.*, 124 NLRB 904.

[45] *Edward Aaron Corp.*, 125 NLRB 840, Member Fanning concurring in the result.

[46] *Wood Conversion Co*, 125 NLRB 785.

the infirmity of the basic contract.[47] *Arvey Corporation*,[48] decided during fiscal 1959, was overruled as inconsistent with this principle.

b. Duration of Contract

Under the Board's present practice, a valid collective-bargaining agreement is held to bar a determination of representatives "for as much of its term as does not exceed 2 years." [49] A contract with a fixed term of more than 2 years will be treated as for a fixed term of 2 years.[50] But a contract of no fixed duration is considered ineffective as a bar for any period.[51] A Board majority held, however, that the *Pacific Coast* rule did not apply to a renewal contract which, while lacking an express duration or termination clause, incorporated [52] by reference the parties' earlier 2-year contract. The majority was of the view that, when read together, the two agreements clearly indicated the parties' intent to contract again for a 2-year term.

The 2-year period during which a contract is operative as a bar runs from its effective date. In announcing this rule, and in rejecting the proposal that the execution date of a contract be held to control,[53] the Board sought to further implement its policy "to provide employees the opportunity to select representatives at reasonable and predictable intervals." [54] The Board stated:

> The term of a contract technically embraces the effective term provided in the instrument, and it is this term on the face of the contract to which the employees and outside unions look to predict the appropriate time for the filing of a representation petition. It is, of course, a fact that many contracts do not show the execution date, or such date as appears may not be accurate. In these instances the desired predictability would therefore be lost if reliance were to be placed on the execution date.

The Board also noted that computation of the contract term from the execution date would often require resort to parol evidence to determine the actual time of execution, contrary to the Board's contract-bar policy to require that an asserted contract be sufficient on its face.[55]

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[47] See *Carbide & Carbon Chemicals Division, Union Carbide and Carbon Corp.*, 98 NLRB 270.

[48] *Arvey Corp. (Transo Envelope Company Division)*, 122 NLRB 1640; Twenty-fourth Annual Report, p. 22.

[49] *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990; Twenty-fourth Annual Report, p. 23.

[50] *Ibid.*

[51] *Pacific Coast Association, supra.*

[52] *Consolidated Brick Co., Inc.*, 127 NLRB 914, Members Rodgers and Jenkins dissenting.

[53] *Benjamin Franklin Paint & Varnish Co.*, 124 NLRB 54.

[54] See *Pacific Coast Association of Pulp and Paper Manufacturers, supra.*

[55] Compare *Mutual Shoe Co.*, 124 NLRB 943, footnote 4.

(1) Amendment of Long-Term Contract

The Board announced during the past year that amendments of long-term contracts, executed after the first 2 years, to have contract-bar effect must clearly indicate that the parties intend to be bound for a specified period.[56] The rule governing extensions of long-term agreements was stated as follows:

> . . . where, after the end of the first 2 years of a long-term contract and before the filing of a petition, the parties execute (1) a new agreement which embodies new terms and conditions, or incorporates by reference the terms and conditions of the long-term contract, or (2) a written amendment which expressly reaffirms the long-term agreement and indicates a clear intent on the part of the contracting parties to be bound for a specific period, such new agreement shall be effective as a contract bar for as much of its term as does not exceed 2 years. Any new agreement or amendment executed prior to the 60-day period at the end of the first 2 years of a long-term contract, however, is subject to the premature extension doctrine.

c. Terms of Contract

To bar a petition, an asserted contract must contain substantial terms and conditions of employment sufficient to stabilize the bargaining relationship of the parties.[57]

An agreement which provides only for recognition of the union involved is not such a contract and does not bar a petition.[58] The Board also has continued to deny contract-bar effect to supplementary agreements which are merely ancillary to and dependent upon a master agreement. Thus, an agreement "supplemental and subject to" a companywide agreement was held to have expired with the latter and to have no contract-bar force of its own. The provisions of the supplemental agreement here, dealing with union security, grievances, holidays, vacations, overtime pay, and lunch periods, were incomplete and required reference to the master contract.[59] Similarly, a supplemental agreement was held without effect separate and apart from the basic national agreement because it served merely to prescribe some terms conforming layoff and recall procedures to local conditions.[60]

(1) Union-Security Clauses

Under established Board rules, summed up during the preceding year in the *Keystone Coat* case,[61] a contract will not be held a bar if it

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[56] *Southwestern Portland Cement Co.*, 126 NLRB 931.

[57] See *Appalachian Shale Products Co.*, 121 NLRB 1160; Twenty-fourth Annual Report, p. 24

[58] *Central Coat, Apron & Linen Service, Inc.*, 126 NLRB 958.

[59] *United States Rubber Co.*, 124 NLRB 466.

[60] *General Electric Co.*, 125 NLRB 718.

[61] *Keystone Coat, Apron & Towel Supply Co.*, 121 NLRB 880; Twenty-fourth Annual Report, pp. 24–26.

contains union-security provisions which contravene requirements of the union-security proviso of section 8(a)(3).[62] Thus, a union-security contract is no bar if the contracting union lacks statutory qualifications, or if the terms of the agreement exceed the statutory limitations.[63] A union can validly enter into a union-security agreement only if it is the majority representative of the employees in an appropriate unit, and if its authority to make such an agreement has not been revoked by the employees during the preceding year in a section 9(e) election. Before the repeal of section 9(f), (g), and (h), effective September 14, 1959, the contracting union was also required to be in compliance with the filing requirements of that section. In cases decided after September 14, 1959, the Board has declined to recognize as a bar contracts executed at a time when the union was not in compliance with the filing requirements which then were still in effect.[64]

(a) Terms of union-security clause

It is the Board's announced policy [65] to find no contract bar where the asserted contract contains a union-security clause which—

(1) does not on its face conform to the requirements of the act; [66]

(2) has been found unlawful in an unfair labor practice proceeding.

Union-security clauses which were found to be invalid on their face included a clause not expressly granting old nonunion employees 30 days to join the union,[67] one essentially establishing a closed shop,[68] and one amounting to an unlawful exclusive hiring agreement.[69]

The Board has adhered to the policy, announced in the *Keystone* case, not to recognize any amendments deleting or purporting to rescind illegal union-security clauses.[70]

(2) Checkoff Clauses

Under the Board's rules a contract is not a bar if it contains a checkoff clause which does not on its face conform to section 302 of the act.[71]

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[62] Once the contract-bar issue has been raised, it is the Board's policy to examine the contract's union-security provisions on its own motion.

[63] For pertinent amendments to the act which became effective November 13, 1959, see footnote 39, *supra*.

[64] *Du-Wel Decorative Company*, 125 NLRB 31; *Food Haven, Inc.*, 126 NLRB 666.

[65] See the *Keystone Coat* case, *supra;* Twenty-fourth Annual Report, p. 25.

[66] Parol evidence may not be adduced to establish the validity of the clause See *Benjamin Franklin Paint & Varnish Co.*, 124 NLRB 54.

[67] *Freezmor Metal Products Co.*, 124 NLRB 803.

[68] *Shreveport-Bossier Cleaners & Laundries, Inc.*, 124 NLRB 534.

[69] *Porto Rican American Sugar Refinery, Inc.*, 125 NLRB 384.

[70] *Food Haven, Inc., supra; Radio Frequency Connectors Corp.*, 126 NLRB 1076.

[71] Sec. 302(c)(4) provides that an employer may deduct union membership dues from the wages of employees if "the employer has received from each employee, on whose ac-

d. Changes in Identity of Contracting Party—Schism—Defunctness

During the preceding year, the Board in the *Hershey Chocolate* case [72] stated the rules by which it will be governed in determining whether contract-bar effect should be denied because of a schism in the ranks of the contracting union, or because the union is defunct.

(1) Schism

The new schism rules are set out in the last Annual Report.[73] The cases where the rules were applied during fiscal 1960 involved questions regarding the presence of certain prerequisites to a schism finding, *viz*, existence of "a basic intraunion conflict," [74] and disaffiliation action directly related to the intraunion conflict.[75]

B & B Beer, where no schism warranting an election was found, involved the expulsion of the Teamsters by the AFL–CIO, the Board holding that the expulsion, standing alone, was insufficient to establish the existence of an intraunion conflict. The Board noted that the expulsion did not result "either in the creation of a new rivalry, or the aggravation of an existing rivalry, based on the policy conflict"; that there were "no concerned efforts to secure the allegiance of the local union members," such as are contemplated by the *Hershey* case; and that there was no evidence of any effect of the expulsion on the general stability of the expelled union's bargaining relationships.

Conversely, a schism within the *Hershey* rule was found in the *Oregon Macaroni* case, the Board rejecting the contention that economic problems, rather than the intraunion conflict arising from expulsion on grounds of alleged corrupt practices, were the chief reason for disaffiliation. The Board here also rejected the contention that the asserted disaffiliation action was not taken "within a reasonable time after the occurrence of the conflict," as required under the *Hershey* rule. It was pointed out that the dissident local's delay in taking disaffiliation action was justified by the attending circumstances.

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count such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner."

Section 8(e) of the amended act, which became effective November 13, 1959, outlaws "hot cargo" type agreements. As noted above (footnote 39), cases involving the question of the contract-bar effect of agreements containing "hot cargo" clauses did not reach the Board until after the close of fiscal 1960. Since then, the Board has held that such agreements do not bar an election.

[72] *Hershey Chocolate Corp.*, 121 NLRB 901.

[73] Twenty-fourth Annual Report, p. 27.

[74] *B & B Beer Distributing Co., Inc.*, 124 NLRB 1420.

[75] *Oregon Macaroni Co.*, 124 NLRB 1001.

(2) Defunctness

The Board deems a union defunct and its contract not a bar if it "is unable or unwilling to represent the employees" in the contract unit.[76] Applying the *Hershey* case rule,[77] the Board rejected the petitioner's contention in one case that the intervening union was defunct and therefore not in a position to assert its contract as a bar.[78] Here the contracting intervenor had continued to function with the aid of the field representative who was a signatory to the contract; the employer, refusing to honor the large number of purported employee repudiations, continued to remit checked-off dues, and later a substantial number of the employees signed a redesignation petition in the intervenor's favor. In another case, defunctness was held not shown where it appeared that the intervenor was under a special trusteeship.[79]

e. Effect of Rival Claims and Petitions, and Conduct of Parties

Under the Board's rules, as recently revised in the *Deluxe Metal Furniture* decision,[80] an asserted contract may not bar a present election because of a timely rival claim or petition, or the parties' conduct regarding their contract.

(1) Effect of Representation Claims

The Board has continued to deny contract-bar effect to collective-bargaining agreements executed at a time when the employer was confronted with a substantial, as distinguished from an unsupported, representation claim.[81]

(2) Effect of Rival Petitions—Timeliness

To defeat a contract as a bar, a rival petition must be filed timely in accordance with the Board's rules.[82] Generally, a petition will be held untimely if (1) filed on the same day a contract is executed; or (2) filed prematurely, *viz*, more than 150 days before the terminal date of an outstanding contract;[83] or (3) filed during the 60-day "insulated" period immediately preceding that date.

[76] See *Hershey Chocolate Corp., supra.*

[77] See Twenty-fourth Annual Report, p. 28.

[78] *Consolidated Brick Co., supra,* Members Rodgers and Jenkins dissenting.

[79] *Pennington Bros., Inc.,* 124 NLRB 935.

[80] *Deluxe Metal Furniture Co.,* 121 NLRB 995; Twenty-fourth Annual Report, pp. 28–34.

[81] See *Deluxe Metal Furniture Co., supra.*

[82] See Twenty-fourth Annual Report, pp. 29–31.

[83] See, e g, *The Union News Co.,* 127 NLRB 520, where one of several consolidated petitions was dismissed, having been filed 1 month after the execution of a supplemental agreement extending the parties' master agreement effectively for 2 years.

However, a contract will not be deemed a bar where, notwithstanding the prematurity of a petition, a hearing is held and the Board's decision issues on or after the 90th day preceding the expiration date of the contract. See *The Ohio Valley Gas Co.,* 124 NLRB 579.

In the case of an amended petition, timeliness is controlled by the filing date of the original petition, provided the employees sought in the original petition can be identified with reasonable accuracy.[84]

(a) Sixty-day insulated period

The *Deluxe Metal* rule, barring petitions during the 60-day period immediately preceding and including the expiration date of an existing contract, was adopted to promote industrial stability by affording parties to an expiring contract an opportunity to negotiate a new agreement without the disrupting effect of rival petitions.[85]

Petitions which are untimely under the 60-day rule will be dismissed irrespective of whether or not the issue of timeliness was specifically raised.[86] The 60-day rule does not apply where the incumbent's contract is not a bar under the Board's rules.[87]

In one case where successive petitions were filed—the first for a presently represented overall unit, and the second for severance of a craft group—the Board held that the severance petition was not subject to the 60-day rule because it was filed while the question of representation raised by the earlier timely petition remained unresolved.[88]

(3) Termination of Contract

A contract ceases to be a bar to rival petitions upon its termination. However, termination of a contract during the 60-day insulated period does not render timely a petition filed during the 60-day period.[89]

(a) Automatically renewable contracts

In the case of an automatically renewable contract—as in the case of a fixed-term contract—a petition is untimely if filed during the 60-day insulated period preceding the contract's expiration date.

Under present rules, automatic renewal for contract-bar purposes is forestalled by—

> Any notice of a desire to negotiate changes in a contract received by the other party thereto immediately preceding the automatic renewal date provided for in the contract . . . despite provision or agreement for its continuation during negotiations, and regardless of the form of the notice.[90]

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[84] See *Purity Baking Co.*, 124 NLRB 159, citing *Deluxe Metal Furniture Co.*, 121 NLRB 995, footnote 12. See also *Minneapolis-Honeywell Regulator Co.*, 127 NLRB 878.

[85] See Twenty-fourth Annual Report, pp. 30–31.

[86] *Oregon Macaroni Co.*, 124 NLRB 1001, footnote 2.

[87] *Edward Aaron Corp.*, 125 NLRB 840.

[88] *Marinette Paper Co*, 127 NLRB 1319.

[89] See *Deluxe Metal Furniture Co., supra.* Twenty-fourth Annual Report, p. 33.

[90] For the effect of belated notice and of notice under modification clauses, see Twenty-fourth Annual Report, pp. 32–33.

(b) Effect of midterm modification

The Board during fiscal 1960 reaffirmed the rule announced in the *Deluxe Metal* case that no action pursuant to a midterm modification clause short of actual termination of a contract will remove a contract as a bar, except where notice is given immediately prior to the automatic renewal date of such contract.[91]

(4) Premature Extension of Contract

The Board adheres to the general rule that a prematurely extended contract will not bar a petition which is timely in relation to the original contract's terminal date. However, in view of the *Deluxe Metal* requirements, a petition to be timely must be filed over 60 days, but not more than 150 days, before the original contract's terminal date. If so filed, the petition is timely in relation to the extended contract.[92]

Where a contract of more than 2 years' duration is extended during the first 2 years, the extension is premature. In such a case, a petition filed over 60, but not more than 150, days before the expiration of the first 2 years of the original contract is timely.[93]

The premature extension rule does not apply where a contract of more than 2 years' duration is extended after the contract has run for more than 2 years;[94] nor does the rule apply to an extension made during the 60-day insulated period preceding the terminal date of the original contract[95] or to the extension of a contract which would not have barred an election because of other contract-bar rules.[96]

5. Impact of Prior Determination

To promote the statutory objective of stability in labor relations, representation petitions under section 9 are barred during specific periods following a prior Board determination of representatives. Thus, according to longstanding, judicially approved Board practice, the certification of a representative ordinarily will be held binding for at least a year.[97] In addition, section 9(c)(3) specifically prohibits the Board from holding an election during the 12-month period following a valid election in the same group.

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[91] See *Ellison Brothers Oyster Co*, 124 NLRB 1225.

[92] See, e.g., *The Mountain States Telephone & Telegraph Co.*, 126 NLRB 676; *Radio Corporation of America*, 127 NLRB 1563.

[93] *Sabine Towing Co., Inc.*, 126 NLRB 61. *Southwestern Portland Cement Co.*, 126 NLRB 931.

[94] *Alliance of Television Film Producers, Inc.*, 126 NLRB 54.

[95] Twenty-fourth Annual Report, p. 34; *Southwestern Portland Cement Co., supra.*

[96] Twenty-fourth Annual Report, p. 34; *Alliance of Television Film Producers, Inc., supra.*

[97] See *Ray Brooks* v. *N.L.R.B.*, 348 U.S 96.

a. One-Year Certification Rule

Under the Board's 1-year rule a petition filed before the end of the certification year will be dismissed,[98] except where the certified incumbent and the employer have executed a contract during the certification year. In that situation, the certification year is held to merge with the contract, the contract becoming then controlling with respect to the timeliness of a rival petition.[99] This rule, however, applies only where the union negotiates a new contract and not where the certified union after certification assumes an existing contract pursuant to a preelection agreement.[1]

The Board has consistently declined to apply its *Allis-Chalmers* doctrine [2] and to extend the 1-year period in favor of parties alleging that, without fault on their part, they had insufficient time to negotiate a contract during the certification year.[3] The Board has adhered to the view that the *Allis-Chalmers* rule should be strictly limited to the wartime situation in which it originated.

b. Twelve-Month Limitation

Section 9(c)(3) prohibits the holding of an election *in any bargaining unit or any subdivision* in which a valid election was held during the preceding 12-month period. The Board has interpreted section 9(c)(3) as not precluding a new election in a unit larger than that in which the earlier election was held.[4] In cases involving the reverse situation, i.e., where an election is sought in a unit constituting a segment of the unit involved in the first election, the Board likewise considered the second election not barred by section 9(c)(3).[5]

In one case, where separate elections in two voting groups were inconclusive, and where none of the three participating unions received a majority in the pooled group for which provision had been made, a majority of the Board held that under the circumstances an immediate second election in the combined unit was necessary to resolve the still unresolved question of representation, and that an election in that unit was not in conflict with the 12-month limitation of section 9(c)(3).[6]

(1) Timeliness of Petition—New 60-Day Rule

It has also been the Board's view that section 9(c)(3) only prohibits the holding of an election during the proscribed period, but does not

[98] *Centr-O-Cast & Engineering Co.*, 100 NLRB 1507.
[99] *Ludlow Typograph Co.*, 108 NLRB 1463; *Purity Baking Co.*, 124 NLRB 159.
[1] *The Great Atlantic & Pacific Tea Co.*, 125 NLRB 252, footnote 5.
[2] *Allis-Chalmers Manufacturing Co.*, 50 NLRB 306.
[3] See *The Great Atlantic & Pacific Tea Co., supra*, Member Bean dissenting.
[4] See *Vickers, Inc.*, 124 NLRB 1051.
[5] See *Vickers, Inc., supra;* and see *Home Beneficial Life Insurance Co.*, 98 NLRB 1053.
[6] *Anheuser-Busch, Inc.*, 125 NLRB 556, Members Rodgers and Jenkins dissenting.

require the Board to dismiss any petition filed during the 12-month period as untimely. Heretofore the Board considered timely a petition filed "at or near the close of the year" after an election in which no bargaining agent was selected.[7] However, the Board held during the past year that the desirability of establishing specific periods for the timely filing of petitions required a more definite standard. The Board therefore adopted a 60-day standard, announcing that hereafter petitions filed more than 60 days before the expiration of the statutory 12-month period will be dismissed forthwith.[8]

6. Unit of Employees Appropriate for Bargaining

Section 9(b) requires the Board to decide in each representation case whether, "in order to assure to employees the fullest freedom in exercising the rights guaranteed by this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." [9]

The broad discretion conferred on the Board by section 9(b) in determining bargaining units is, however, limited by the following provisions:

Section 9(b)(1) prohibits the Board from deciding that a unit including both professional and nonprofessional employees is appropriate unless a majority of the professional employees vote for inclusion in such a mixed unit.[10]

Section 9(b)(2) prohibits the Board from deciding that a proposed craft unit is inappropriate because of the prior establishment by the Board of a broader unit, unless a majority of the employees in the proposed craft unit vote against separate representation.[11]

Section 9(b)(3) prohibits the Board from establishing units including both plant guards and other employees or from certifying a labor organization as representative of a guard unit, if the labor organization admits to membership, or is affiliated, directly or indirectly, with an organization which admits, nonguard employees.[12]

Section 9(c)(5) prohibits the Board from establishing a bargaining unit solely on the basis of extent of organization.[13]

The following sections discuss the more important cases decided dur-

[7] *Vickers, Inc., supra,* at p. 1052.

[8] *Ibid.*

[9] Unit determinations also have to be made in refusal-to-bargain cases, as no violation of the relevant section of 8 (a) or (b) can be found unless the bargaining representative involved had a majority status in an appropriate bargaining unit at the time of the alleged refusal to bargain.

[10] *Vickers, Inc.,* 124 NLRB 1051; *Pay Less Drug Stores,* 127 NLRB 160.

[11] For the application of rules governing the establishment of craft units, see *infra,* pp. 38–40.

[12] See, e g, *American Building Maintenance Co.,* 126 NLRB 185.

[13] See *Quality Food Markets, Inc.,* 126 NLRB 349.

ing fiscal 1960 which deal with factors generally considered in unit determinations, particular types of units, and treatment of particular categories of employees or employee groups.

a. General Considerations

The appropriateness of a bargaining unit is primarily determined on the basis of the common employment interests of the group involved.[14] In making unit determinations, the Board also has continued to give particular weight to any substantial bargaining history of the group.

The wishes of the employees concerned, as ascertained in self-determination elections, are taken into consideration where (1) specifically required by the act, or (2) in the Board's view, representation of an employee group in a separate unit or a larger unit is equally appropriate, or (3) the question of a group's inclusion in an existing unit rather than continued nonrepresentation is involved.

Extent of organization may be a factor but, under section 9(c)(5), it cannot be given controlling weight.

The Board has consistently held that limitations on a union's jurisdiction in its constitution are not a controlling factor in determining the appropriateness of a bargaining unit.[15]

b. Craft and Quasi-Craft Units

The Board has continued to apply the *American Potash* rules[16] in passing on petitions for the establishment of craft units, or the severance of craft or craftlike groups from existing larger units. Under these rules: (1) A craft unit must be composed of true craft employees having "a kind and degree of skill which is normally acquired only by undergoing a substantial period of apprenticeship or comparable training"; (2) a noncraft group, sought to be severed, must be functionally distinct and must consist of employees who, "though lacking the hallmark of craft skill," are "identified with traditional trades or occupations distinct from that of other employees . . . which have by tradition and practice acquired craftlike characteristics"; and (3) a representative which seeks to sever a craft or quasi-craft group from a broader existing unit must have traditionally devoted itself to serving the special interests of the type of employees involved.[17]

[14] See, e.g., *Arlington Hotel Co., Inc.*, 126 NLRB 400.

[15] See *Pennsylvania Garment Manufacturers Association, Inc.*, 125 NLRB 185. Here, a request for separate units based on an International's alleged division of jurisdiction between its branches according to work tasks was rejected as contrary to established Board policy.

[16] *American Potash and Chemical Corp.*, 107 NLRB 1418.

[17] See *Kennecott Copper Corp.*, 125 NLRB 107, and *Seville-Sea Isle Hotel Corp*, 125 NLRB 299.

(1) Craft Status

In two cases, truck service and repair shop mechanics, sought to be included in separate craft units, were found to have craft status and to be entitled to craft representation.[18] The considerations underlying the *International Harvester* decision[19] were held to apply. The Board pointed out that, as in that case, the mechanics here were concerned with the adjustment and maintenance of complicated modern automotive equipment requiring the use of craft skills. Separate craft units were therefore held appropriate, whether or not the employer had on-the-job training or apprenticeship programs.[20]

In one case, where the petitioner sought a craft unit comprising employees engaged in electrotyping and rubber plate making, the Board reaffirmed the craft status of the type of employees involved.[21] Noting, however, that the two operations require different skills, and that the petitioner's constitution treats them as separate crafts, the Board established two separate units rather than a single unit.

Moldmakers in a glass bottle and container manufacturing plant were held to have craft status and to constitute a craft group appropriate for separate representation.[22] While there was no apprentice program for moldmakers, many, as noted by the Board, had mechanical vocational training prior to being employed, and all of them were trained in the moldmakers trade after assignment to the employer's mold shop.

However, bindery workers in the printing department of a manufacturer of duplicating machines and supplies were held to have no craft status in the absence of any apprenticeship or formal training program at the plant.[23] The employer here, when hiring bindery employees, did not require any fixed amount of experience, and only a few of the bindery employees were shown to have had any previous experience in their present occupation.

(2) Craft and Departmental Severance

As heretofore, severance of true craft groups, or functionally distinct and homogeneous traditional departmental groups,[24] from

[18] *Diamond T. Utah, Inc.*, 124 NLRB 966; *Kennecott Copper Corp., supra.* Member Jenkins who dissented in the *Diamond* case did not participate in *Kennecott Copper.*

[19] *International Harvester Co.*, 119 NLRB 1709.

[20] See the *Diamond* case, *supra.*

[21] *Dixie Electrotype Co., Inc.*, 126 NLRB 924, citing *National Cash Register Co.*, 121 NLRB 408.

[22] *Puerto Rico Glass Corp.*, 126 NLRB 102.

[23] *Ditto, Inc.*, 126 NLRB 135.

[24] It has been made clear that a general maintenance group may not be severed en masse. *Seville-Sea Isle Hotel Corp.*, 125 NLRB 299, *The Bellingham Hotel Co*, 125 NLRB 562.

existing larger units [25] was permitted where the *American Potash* requirements were met, including the requirement that the severance petitioner qualify as the "traditional representative" of the group.[26]

A union organized for the sole purpose of representing an otherwise severable group is entitled to seek severance of the group.[27] On the other hand, "a union which, by its constitution, does not purport to represent a specific craft but may represent a multitude of crafts or even tradesmen who may not be skilled craftsmen is not a qualified 'traditional representative' under *American Potash* for craft severance purposes." [28] A severance petitioner was held not qualified where it appeared that it was formed by, and was fronting for, an organization which had been unsuccessful in its attempt to sever the group involved because of lack of "traditional representative" status.[29]

Adhering to the policy stated in the *American Potash* case,[30] the Board has continued to permit severance where otherwise proper, irrespective of any degree of integration of the employer's operations.[31]

c. Multiemployer Units

Questions regarding the appropriateness of multiemployer units were again presented in a number of cases. In determining whether requests for such a unit should be granted, the Board has continued to look to the existence of a controlling bargaining history,[32] and the intent and conduct of the parties.[33]

Regarding the determinative factors, the Board had occasion to make clear that where there is agreement as to proposed multiemployer bargaining, with no party seeking single-employer units, col-

[25] Severance must be coextensive with the existing bargaining unit. Thus, severance of steam engineers in one plant was held inappropriate where bargaining had been on a nationwide basis. *Chrysler Corp. (St. Louis Assembly Plant)*, 124 NLRB 792, footnote 9.

[26] See *Kennecott Copper Corp.*, 125 NLRB 107; compare *Seville-Sea Isle Hotel Corp., supra.*

[27] *Puerto Rico Glass Corp.*, 126 NLRB 102, citing *Friden Calculating Machine Co., Inc.*, 110 NLRB 1618.

[28] *Robertson Paper Box Co., Inc.*, 124 NLRB 348.

[29] *Iowa Packing Co.*, 125 NLRB 1408; see also *Swift & Co.*, 126 NLRB 398.

[30] *Supra*, footnote 16.

[31] *Puerto Rico Glass Corp., supra; E. I. DuPont de Nemours and Co.*, 126 NLRB 885. In the latter case the Board acknowledged, but expressed disagreement with, the decision of the court of appeals in *N.L.R.B.* v. *Pittsburgh Plate Glass Co.*, 270 F. 2d 167 (C.A. 4), *infra.*

[32] In one case where a party objected to the use of a contract containing an illegal union-security clause as evidence of a multiemployer bargaining history, the Board, while relying on the party's participation in joint bargaining rather than on the contract, pointed out that a contract containing such a clause "does not render inappropriate an otherwise appropriate unit." *Cosmopolitan Studios, Inc.*, 127 NLRB 788.

[33] See Twenty-fourth Annual Report, p. 40.

lective-bargaining history is not a prerequisite to finding a multiemployer unit appropriate.[34]

The Board during the past year also reaffirmed its policy not to give any weight to collective-bargaining history with a labor organization which has received illegal employer assistance.[35]

A bargaining history on an associationwide basis is not controlling where all the parties have abandoned joint bargaining, as where the association released its members, and the members in turn resigned, revoked the association's bargaining authority, and entered into separate agreements with the former common employee representative.[36]

In some cases the appropriateness of the proposed multiemployer unit turned on whether members of the particular employee group had clearly indicated their intent to be bound by joint bargaining. Joint participation in negotiations of several employers, and unity of action for arriving at identical contract terms for the participants, have been held to evidence such an intent.[37]

Where the inclusion of an employer in a multiemployer unit is contested, inclusion in the unit is considered proper if "the employer participates personally with other employers in joint negotiations, or when it delegates to a joint bargaining representative authority to conduct negotiations on its behalf." [38] But inclusion in the unit is not warranted by an only informal, if close, interest in an association's joint negotiations followed by adoption of the resulting agreements,[39] or by the mere adoption of association contracts.[40]

The exclusion of a former member employer from an associationwide unit may depend upon the employer's effective withdrawal from the employer group.[41] In one case the Board held that a former multiemployer unit was no longer binding on the petitioning employers because they had formally withdrawn from association bargaining and the union, which insisted on maintaining the former unit, had itself expressed willingness to bargain singly with those employers.[42] The petitioning employers, according to the Board, could no longer be required to bargain on a multiemployer basis,

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[34] *Broward County Launderers & Cleaners Association, Inc.*, 125 NLRB 256. See also *Alliance of Television Film Producers, Inc.*, 126 NLRB 54.

[35] *Cavendish Record Manufacturing Co.*, 124 NLRB 1161.

[36] *Pennsylvania Garment Manufacturers Association, Inc.*, 125 NLRB 185.

[37] See *Local 19, International Brotherhood of Longshoremen, AFL–CIO (Chicago Stevedoring Co., Inc.)*, 125 NLRB 61.

[38] *Pennsylvania Garment Manufacturers Association, Inc., supra.*

[39] *Shreveport-Bossier Cleaners & Laundries, Inc.*, 124 NLRB 534.

[40] *Shreveport-Bossier Cleaners, supra; Pennsylvania Garment Manufacturers, supra.*

[41] See *Anderson Lithograph Co., Inc.*, 124 NLRB 920, and *Cosmopolitan Studios, Inc.*, 127 NLRB 788, unfair labor practice cases where the respective employers were held estopped by their inconsistent conduct from asserting withdrawal from a multiemployer unit as a defense to their refusal to bargain with the employees' common bargaining representative.

[42] *Scougal Rubber Mfg. Co., Inc.*, 126 NLRB 470.

either because of mutual abandonment of joint bargaining as to the employees involved, or because the union was estopped from changing its position.

d. Units in the Hotel Industry

During fiscal 1960, the Board examined the normal operations of hotels for the purpose of determining the proper scope of bargaining units in the industry. The examination led to the conclusion that a hotel employee unit should include all operating personnel because of their high degree of functional integration and mutuality of interests.[43]

The Board also held that certain clerks [44] were operating personnel and therefore properly in the unit. Office clericals, the Board announced, will be included in the unit, except where the parties have agreed to exclude them.[45] Hotel maintenance employees likewise were held to have interests which are not sufficiently distinct from those of other employees to warrant their representation in a separate unit.[46]

e. Special Classes of Employees

Some of the cases decided during fiscal 1960 presented issues regarding the unit placement of office clerical employees, technical employees, and of musicians whose tenure is irregular.

Regarding office clericals, the Board reaffirmed its general policy to prevent the commingling in production and maintenance units of such employees and employees who perform manual labor, except where retail selling and nonselling units are involved, or in the case of wholesale operations where the parties do not object to such commingling.[47] It was pointed out, however, that, in addition to these well-established exceptions, the Board now will also include office clericals in a production and maintenance unit "where there is a bargaining history of inclusion coupled with a stipulation to include them." [48]

Regarding technical employees, the Board reexamined and (one member dissenting) reaffirmed the policy not to include technicals in units with other employees where their unit placement is in issue.[49] Defining technicals as employees "who do not meet the strict requirements of the term 'professional employee' as defined in the act but

[43] *Arlington Hotel Co., Inc.*, 126 NLRB 400.

[44] Room clerks, front clerks, desk and information clerks, mail clerks, file clerks, and cashiers.

[45] *Hotel Admiral Semmes*, 127 NLRB 988

[46] *Arlington Hotel Co, supra; Florida Enterprises, Inc. of Georgia*, 125 NLRB 258.

[47] *Charles Bruning Co., Inc.*, 126 NLRB 140. For inclusion of office clericals in hotel employees units, see *supra*.

[48] *Ibid.*, Member Jenkins dissenting in this respect.

[49] *Litton Industries of Maryland, Inc.*, 125 NLRB 722, Member Rodgers dissenting.

whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or through special courses," the majority made clear that wherever technical status is in issue the employees will be held technicals only if the record shows that their work in fact satisfies requirements.

Recording musicians, customarily employed by employers in the phonograph recording industry on a per-session basis, usually for 3 hours when needed, were held to constitute an appropriate bargaining unit.[50] In rejecting a contention that such a unit was inappropriate because of the irregular nature of the musicians' employment, the Board took into consideration the peculiar nature of the musician's profession and the characteristics of the phonograph recording industry.

f. Individuals Excluded From Bargaining Units by the Act

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

The statutory exclusions have continued to require determinations as to whether the employment functions or relations of particular employees precluded their inclusion in a proposed bargaining unit.

(1) Agricultural Laborers

A continuing rider to the Board's appropriation act requires the Board to determine "agricultural laborer" status so as to conform to the definition of the term "agriculture" in section 3(f) of the Fair Labor Standards Act.

In applying the statutory terms, it is the Board's policy to give great weight to the interpretation of section 3(f) by the Wage and Hour Division of the U.S. Department of Labor.[51] Thus, employees engaged in harvesting sedge peat were held not agricultural laborers but "employees" in view of the Wage and Hour Division's ruling that persons engaged in harvesting wild commodities, such as "mosses," or appropriating uncultivated products from the soil are not employed

[51] *Michigan Peat, Inc.*, 127 NLRB 518. See also Twenty-fourth Annual Report, p. 43.

[50] *Cavendish Record Manufacturing Co.*, 124 NLRB 1161. See also *Alliance of Television Film Producers, Inc.*, 126 NLRB 54.

in the "production, cultivation, growing, and harvesting of agricultural or horticultural commodities" within the meaning of section 3(f).[52] In another case, a contention that bulk tank drivers of a milk producers cooperative were "agricultural laborers" for unit purposes was rejected, the Board pointing out that the employing cooperative owns no land and merely furnishes services to its farmer members, and is not itself a "farmer" within the meaning of section 3(f) of the Fair Labor Standards Act.[53]

Conversely, packingshed workers of an employer engaged in growing celery and preparing it for market were held agricultural laborers under section 2(3).[54] Distinguishing those cases where workers in a packingshed, operated as a separate commercial enterprise, were held "employees" for unit purposes, the majority of the Board noted that here "the employer packs his own produce, packs only a small amount of celery for others, has only a modest packingshed financial investment, and utilizes its packingshed employees for more than one-third of their working time in harvesting operations on its farms."

Certain employees of a canning company were held to perform agricultural labor to the extent that they patrolled the company's farm during the harvesting season in trucks equipped with two-way radios for the purpose of reporting and regulating work progress.[55]

(2) Independent Contractors

In determining whether an individual is an independent contractor rather than an employee, and therefore must be excluded from a proposed bargaining unit, the Board has consistently applied the "right-of-control" test. This test is based on whether the person for whom the individual performs services has retained control not only over the result to be achieved but also over the manner in which the work is to be performed. "The resolution of this question depends on the facts of each case, and no one factor is determinative." [56]

In one case the Board held that a soft drink manufacturer's city distributors, or in-town driver-salesmen, were employees for unit purposes, whereas the company's out-of-town distributors were independent contractors.[57] Unlike the former, it was pointed out, the latter were assigned exclusive territories, operated several trucks with their own employees, and maintained warehouses; the distributor's name rather than that of the company was carried on their equipment; they were not required to attend sales meetings, "call in,"

[52] *Ibid.*
[53] *The Valley of Virginia Cooperative Milk Producers Assn.*, 127 NLRB 785.
[54] *John C. Maurer & Sons*, 127 NLRB 1459, Member Jenkins dissenting.
[55] *The Illinois Canning Co.*, 125 NLRB 699.
[56] *Golden Age Dayton Corp.*, 124 NLRB 916.
[57] *Golden Age Dayton Corp., supra.*

or solicit new accounts; they paid a lower price for beverages and were contacted directly by customers; and the company made no social security deductions for the out-of-town drivers. In another case, owner-drivers of a trucking service who leased tractors driven by them to the employer, as distinguished from nonowner and regular drivers, also were found to be independent contractors and therefore excluded from the proposed bargaining unit.[58] A lease provision that the employer was to have "absolute control" over the operation of the leased equipment, while normally persuasive evidence of an employer-employee relationship, was held not controlling because the employer, in fact, did not exercise any significant control over the method of operation by the owner-drivers, who were found to "enjoy a degree of independence . . . and assumed responsibilities and risks normally associated with intrepreneurs rather than employees." [59] On the other hand, a motel swimming pool manager was held not an independent contractor even though he paid his own help, received a percentage of the income derived from the rental of beach mats, and shared a concession at the pool. The Board here noted particularly that the pool manager, aside from paying his help, made no significant capital investment, furnished no goods or materials, and did not undertake any risk.

(3) Supervisors

The supervisory status of an individual under the act depends on whether he possesses authority to act in the interest of his employer in the matters and the manner specified in section 2(11), which defines the term "supervisor." [60]

An employee will be found to have supervisory status if he has any of the authorities enumerated in section 2(11),[61] or exercises it as there provided.[62] An employee who performs the stated functions only in a "routine or clerical" manner is not a supervisor.[63]

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[58] *Hugh Major Truck Service,* 124 NLRB 1387.

[59] Compare *Smith's Van & Transport Company, Inc.,* 126 NLRB 1059, an unfair labor practice case where the Board held that the employee status of the company's drivers was not converted into independent-contractor status by the terms of certain individual contracts.

[60] Sec. 2(11) reads: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

[61] See *Ohio Power Co.* v. *N.L.R.B.,* 176 F. 2d 385, 387 (C.A. 6), cert. denied, 338 U.S. 899: "This section is to be interpreted in the disjunctive . . . and the possession of any of the authorities listed in § 2(11) places the employee . . . in the supervisory class."

[62] Engineers in overall charge of an engineroom and its equipment, but with no employees to supervise, were held not supervisors since mere responsibility for the maintenance of physical property does not constitute supervisory authority. *Graham Transportation Co.,* 124 NLRB 960.

[63] See, e.g., *Durham Coca-Cola Bottling Co.,* 124 NLRB 240; *Magnode Products, Inc.,* 124 NLRB 596; compare *Gulf Bottlers, Inc.,* 127 NLRB 850.

g. Employees Excluded From Unit by Board Policy

It is the Board's policy to exclude from bargaining units employees who act in a confidential capacity to officials who formulate, determine, and effectuate the employer's labor relations policies,[64] as well as managerial employees, i.e., employees in executive positions with authority to formulate and effectuate management policies.[65]

7. Conduct of Representation Elections

Section 9(c)(1) provides that if a question of representation exists the Board must resolve it through an election by secret ballot. The election details are left to the Board. Such matters as voting eligibility, timing of elections, and standards of election conduct are subject to rules laid down in the Board's Rules and Regulations and in its decisions.

a. Voting Eligibility

An employee's voting eligibility depends on his status on the eligibility payroll date and on the date of the election. To be entitled to vote, an employee must have worked in the voting unit during the eligibility period and on the date of the election. However, as specified in the Board's usual direction of election, this does not apply in the case of employees who are ill or on vacation or temporarily laid off, or employees in the military service who appear in person at the polls.

(1) Economic Strikers and Replacements

Section 9(c)(3) of the 1947 act was amended during fiscal 1960 [66] so as to provide that—

> Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike.

The effect of the amendment, according to the Board,[67] is to eliminate the former voting disability of economic strikers and, at the same

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[64] See, e.g., Twenty-third Annual Report, pp. 41–42.

[65] Managerial status, warranting exclusion, was found in the case of a hotel employee in charge of booking entertainment with authority to pledge the employer's credit in amounts up to $500. (*New Hotel Monteleone,* 127 NLRB 1092), and an owner-driver shareholder of a taxicab company who was one of the company's directors. (*Blue and White Cab Co.,* 126 NLRB 956). However, in the same case, owner-drivers possessing about 6 out of 96 shares of stock were included in the unit since each share carried only 1 vote.

[66] Sec. 702. Labor-Management Reporting and Disclosure Act of 1959, Title VII—Amendments to the Labor Management Relations Act, 1947, as amended.

[67] *W. Wilton Wood, Inc.,* 127 NLRB 1675.

time, to preserve the concurrent eligibility of permanent replacements for such strikers.[68]

In applying the new provisions,[69] the Board announced the following principles:[70]

(1) Strikers are presumed to be "economic" unless they are found by the Board to be on strike over unfair labor practices of the employer.[71]

(2) To be entitled to vote, an economic striker must be on strike at the time of the election. The fact that the strike may have commenced before the effective date of the new section 9(c)(3) is immaterial.[72]

(3) Whether an economic striker has lost his status as such before the election, and is therefore no longer eligible to vote is subject to certain tests:[73]

(a) Generally, an employee retains economic striker status absent some affirmative action (other than his replacement) which brings it to an end.

(b) While the facts and circumstances of each case are determinative, economic striker status for voting purposes is forfeited where (i) the striker obtains permanent employment elsewhere before the election; (ii) the employer eliminates his job for economic reasons; and (iii) the striker is discharged or refused reinstatement for misconduct rendering him unsuitable for reemployment.

(4) All issues as to voting eligibility of strikers and replacements will be deferred until the election for disposition by way of challenges.[74]

(2) Replacements for Discriminatees

In one case, the Board during the past year sustained challenges to ballots of employees whom the employer hired as replacements for employees discriminatorily laid off or discharged.[75]

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[68] The Board noted legislative history to the effect that the amendment "allows both the economic striker and the one who has filled his job to vote." Cong. Rec. Senate—Apr. 21, 1959 (p. 5732). Legislative History, Vol. II, p. 1065, col. 1.

[69] The amendment which became effective Nov. 13, 1959, was held applicable to elections held after that date, regardless of whether or not the eligibility date for the election occurred before Nov. 13. *W. Wilton Wood, Inc., supra.*

[70] Regarding the requirement of the new sec. 9(c)(3) that the eligibility of economic strikers be governed by appropriate regulations, the Board elected to proceed by the adjudicative process rather than by the formulation of general rules and regulations. See *W. Wilton Wood, supra.*

[71] *Bright Foods, Inc.*, 126 NLRB 553, citing *Times Square Stores Corp.*, 79 NLRB 361, 364.

[72] *Bright Foods, Inc., supra.*

[73] See the *W. Wilton Wood* case, *supra.*

[74] *Bright Foods, Inc., supra.*

[75] *Lock Joint Tube Co*, 127 NLRB 1146.

(3) Irregular and Intermittent Employees

As heretofore, voting eligibility in industries where employment is intermittent or irregular has been adjusted by the use of formulas designed to enfranchise all employees with a substantial continuing interest in their employment conditions and to insure a representative vote.

To this end, voting eligibility was extended to employees in stevedoring operations who worked at least 50 hours at any time during the employer's last season up to the payroll period immediately preceding the notice of election, provided the employees' names appeared on at least one daily payroll during the current season preceding the eligibility date for the election.[76] Employees of a construction company were held eligible to vote if they worked for the employer at least 65 days in the year preceding the eligibility date for the election.[77] In the case of radio and television talent employees,[78] and musicians in the television film,[79] motion picture,[80] and phonograph recording industries,[81] the Board has applied a uniform voting eligibility formula requiring 2 or more days of employment in the appropriate unit during the year preceding the direction of election.

b. Timing of Election

Ordinarily, the Board directs that elections be held within 30 days from the date of the direction of election. But where an immediate election would occur at a time when there is no representative number of employees in the voting unit—because of such circumstances as a seasonal fluctuation in employment or a change in operations—a different date will be selected in order to accommodate voting to the peak or normal work force. In seasonal industries, it is customary to time the election so as to occur at or near the first peak season following the direction of election.[82] In the case of an expanding unit, the election date will be made to coincide with the time when a representative number of the contemplated enlarged work force is employed.[83] But an

[76] *Toledo Overseas Terminals, Inc.*, 126 NLRB 1283. See also Twenty-fourth Annual Report, p. 46.

[77] *Trammell Construction Co., Inc.*, 126 NLRB 1365.

[78] *El Mundo, Inc. (WKAQ–TV Telemundo)*, 127 NLRB 538.

[79] *Alliance of Television Film Producers, Inc.*, 126 NLRB 54.

[80] *Batjac Enterprises, Inc.*, 126 NLRB 1281; *Edward Small Productions, Inc.*, 127 NLRB 283.

[81] *Cavendish Record Mfg. Co.*, 124 NLRB 1161.

[82] See, e.g., *Pennsylvania Garment Manufacturers Assn., Inc.*, 125 NLRB 185.

[83] *Gordon B. Irvine*, 124 NLRB 217; see also *Hussmann Refrigerator Co.*, 125 NLRB 621; and *Edward Aaron Corp.*, 125 NLRB 840, where unit expansion was held not to justify postponement because it was shown that a substantial and representative segment of the employee complement would be employed at the normal election date.

election will not be postponed because of possible changes in operations which are wholly speculative.[84]

The Board has adhered to the practice not to postpone an election because of unfair labor practice charges which the charging party has waived as a basis for objections to the election, or which has been dismissed by the regional director and may be pending on appeal before the General Counsel.[85]

c. Standards of Election Conduct

Board elections are conducted in accordance with strict standards designed to assure that the participating employees have an opportunity to register a free and untrammeled choice in selecting a bargaining representative. Any party to an election who believes that the standards were not met may, within 5 days, file objections to the election with the regional director under whose supervision it was held. The regional director then makes a report on the objections. Exceptions to this report may be filed with the Board. The issues raised by such objections, and exceptions if any, are then finally determined by the Board.[86]

(1) Mechanics of Election

Election details, such as the time, place, and notice of an election, are left largely to the regional director. The Board does not interfere with the regional director's broad discretion in making arrangements for the conduct of elections except where the discretion has been abused. The test is whether the employees in fact had an adequate opportunity to cast a secret ballot.

Employees were held deprived of the requisite opportunity to vote where the employer's preelection arrangements and instructions justifiably created the mistaken impression that they would be told when they could vote.[87] Some of the employees having failed to cast their ballot in time under these circumstances, the Board set aside the election and directed that a new election be held. However, in one case closing of the polls 15 minutes earlier than the scheduled time was held not to have invalidated the election in the absence of any

[84] *The Houston Corp.*, 124 NLRB 810; *Kellogg Switchboard & Supply Co.*, 127 NLRB 64.

[85] In *Star Union Products Co.*, 127 NLRB 1173, the Board held during the past year that an immediate election was proper notwithstanding the pendency of unfair labor practice charges against one of the two intervening unions, in which the petitioner was in no way involved. Noting that the alleged unfair labor practices had ceased with the termination of the recognition strike during which they occurred, the Board believed that the employees should now have the opportunity to decide which, if any, of the three claimants they desire to represent them.

[86] The procedures for filing objections and exceptions and for their disposition are set out in sec. 102.69 of the Board's Rules and Regulations, Series 8.

[87] *Wagner Electric Corp.*, 125 NLRB 834.

evidence that any eligible employees unsuccessfully attempted to vote during the scheduled voting hours.[88]

Regarding the secrecy of the ballot, as affected by the manner in which ballots are marked, the Board had occasion to restate that—

> a ballot will not be invalidated by reason of its marking if the marking clearly indicates the voter's choice in the election and does not inherently identify the voter, or is not such a departure from the usual ways in which people mark ballots to warrant the conclusion that it is an identifying mark, unless it can be shown that the marking was used for identification purposes at the suggestion or urging of the participating Union or the Employer.[89]

Under these tests, the Board held, ballots were not invalid because, instead of "X" in the particular square, a check mark was used or the square was blocked in with pen lines. The fact that a voter may have intended the marking used by him as a means of later identifying his ballot was held immaterial. The Board also reiterated during the past year that a ballot is not invalid because the "voter's identity may be publicly known as an unavoidable result of the challenge procedure," as in the case of a tie vote.[90]

(2) Interference With Election

An election will be set aside if it was accompanied by conduct which, in the Board's view, created an atmosphere of confusion or fear of reprisals and thus interfered with the employees' free and untrammeled choice of a representative guaranteed by the act.[91] In determining whether specific conduct amounted to such interference, the Board does not attempt to assess its actual effect on the employees but concerns itself with whether it is reasonable to conclude that the conduct tended to prevent a free expression of the employees' choice.

In determining whether verbal utterances have interfered with a free election the Board is not limited by the free speech provisions of section 8(c) of the act which preclude expressions of views from being made the basis of unfair labor practice findings.[92]

(a) Preelection speeches—the 24-hour rule

In order to insure an atmosphere conducive to a free election, the Board has prohibited participating parties from making preelection

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[88] *Independent Linen Service Co. of Mississippi,* 124 NLRB 717.

[89] *Bridgeton Transit,* 124 NLRB 1047.

[90] *Prestige Hotels, Inc.,* 125 NLRB 207.

[91] See, e g., *The Great Atlantic & Pacific Tea Co.,* 124 NLRB 329; *Davis-Cleaver Produce Co.,* 126 NLRB 204; *Alamo Express, Inc.,* 127 NLRB 89; *Frank R. Cook Co.,* 126 NLRB 805.

In order to prevent confusion and turmoil at the time of the election, the Board has specifically prohibited electioneering speeches on company time during the 24-hour period just before the election (*Peerless Plywood Co.,* 107 NLRB 427, *infra*), as well as electioneering near the polling place during the election.

[92] *National Caterers of Virginia, Inc ,* 125 NLRB 110.

speeches on company time and property to massed assemblies of employees within 24 hours before the time scheduled for an election. Violation of this rule results in the election being set aside.

In one case, a speech delivered within 24 hours before the scheduled time for the election was held violative of the *Peerless* rule even though it became necessary to reschedule the election.[93] In holding that in such a situation the time scheduled for the election, rather than the time of the actual balloting, controls, the Board pointed out that "To hold that a campaign speech, otherwise violative of the rule when delivered, subsequently becomes permissive because of a fortuitous postponement of the scheduled election date, would . . . result in an unfair campaign advantage and be contrary to the purpose of the rule."

The Board made clear during the past year that the *Peerless* rule bars "absolutely" the use of company time for campaign speeches during the 24-hour preelection period, and that where company time is used it is immaterial whether or not employee attendance was voluntary.[94] It was pointed out that according to the *Peerless* decision itself "the issue of 'voluntary' attendance only arises if the employees are attending on their 'own time.'" The Board also made clear that the rule against use of company time is violated if *some*, though not all, of the employees attended the meeting in question on company time.

In the same case, the Board rejected the employer's contention that the challenged question-and-answer session which it had arranged was not an "election speech" within the meaning of the *Peerless* rule. The Board held that while there was no formal speech, the employer's answers to questions contained expressions of antiunion views and constituted the type of campaign electioneering sought to be regulated by the *Peerless* rule.[95]

(b) Use of sample ballots

The Board's rule against the use of reproductions of the official ballot as campaign propaganda has been strictly enforced. Thus it was pointed out again that "there can be no reproduction of any document purporting to be a copy of the Board's official ballot, other than one completely unaltered in form and content and clearly marked sample on its face."[96] Here, an election was set aside because the petitioner had mailed to the employees leaflets containing a reproduc-

[93] *Hamilton Welding Co.*, 126 NLRB 138.

[94] *Montgomery Ward & Co., Inc.*, 124 NLRB 343.

[95] In *Independent Linen Service Co. of Mississippi*, 124 NLRB 717, the Board held that alleged electioneering speeches to employees in small groups, even if made, did not constitute speeches to massed assemblies of employees within the *Peerless* rule.

[96] *United States Gypsum Co.*, 124 NLRB 1026.

tion of the official ballot marked "sample" but carrying campaign buttons identifying the petitioner which in many instances were pinned to the "Yes" square of the sample ballot.

(c) Election propaganda

In order to safeguard the right of employees to select or reject collective-bargaining representatives in an atmosphere which is conducive to the free expression of the employees' wishes, the Board will set aside elections which were accompanied by propaganda prejudicial to such expression. However, in view of the large number and the nature of objections to elections filed, the Board has frequently had occasion to make clear that it will not police or censure the parties' election propaganda.[97] However it is the Board's policy to set aside an election where it was preceded by propaganda which the employees were unable to evaluate or recognize as such because of fraud and trickery. The Board had occasion during fiscal 1960 to hold that the possibility of misleading and misdirecting employees is present, and that grounds for setting aside an election exist, where parties to the election have failed to identify themselves as the sponsors of campaign propaganda initiated by them.[98] This rule, it was pointed out, comports with the national election standards which prohibit the distribution and publication of campaign propaganda without disclosure of its source.[99]

On the other hand, as stated again by the Board, mere falsity of campaign propaganda will not be held to constitute trickery warranting setting aside an election. "It is only when one of the parties deliberately misstates material facts which are within its special knowledge and where the employees are unable properly to evaluate the misstatements that the Board will set aside an election." [1] Assertions by employees that they were unable to evaluate campaign propaganda are not a sufficient basis for invalidating an election, the test, according to the Board, being whether or not, in the light of all the circumstances, the employees could reasonably have evaluated the propaganda.[2]

[97] See, e.g., *Photon, Inc.*, 124 NLRB 257.

[98] *Heintz Division, Kelsey-Hayes Co.*, 126 NLRB 151. Here, the intervening union selected some spectators at a baseball game to distribute handbills urging a vote for the petitioner. The Board found that the omission of any identification of the sponsor of the handbills, or of the distributors, clearly indicated the intervenor's intent to lead the employees to believe that the petitioner was the sponsor.

[99] 18 U.S C.A., sec 612 (1958).

[1] *The Lundy Packing Company*, 124 NLRB 905. Here, certain misstatements regarding the petitioner's strike activities were held insufficient to invalidate the election since the employees had more than 2 months to verify the statements and to seek more information from the petitioner regarding them, and the petitioner with proper diligence could have answered the statements in due course. See also *R. L. Polk & Co.*, 125 NLRB 181.

[2] *Pinkerton's National Detective Agency, Inc.*, 124 NLRB 1076.

(d) Campaign tactics

As in the case of prejudicial propaganda, an election will be set aside if the Board finds that campaign tactics resorted to by a party impaired the employees' free choice.

(i) Preelection straw vote

In a case of first impression, the Board was called upon to consider the effect of a poll or straw vote conducted by an employer in anticipation of a Board election.[3] The employer here, 2 weeks after consenting to a Board election, distributed in the employees' pay envelopes questionnaires intended to ascertain the wishes of the employees regarding representation or nonrepresentation, and regarding their union preferences. The questionnaire was to be a "secret ballot" without employee identification. The results of the poll were not made known until after the Board election. Setting aside the election conducted by it, the Board, with one Member dissenting,[4] took the view that—

> after the Board directs a representation election, or the parties agree to a Board-conducted election, the responsibility to conduct a secret ballot election for the resolution of the question concerning representation rests solely with the Board, and any secret balloting or polling of the employees on the representation issue by the parties, or by others on a party's behalf, is an intrusion upon the Board's responsibility and an interference with the Board-conducted election and may be utilized by an innocent party as a basis for setting aside the Board election.

(ii) Employee interviews

The Board has adhered to the *General Shoe* doctrine [5] that an election does not reflect a free choice where the employer has endeavored to influence the outcome by the device of encouraging a "no" vote while interviewing a substantial number of his employees individually or in small groups, away from their work stations and at a location the employees will regard as a place of managerial authority. Setting aside an election in one case because of such interviews, the Board rejected the employer's contention that the place in the cafeteria storeroom where the individual interviews occurred was not a place of authority, particularly because the employees were not interviewed at the cafeteria manager's desk which was located in the storeroom.[6] The Board noted that the setting up of two chairs in a corner of the storeroom for the purpose of the private interviews by a management

[3] *Offner Electronics, Inc.*, 127 NLRB 991.
[4] Member Rodgers.
[5] *General Shoe Corp. (Marman Bag Plant)*, 97 NLRB 499.
[6] *National Caterers of Virginia, Inc.*, 125 NLRB 110.

official reasonably led the employees to believe that the location was a place of managerial authority.

However, an election will not be set aside because of antiunion discussions with individual employees where the employer's tactics are not coercive within the meaning of the *General Shoe* doctrine. Thus, the Board overruled objections to an election based on individual discussions by supervisors where no more than 14 of the 153 eligible voters were involved, and the discussions, though for the most part initiated by the employee's immediate supervisor, generally took place only when an employee happened to be present in connection with his work and expressed an interest in certain explanations.[7]

The Board has consistently set aside elections where the employer resorted to the technique of visiting employees at their homes to urge them to vote against a proposed bargaining representative, regardless of whether the employer's remarks to the employees were coercive in character.[8] But similar preelection visits to employees' homes by a representative of a campaigning union, not being inherently coercive, will not be held to invalidate the election absent a showing that the visits were in fact accompanied by threats or other coercive conduct.[9]

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[7] *Pennsylvania Power & Light Co.*, 124 NLRB 470.
[8] *F. N. Calderwood, Inc.*, 124 NLRB 1211.
[9] *Canton, Carp's, Inc.*, 127 NLRB 513.

IV

Unfair Labor Practices

The Board is empowered by the act "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." In general, section 8 forbids *an employer* or *a union* or their agents from engaging in certain specified types of activity which Congress has designated as unfair labor practices.[1] The Board, however, may not act to prevent or remedy such activities until a charge of unfair labor practice has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or other private party. They are filed with the regional office of the Board in the area where the unfair practice allegedly was committed.

This chapter deals with decisions issued by the Board during the 1960 fiscal year, emphasis being given to decisions which involve novel questions or set new precedents.

A. Unfair Labor Practices of Employers

1. Interference With Section 7 Rights

Section 8(a)(1) of the act forbids an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights to engage in, or refrain from, collective bargaining and self-organizational activities as guaranteed by section 7. Violations of this general prohibition may take the form of (1) any of the types of conduct specifically identified as employer unfair labor practices,[2] or (2) any other employer conduct which independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights. Violations of the latter type are discussed in this chapter.

The cases arising from complaints alleging independent 8(a)(1) violations continued to present situations where employers sought to

[1] Sec. 8 was amended in several respects during the past year by the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257) 73 Stat. 519. The 1959 amendments effect changes in the union-security proviso of sec. 8(a)(3) (see *infra*, pp. 64, 72, 84), and the union unfair labor practice provisions of subsec. (b) of sec. 8 (see *infra*, pp. 104, 105, 117-120). A new section—sec. 8(e)—makes it an unfair labor practice for both employers and unions to enter into "hot cargo" type contracts.

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

impede union organization or to discourage union adherence of employees. Remedial action again was held required in the case of such clearly coercive conduct as express or implied threats of reprisals for participation in collective bargaining or organizational activities, including threats of plant shutdown [3] or discharge,[4] "blackballing," [5] loss of privileges [6] and overtime,[7] or loss of bonus payments.[8] Section 8(a)(1) was likewise held violated by threats which related the employees' opportunities for employment or promotion to the rejection of a bargaining representative.[9]

The Board reiterated during the past year that an employer's threat not to sign a collective-bargaining agreement under any circumstances also interferes with the employees' section 7 rights because such "an anticipatory refusal to bargain is tantamount to a threat to . . . employees to refrain from assisting or becoming members of any union." [10] And in one case, the statement of a company official that he would leave if a union should come in was again held violative of section 8(a)(1) as the equivalent of a threat to the economic security of the employees.[11]

Unlawful interference within the meaning of section 8(a)(1) was also found where employers promised wage increases and other economic benefits in return for the employees' abandonment of union support,[12] and where employers solicited employees to resign from the union,[13] or to abandon a current strike.[14]

Where a question is raised as to the coercive effect of conduct alleged to be violative of section 8(a)(1), the test which the Board applies

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[3] *Kit Manufacturing Co.*, 127 NLRB 426. Compare *Neco Electrical Products Corp.*, 124 NLRB 481, where a supervisor's reply to a question that the employer might lose two of its biggest customers if the union came in, because of the customers' fear of production shortages caused by strikes, was held protected since it was a prediction of possible future action by third parties rather than a threat of action the employer might take to induce the predicted events

[4] *Maricopa Packing Co.*, 124 NLRB 1006.

[5] *Theads-Inc.*, 124 NLRB 968.

[6] *American Freightways Co., Inc.*, 124 NLRB 146.

[7] *Sheridan Silver Co., Inc*, 126 NLRB 877.

[8] *J. G. Braun Co.*, 126 NLRB 368.

[9] *Walton Manufacturing Co.*, 124 NLRB 1331; *Biscayne Television Corp.*, 125 NLRB 437; *Chambers Manufacturing Corp.*, 124 NLRB 721; *Neco Electrical Products Corp.*, 124 NLRB 481; *Revere Metal Art Co., Inc.*, 127 NLRB 1028.

[10] *Grunwald-Marx, Inc.*, 127 NLRB 476. The Board here rejected the trial examiner's view that such a threat violates sec. 8(a)(1) only if made in the context of other violations.

[11] *Grunwald-Marx, Inc., supra.*

[12] *Guerdon Industries, Inc*, 127 NLRB 810; *Michigan Scrap Co.*, 124 NLRB 569; *Kit Manufacturing Co.*, 127 NLRB 426.

[13] *Shamrock Foods, Inc.*, 127 NLRB 522; *Firedoor Corporation of America*, 127 NLRB 1123; *Marlboro Electronic Parts Corp*, 127 NLRB 122.

[14] *Trinity Valley Iron & Steel Co.*, 127 NLRB 417. However, in one case letters, advertisements, and solicitations of strikers to return to work were held not in violation of sec. 8(a)(1) but lawful notifications to economic strikers of the possibility of their replacement if they did not return to work by a certain date. *Albany Garage, Inc.*, 126 NLRB 417, Members Bean and Jenkins dissenting.

is "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." [15] Thus, the Board held in one case that the employer interfered with the employees' organizational freedom by announcing a favorable change in overtime policy while an organizing campaign was in progress.[16] Rejecting the trial examiner's contrary conclusion, the Board made clear that to support a violation it was not necessary to show that the employer was motivated by a desire to influence the employees' choice of a bargaining representative, it being well established that section 8(a)(1) coercion "does not turn on the employer's motive or on whether the coercion succeeded or failed." In the case of questioning of employees regarding their union allegiance and activities, the Board has continued to hold that such interrogation by an employer is coercive if it occurs in the context of union hostility and other unfair labor practices.[17]

a. Prohibitions Against Union Activities

The Board had occasion during the past year to restate the principles which circumscribe the employer's right to promulgate plant rules prohibiting employees from engaging in union activities such as union solicitation and distribution of union literature.[18] The occasion arose when an employer contended that its rule against membership solicitation and distribution of union literature on company property could not be held violative of section 8(a)(1) under the Supreme Court's decisions in the *Republic Aviation*,[19] *Babcock & Wilcox*,[20] and *Nutone* [21] decisions. Holding that the employer's rule was invalid because it applied to the employees' nonworking time without a showing that this was necessary in order to maintain production and dis-

[15] *American Freightways Co., Inc.*, 124 NLRB 146; *Neco Electrical Products Corp.*, 124 NLRB 481.

[16] *American Freightways Co., Inc., supra.* Compare *True Temper Corp.*, 127 NLRB 839, where the trial examiner concluded that the *American Freightways* doctrine does not require an inference that a change in wages or working conditions at any stage of an organizational campaign tends to interfere with the employees' right under the act. The Board here affirmed the trial examiner's findings that the employer did not violate sec. 8(a)(1) by making such changes at the preliminary stages of an organizational campaign, pursuant to a known company policy established before the campaign began. The trial examiner had noted that there was no evidence that the changes were made for the purpose of coercing the employees in the exercise of their sec. 7 rights.

[17] See *Bowmar Instrument Corp.*, 124 NLRB 1; *Walton Manufacturing Co.*, 124 NLRB 1331.

[18] *Walton Manufacturing Co.*, 126 NLRB 697.

[19] *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U.S. 793 (1945); Tenth Annual Report, pp. 58–59.

[20] *N.L.R.B.* v. *Babcock & Wilcox Co.*, 351 U.S. 105 (1956); Twenty-first Annual Report, pp. 123–125.

[21] *N.L.R.B.* v. *United Steelworkers of America, CIO (Nutone, Inc., Intervenor)*, 357 U.S. 357 (1958); Twenty-third Annual Report, pp. 106–107

cipline, the Board construed the cited Supreme Court cases as establishing the following rules of law:

1. No-solicitation or no-distribution rules which prohibit union solicitation or distribution of union literature on company property by employees during their nonworking time are presumptively an unreasonable impediment to self-organization, and are therefore presumptively invalid both as to their promulgation and enforcement; however, such rules may be validated by evidence that special circumstances make the rule necessary in order to maintain production or discipline.

2. No-solicitation or no-distribution rules which prohibit union solicitation or distribution of union literature by employees during working time are presumptively valid as to their promulgation, in the absence of evidence that the rule was adopted for a discriminatory purpose; and are presumptively valid as to their enforcement, in the absence of evidence that the rule was unfairly applied.

3. No-solicitation or no-distribution rules which prohibit union solicitation or distribution of union literature by nonemployee union organizers at any time on the employer's property are presumptively valid, in the absence of a showing that the union cannot reasonably reach the employees with its message in any other way, or a showing that the employer's notice discriminates against the union by allowing other solicitation or distribution.

In a later case the Board held that, under the rules stated in the *Walton* decision, the employer did not violate section 8(a)(1) by announcing to an employee actively engaged in an organizing campaign that union solicitation during working hours was prohibited.[22] The Board pointed out again that a prohibition against union solicitation on company time is presumptively valid and will not be held unlawful when there is no showing that the prohibition had a "discriminatory purpose" or was "unfairly" applied. Rejecting the trial examiner's conclusion that the limited scope of the prohibition here, the time and manner of its promulgation, and the absence of a showing of a need for it established a discriminatory purpose, the Board held that (1) the presumption of validity of a no-solicitation rule is not overcome by the fact that the prohibition is limited to union solicitation and is not addressed to other forms of solicitation as well; (2) the fact that the employer may not have formulated the prohibition against union solicitation until occasion for it arose does not necessarily evidence a discriminatory purpose;[23] and (3) the presumption of the validity of a no-solicitation rule, such as the one here, would be meaningless if the employer were required to show actual need for the rule. Holding further that there was no evidence of unfair application, the Board specifically noted the absence of any showing that enforcement

[22] *Star-Brite Industries, Inc*, 127 NLRB 1008.

[23] See also *Walton Manufacturing Co.*, 124 NLRB 1331, where the Board held that a supervisor's spontaneous and informal prohibition, prompted by union talk presently carried on during working hours, constituted a validly promulgated rule even though it was couched in general terms.

of the rule was an "unreasonable impediment" to the union's organizational efforts.

b. Interference With Board Proceedings

The Board reiterated during fiscal 1960 that an employer's attempt to persuade an employee to forgo participation in a Board proceeding constitutes unlawful interference with employee rights under the act.[24] Thus, the noninterference provisions of section 8(a)(1) were held violated where an employer sought to prevent an employee from honoring a Board subpena and from appearing at the hearing at which he was to testify on behalf of the Board's General Counsel,[25] and where an employee was threatened with discharge in a manner designed to deter him from testifying truthfully concerning matters relevant in an unfair labor practice proceeding.[26]

Section 8(a)(1) was also held violated by an employer who impliedly threatened to sue for libel because of the filing of unfair labor practice charges, or unless the charges were dropped.[27] The Board pointed out that a threat, such as was made here, would normally dissuade an individual from filing a contemplated charge, or would cause him to withdraw a charge already filed, and is therefore coercive within the meaning of section 8(a)(1).

c. Resort to Courts

The Board made clear in the *Taylor* case [28] that, while condemning threats to resort to the civil courts as a tactic calculated to restrain employees in the exercise of their rights under the act, it recognizes the normal right of all persons to resort to the civil courts to obtain an adjudication of claims. Thus, the Board held in *Taylor* that the employer did not violate section 8(a)(1) by obtaining a State court order enjoining the complaining union from peacefully picketing in protest against the unlawful discharge of certain employees. In reversing the trial examiner's contrary finding, a majority of the Board overruled the *W. T. Carter* case [29] on which the trial examiner relied, adopting the view expressed in the dissenting opinion in the *Carter* case that "the Board should accommodate its enforcement of

[24] *Alterman Transport Lines, Inc.*, 127 NLRB 803.
[25] *Ibid.*
[26] *Petroleum Carrier Corporation of Tampa, Inc.*, 126 NLRB 1031, Member Bean dissenting.
[27] *Clyde Taylor Co.*, 127 NLRB 103.
[28] *Supra.*
[29] 90 NLRB 2020. Member Fanning, while concurring in the dismissal of the complaint insofar as it was based on the employer's obtaining an injunction, held that the *Carter* case was distinguishable on the facts and that there was no occasion for overruling that case.

the act to the right of all persons to litigate their claims in court, rather than condemn the exercise of such right as an unfair labor practice."

2. Employer Domination or Assistance and Support of Employee Organization

Section 8(a)(2) makes it unlawful for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." [30] The section provides, however, that an employer may permit employees to confer with him on union business during working hours without loss of pay.[31]

a. Domination of Labor Organization

A labor organization is considered dominated within the meaning of section 8(a)(2) [32] if the employer has interfered with its formation and has assisted and supported its administration to such an extent that the organization must be regarded as the employer's creation rather than the true bargaining representative of the employees. Such domination is the result of a combination of factors and has been found where "the employer not only furnished the original impetus for the organization but there were present such additional factors as (a) the employer also prescribed the nature, structure, and functions of the organization; (b) the organization never developed any real form at all, such as a constitution or by-laws, dues or a treasury, never held any meetings and had no assets other than a contract bestowed by the employer; (c) representatives of management actually took part in the meetings or activities of the committee or attempted to influence its policies." [33] Thus, in one case [34] section 8(a)(2) was held violated in this sense under the following circumstances: The employer here notified an employee meeting that he did not intend to renew his contract with the incumbent union, suggesting that employee "committees" be formed which were to "follow through" on

[30] Sec. 8(a)(2) contemplates a "labor organization" as defined in sec. 2(5). To satisfy the definition, a formal organization is not required and, generally, it is sufficient that the alleged representative deals with the employer concerning matters subject to collective bargaining. See *Whirlpool Corp.*, 126 NLRB 1117, where the employer's contention that no "labor organization" was involved was rejected on the authority of the Supreme Court's decision in *N.L.R.B.* v. *Cabot Carbon Co.*, 360 U.S. 203; Twenty-fourth Annual Report, pp. 116–117.

[31] Reimbursement of employees for time spent on union business, however, is considered unlawful financial assistance to the union (*infra*, p. 62).

[32] The distinction between domination and lesser forms of employer interference with labor organizations is of importance for remedial purposes. See, e.g., Twenty-fourth Annual Report, pp. 61–62.

[33] See *Detroit Plastic Products Co.*, 126 NLRB 1182. Here no domination was found because some of the stated criteria were lacking.

[34] *Yale Upholstering Co., Inc.*, 127 NLRB 440.

certain proposals regarding terms of employment proposed by the employer. Committee elections were attended by the employer's president who made membership suggestions. Supervisors voted at committee meetings and were elected as committee members.[35] Elections were held on company property, employees being paid for time spent at meetings. The employer also assisted in the preparation of employee petitions designating the committee as their representative, posted notices of committee meetings, and furnished refreshments while meetings were held. The committee had no constitution, bylaws, dues, or funds, and did not seek a contract with the employer. In another case,[36] the employer was likewise held to have unlawfully dominated a labor organization, the trial examiner having found that the employer caused the formation of the employee "Council" involved, fixed the areas in which it operated, and paid the expenses of the Council, which had no funds, by having councilmen perform their functions during working hours.[37] In one case,[38] an incumbent affiliated union was held dominated by the employer who dealt with its negotiating committee half of whose members the employer had appointed, and who entered hastily into a new contract when a rival union was about to enter the plant. The employer executed the contract over the protest of an employee-designated committee member, and also threatened reprisals against employees who favored a union other than the incumbent. The gravity of the employer's interference which justified a finding of domination was held further demonstrated by the employer's part in the original selection and administration of the incumbent. While these events occurred more than 6 months before the charges were filed, and under section 10(b) of the act could not be made the basis of an unfair labor practice finding, they could properly be considered, in the view of the majority of the Board panel here, insofar as they shed light on the employer's later conduct.[39]

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[35] However as pointed out in *Anchorage Businessmen's Assn.*, 124 NLRB 662, participation of supervisors in intraunion activities does not *per se* constitute evidence of domination where the supervisors are members of the same bargaining unit as rank-and-file employees, and the employer is not shown to have "encouraged, authorized or ratified their activities." The assistance aspects of the case are discussed at p. 63, below.

[36] *Whirlpool Corp.*, 126 NLRB 1117.

[37] See also *Norrich Plastics Corp.*, 127 NLRB 150, where the Board adopted the trial examiner's finding of unlawful employer domination which was based on similar conduct.

[38] *Murfreesboro Pure Milk Co.*, 127 NLRB 1101.

[39] Contrary to Member Rodgers, who found assistance but not domination, the majority believed that its treatment of this evidence comported with the Supreme Court's interpretation of the 6-month limitation of sec. 10(b) in *Bryan Mfg. Co.*, 362 U.S. 411, discussed *infra* p. 125. Compare the earlier *Mt. Clemens Metal Products Co.* case, 126 NLRB 1297, where the Board reversed the trial examiner's finding of unlawful domination because the trial examiner had given "independent and controlling weight" to events occurring outside the statutory 6-month period.

b. Assistance and Support

Section 8(a)(2) interference with labor organizations, other than complete domination, was again found in a number of cases where employers sought to foster or entrench a favored union by various kinds of conduct. Thus, one employer [40] was held to have unlawfully assisted and facilitated the organizational drive of a union, which sought to oust the employees' incumbent bargaining representative, by shutting down the plants involved, terminating the incumbent union's contract and refusing to bargain with it, discontinuing payments into the incumbent's welfare and retirement fund, prematurely extending to the favored union exclusive recognition, and by furnishing it a mailing list of employees.[41] In another case [42] where unlawful assistance and support was found, the employer had similarly aided a union in displacing the employees' lawful representative by refusing to deal with the latter, by discharging its adherents, and by granting recognition to the favored rival union.[43]

In one case, the employer was held to have unlawfully assisted a union by soliciting and procuring from employees and applicants for employment, during the hiring procedure, applications for union membership and signed authorizations for the checkoff of union dues.[44]

Financial support of unions has consistently been held violative of the noninterference provision of section 8(a)(2), whether it took the form of direct payments to the assisted union,[45] or payment and reimbursement of employees for time spent on the assisted union's business.[46]

(1) Supervisor's Participation in Union's Affairs

In several cases the Board had to concern itself with the question whether participation of supervisors in the intraunion affairs of an incumbent bargaining representative of which they are members may be imputed to the employer and may be regarded as violative of section 8(a)(2). In further clarifying the principles which govern employer

[40] *Perry Coal Co.*, 125 NLRB 1256.

[41] In finding that the furnishing of the mailing list constituted unlawful assistance under the circumstances here, the Board did not decide whether this conduct was unlawful *per se.*

[42] *Vapor Blast Manufacturing Co.*, 126 NLRB 74.

[43] See also *The Bassick Co.*, 127 NLRB 1552, where the trial examiner found that the employer assisted the union which it preferred in signing up a majority of the employees; and *Gulf Bottlers, Inc.*, 127 NLRB 850, where sec. 8(a)(2) was held violated on the basis of the trial examiner's finding that the employer, faced with a recognition claim, instigated the formation of another union, solicited membership therein and withdrawals from its rival, and permitted the use of company facilities, and otherwise assisted the favored union.

[44] *Chun King Sales, Inc.*, 126 NLRB 851.

[45] *Aacon Contracting Co., Inc.*, 127 NLRB No. 1250.

[46] *Yale Upholstering Co., Inc.*, 127 NLRB 440; *Jamestown Machine & Manufacturing Co.*, 127 NLRB 172; see also *The Bassick Co., supra.*

responsibility in such situations, the Board distinguished between intraunion activities of supervisors who are members of the same union and bargaining unit as rank-and-file employees,[47] and such activities of supervisors who are union members but are outside the bargaining unit.[48]

Regarding intraunion activities of supervisors in the bargaining unit[49] the Board applied the following rules:[50]

> 1. Participation of member supervisors in intraunion activities will not be attributed to the employer and does not constitute evidence of either domination[51] or assistance to the particular union, unless there is proof that the supervisors' participation was encouraged or authorized by the employer.
>
> 2. Unlawful assistance to the union will be found, however, where the employer acquiesced in the supervisors' voting at union elections and has been dealing with supervisors who represented the union as elected officers or members of negotiating committees.[52]

On the other hand, regarding the participation in intraunion affairs of member supervisors who are outside the bargaining unit, it was made clear[53] that—

> [The Board] will apply the rule of *respondeat superior* to any active participation by them in union affairs to the same extent as [it applies] that rule to other areas of supervisory conduct . . . [and] that participation by supervisors, not in the bargaining unit, in the internal affairs of a union of rank-and-file employees constitutes unlawful interference with the administration of the union.[54]

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[47] *Anchorage Businessmen's Assn., Drugstore Unit,* 124 NLRB 662.

[48] *Detroit Assn. of Plumbing Contractors,* 126 NLRB 1381; *Bottfield-Refractories Co.,* 127 NLRB 188.

[49] In the *Anchorage Businessmen's Assn., case (supra)* the Board referred to its observation in *Nassau and Suffolk Contractors' Assn.,* 118 NLRB 174, that inclusion of foremen in rank-and-file bargaining units is historically common in many industries and is normally accompanied by their taking an active part in the union's affairs.

[50] *Anchorage Businessmen's Assn., supra;* see also *The Bassick Co.,* 127 NLRB 1552.

[51] *Supra,* pp. 60–61.

[52] The Board pointed out in the *Anchorage Businessmen's* case that the employers "when confronted with the [union's] negotiating committee which included their own agents, were under duty to refrain from dealing with the committee which did not have a single-minded loyalty to their employees' interests."

[53] *Detroit Assn., of Plumbing Contractors,* 126 NLRB 1381; see also *Bottfield-Refractories Co.,* 127 NLRB 188.

[54] In *Bottfield-Refractories, supra,* the Board held that the mere act of voting by company officers and management representatives in a union election of officers and committee members constituted unlawful interference, regardless of whether or not the employer encouraged or authorized the voting, or whether the employer representatives "conspired to vote for one rather than the other slate of candidates," or whether "they voted as a unit," or whether "the vote of any one in the employer group was decisive."

(2) Assistance Through Contract

The Board has adhered to the rule [55] that an employer renders unlawful assistance within the meaning of section 8(a)(2) by recognizing and entering into a contract with a union while the majority claim of another union raises a real question of representation.[56]

In some cases employers were again found to have unlawfully assisted favored labor organizations by entering into agreements prematurely granting exclusive recognition, as in the case of a prehire contract; [57] granting union-security advantages to which the union was not entitled because it lacked statutory requirements, such as uncoerced majority status; [58] or providing for illegal preferential hiring.[59]

Illegal assistance was also found where the employer's contract contained a clause requiring employees to obtain permission from the contracting union before soliciting on company property.[60] The trial examiner here pointed out that the employer thereby gave the union veto power over the employees' statutory organizational rights. In another case,[61] a contract clause providing that an employee who leaves his job for a supervisory position must, as a condition of reemployment in the unit, pay the equivalent of monthly dues to the unit's bargaining agent while occupying the supervisory position, was held violative not only of the act's nondiscrimination provisions,[62] but also of the prohibition of section 8(a)(2) against employer assistance of a labor organization.

3. Discrimination Against Employees

Section 8(a)(3) prohibits an employer from discriminating against employees "in regard to hire or tenure of employment or any term or condition of employment" for the purpose of encouraging or discouraging membership in any labor organization. However, the union-security provisions of section 8(a)(3) and 8(f)[63] permit an employer to make an agreement with a labor organization requiring

[55] Normally referred to as *Midwest Piping* rule because it originated in *Midwest Piping & Supply Co.*, 63 NLRB 1060.

[56] See *Detroit Plastic Products Co.*, 126 NLRB 1182. The Board here rejected a contention that the rival union's claim covered an inappropriate unit and therefore did not raise a real question of representation.

[57] See *Alco-Gravure, Division of Publication Corp.*, 124 NLRB 1027.

[58] See *Paul M. O'Neill International Detective Agency, Inc.*, 124 NLRB 167. Prior to the September 14, 1959, repeal of sec. 9 (f), (g), and (h), compliance with the filing requirements of those sections was also a requirement; see the *Paul M. O'Neill* case, *supra*.

[59] *Alco-Gravure, supra. Puerto Rico Steamship Assn.*, 125 NLRB 563.

[60] *Wah Chang Corp.*, 124 NLRB 1170.

[61] *Kaiser Steel Corp.*, 125 NLRB 1039.

[62] See *infra*, pp. 74–75.

[63] Section 8(f) was added by the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86–257, 73 Stat. 519) and became effective November 13, 1959.

union membership as a condition of employment subject to certain limitations.[64]

a. Encouragement or Discouragement of Union Membership

To violate section 8(a)(3) discrimination in employment must have been intended to encourage or discourage membership in a labor organization. Such an intention will be presumed where the discrimination inherently has that effect, as where it is based on union membership or lack thereof.[65] Conversely, where discrimination does not inherently encourage or discourage union membership, the employer's unlawful motivation must be shown by independent evidence.[66]

In *Standard Oil Co.*, which turned on whether the disparate treatment by the employer of separate groups of employees, not represented by the same bargaining representative, was inherently violative of section 8(a)(3), the Board cited its earlier decisions in the *Speidel Corp.*[67] and *Anheuser-Busch*[68] cases, restating the principle that in such a situation an unlawful intent to encourage or discourage union membership may not be inferred solely from the differential treatment of the separate groups itself, and that the unequal treatment may be held violative of section 8(a)(3) only if there is independent evidence of unlawful motivation. Applying the rule here, the Board held that the layoff of a group of craft employees, following their severance from the existing bargaining unit and their selection of a craft representative, was not violative of section 8(a)(3), because the layoff was the immediate consequence of severance which in turn resulted in the craft employees' loss of seniority rights acquired under the contract of the preseverance representative. The Board pointed out that the layoff of the craft employees here thus was not based on membership in a particular union but on membership in a unit, and that no 8(a)(3) violation could be found absent independent evidence showing that the layoff was intended by the employer to encourage or discourage membership in the respective unions.[69]

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[64] See *infra*, pp. 72–73.

[65] See *Central States Petroleum Union, Local 115 (Standard Oil Co.)*, 127 NLRB 223, citing *Radio Officers' Union* v. *N.L.R.B.*, 347 U.S. 17.

[66] *Ibid.*

[67] *Speidel Corp.*, 120 NLRB 733.

[68] *Anheuser-Busch, Inc.*, 112 NLRB 686.

[69] See also *National Dairy Products Corp.*, 127 NLRB 313, where the Board similarly held that the employer's conduct which resulted in the termination of its unionized employees could not be held violative of section 8(a)(3) because the action was taken for economic reasons and there was no evidence of any intent on the employer's part to discourage membership of the employees in their union.

b. Discrimination for Protected Activities

Discrimination against employees in their employment because of activities protected by section 7 of the act [70] is violative of section 8(a)(3) if it tends to encourage or discourage membership in a labor organization.[71] The cases alleging such discrimination at times present the question whether the employees' activities involved came within the statutory protection. Thus, the issue in one case during the past year was whether employees were protected in refusing to cross the picket line of some fellow employees who, as found by the Board, had been lawfully discharged for cause.[72] A majority of the Board [73] held that the employees' refusal to cross the picket line constituted a protected strike or concerted activity because "Section 7 embraces the right of employees concertedly to quit work 'in protest over the treatment of a coemployee, or supporting him in any other grievance connected with his work or his employer's conduct.' " [74]

Some cases again turned on whether employees complaining of unlawful discrimination were not entitled to the statutory protection because of the circumstances attending their otherwise protected activities. Section 8(a)(3) relief was held not available to an employee who sought to induce a work stoppage in the face of the broad no-strike commitment of the bargaining representative of the unit to which he belonged,[75] or to employees who refused to work overtime in a context which made the refusal "an attempt to work on terms prescribed solely by themselves." [76] Nor was the statutory immunity held to apply in the case of an employee who encouraged strikers to engage in violence against nonstrikers.[77] The Board here held that, in view of his prestige with the strikers, the employee could reasonably expect them to comply, and that the employee was therefore guilty of serious

[70] Section 7 provides that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining, or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

[71] Discrimination in employment for such activities which does not have the stated effect is nevertheless violative of the prohibition of section 8(a)(1) against employer interference with the employees' section 7 rights. The remedy for both types of discrimination in employment is the same. See e.g., *Washington Aluminum Co., Inc.*, 126 NLRB 14410; *Burke Golf Equipment Corp.*, 127 NLRB 241.

[72] *John H. Swift Co., Inc.*, 124 NLRB 394.

[73] Member Rodgers dissenting.

[74] The Board cited *N.L.R.B.* v. *J. I. Case Co., Bettendorf Works*, 198 F. 2d 919, 922, cert. denied 345 U.S. 917.

[75] *Victor Chemical Works*, 125 NLRB 278. The Union here had agreed that "there will be no strike, boycott, picketing, work stoppage, slowdown or other interference with the company's business." See also *Mineweld Co.*, 127 NLRB 1616.

[76] *John S. Swift Co., Inc., supra.*

[77] *Revere Metal Art Co., Inc.*, 127 NLRB 1028.

misconduct even though he did not personally participate in the ensuing assault.

The Board has, however, continued to apply the rule that, while employees may forfeit their statutory protection through misconduct in connection with their concerted activities, an employer may not discipline employees for misconduct which he has condoned.[78] As pointed out by the Board in one case,[79] "Condonation reflects an employer's willingness to 'wipe the slate clean' and to continue an employee in good standing despite that employee's misconduct." However, an employer who waives his right to terminate an employee because of misconduct "does not thereby waive this right as to *all* employees in the same category." [80]

c. Forms of Discrimination

As heretofore, the greater part of the cases under section 8(a)(3) presented chiefly questions as to whether the complaints alleging unlawful discrimination in employment [81] were supported by sufficient credible evidence, and required the issuance of the usual orders to remedy such violations as discriminatory discharges, layoffs, transfers, or refusals to hire. The cases involving special problems arising in connection with particular forms of discrimination, or pertaining to the type of order best suited to afford appropriate relief in a particular situation, are discussed below.

(1) Lockout in Anticipation of Strike

The question of the legality of a lockout during bargaining negotiations because of a threatened strike arose in two cases during the past

[78] *Union Twist Drill Co.*, 124 NLRB 1143. Member Jenkins found a violation on the basis of estoppel rather than condonation. The Board rejected the employer's contention that the decision in *Mackay Radio & Telegraph Co., Inc.*, 96 NLRB 740, precluded application of the condonation doctrine under the circumstances here. It was pointed out that the *Mackay Radio* decision expressly excluded picket-line misconduct such as was here involved and was limited to the holding that the employees may not invoke the protection of the act after participating in a strike which was unlawful from its inception because of its objective to compel the employer to violate the act by entering into an unlawful union-security agreement.

[79] *Thayer, Inc., of Virginia*, 125 NLRB 222. No condonation was found in this case.

[80] *Ibid.*

[81] All incidents of the employer-employee relationship are within the contemplation of sec. 8(a)(3). Thus, in *Florida Citrus Canners Cooperative*, 124 NLRB 1182, the employer was held to have violated sec. 8(a)(3) by evicting unfair labor practice strikers from company rental units. Employee occupants, the Board pointed out, enjoyed a substantial advantage in that they were able to live nearer to their place of work than the majority of employees at a nominal rental. (The Board's remedial order in this case is noted below, pp. 76–77.) See also *Pittsburgh-Des Moines Steel Co.*, 124 NLRB 855, where the denial of a Christmas bonus to striking employees at one of the employer's plants was held to have been discriminatorily motivated and to have been violative of sec. 8(a)(3). Enforcement of the Board's order in this case was denied after the close of the fiscal year because of the court's view that unlawful motivation had not been sufficiently shown. *Pittsburgh-Des Moines Steel Co.* v. *N.L.R.B.*, 284 F. 2d 74 (C.A. 9).

year, one involving a lockout allegedly justified by the threat of a sudden strike and consequent danger to the employer's plant,[82] and one where the lockout was defended on the ground that a strike against some members of an employer association threatened the integrity of the multiemployer bargaining unit.[83] A third case turned on whether a lockout had in fact occurred.[84]

In *Hercules Powder*, the employer threatened a lockout and issued a lockout notice while bargaining negotiations were in progress, and then shut down operations because of an asserted fear of a sudden strike that would endanger its explosives plant. A majority of the Board held that there was no real danger of a "quickie" strike and that the employer's actions were therefore violative of section 8(a)(3). The union, the majority pointed out, had offered to continue in effect the expired contract's provision for at least 72 hours' strike notice, had given repeated assurances that no strike was contemplated, and in the past had demonstrated its regard for plant safety. The majority further noted that the employer issued its layoff notices when the parties were close to an amicable agreement, closed the plant at the close of the day on which agreement had been reached, and permitted the employees to return to work only after ratification of the new contract.[85]

The *Anchorage Businessmen's Assn.* case involved a strike against several members of an employer association to which the nonstruck employers responded by locking out the striking union's members while retaining nonunion employees. The Board held that the lockout was unlawful and that the Supreme Court's *Buffalo Linen* decision,[86] cited in defense by the respondent employers, was inapplicable. That case, it was pointed out, only sanctioned a lockout by the nonstruck members of an employer association for the limited purpose of protecting the multiemployer bargaining unit against disintegration; whereas here the lockout had the additional, clearly unlawful, purpose to exert pressure on the union to accept the employer's bargaining proposals. The *Buffalo Linen* case was held inapplicable for the further reason that the lockout here, aside from its dual purpose, was carried out in a discriminatory manner in that only the striking union's members were affected.

In the *Willamette* case, the trial examiner's finding that the respond-

[82] *Hercules Powder Co.*, 127 NLRB 333.

[83] *Anchorage Businessmen's Assn, Drugstore Unit*, 124 NLRB 662.

[84] *Willamette Association of Plumbing and Heating Contractors, Inc.*, 125 NLRB 924.

[85] Chairman Leedom and Member Rodgers dissented from the majority's 8(a)(3) finding because of their belief that the union's no-strike assurances were insufficient in that the offer to renew the 72-hour strike notice provision was not unconditional.

[86] *N.L.R.B.* v. *Truck Drivers Local Union No. 449, et al.* (*Buffalo Linen Supply Co.*), 353 U.S. 87; Twenty-second Annual Report, pp. 116–117.

ent employers unlawfully locked out their employees in the face of a strike threat was reversed, the Board holding that there had been no lockout, i.e., no "refusal to allow employees to work when they are ready and willing to do so." As pointed out by the Board, the respondent contractors, having been notified by the union during contract negotiations that its members would not work after a certain date without an agreement, accepted the strike and prepared for it by "buttoning down" the affected construction jobs. According to the Board, the situation was not altered by the union's last-minute attempt to call off the strike, or its belated notice to the employer that work would continue and that the union was willing to negotiate. As noted, the attempt to call off the strike was ineffective, no employees capable of performing work having reported, and the union's notice failed to state the duration and under what conditions the employees would continue to work.

(2) Discontinuance of Operations

An employer who causes his employees to be discharged or laid off by closing the plant, or discontinuing the operation in which the employees are engaged, violates section 8(a)(3) if the action is taken not solely for economic reasons,[87] but, as shown in several cases during the past year, because of the employees' organizational activities.[88] The fact that there may have been some economic justification for a discontinuance of particular operations does not relieve an employer of his liability under section 8(a)(3) if it appears that the operations in fact were abandoned because the employees involved had become unionized.[89]

In one case, where the employer's closing of its plant was held violative of section 8(a)(3) because it was the direct result of the employees' selection of a bargaining representative, a majority of the Board rejected the view that the closing by an employer of his plant, if shown to be permanent, may not be held unlawful under section 8(a)(3)

[87] See, e.g., *Marion Mills*, 124 NLRB 56.

[88] See, e.g, *Herman Nelson Division, American Air Filter Co., Inc.*, 127 NLRB 939, where the employer abolished its guard department, had guard services performed by another employer, and transferred its guards to other employment after unsuccessful efforts to forestall the employees' selection of a bargaining representative; *Brown-Dunkin Co., Inc.*, 125 NLRB 1379, where the employer turned over building service and maintenance operations to another company, and discharged all employees who had performed the subcontracted work, in reprisal for their voting for union representation in a Board election; *Consumers Gasoline Stations*, 126 NLRB 1041, where the employer accelerated the effective date of the scheduled discontinuance of its transportation operation and discharged its drivers to avoid bargaining with the union they had designated as bargaining agent; *Bonnie Lass Knitting Mills, Inc.*, 126 NLRB 1396, where the employer substituted jobbing for its manufacturing operation and discharged manufacturing employees in order to avoid bargaining with their union.

[89] *Home Restaurant Drive-In*, 127 NLRB 635. See also *Barbers Iron Foundry*, 126 NLRB 30.

regardless of whether or not the employer's motive was discriminatory within the meaning of that section.[90]

(a) Remedies for unlawful discontinuance of operations

In remedying discrimination resulting from the discontinuance of business operations for purposes prohibited by section 8(a)(3), it is the Board's policy to assess the reinstatement and backpay rights of the affected employees in the light of the particular situation presented in each case. Reinstatement has been directed where the employer could reasonably be required to resume the discontinued operation. Thus, where an employer abolished its guard department and transferred guard employees to other departments, the Board directed that the guard department be reopened and that the former guards be offered reinstatement to their former positions and be made whole for any losses suffered because of the employer's action.[91] A similar order was, however, found unsuited in a situation where the employer subcontracted store maintenance and service operations to an outside firm to which the employees were then transferred on favorable terms.[92] Here, a majority of the Board ordered the offending employer to offer the affected employees reinstatement in their former bargaining unit and, if a majority accepted reinstatement, to resume the subcontracted operations. The Board's order further provided that, if only a minority desired reinstatement, and the services in question were not resumed, those employees shall be given jobs substantially equivalent to their former ones. The majority [93] was of the view that the equities of the situation were best served by permitting the employees to decide for themselves whether to remain in their better-paying positions, and by directing the employer to bargain with the union which represented the employees before their transfer only if a majority of the transferred employees should return to their former jobs. The question whether reinstatement should be made at the rates of pay received by the employees after their transfer was left to be determined through collective bargaining with the union upon the return of a majority of the employer's service employees.

One situation, which arose from the acceleration—for antiunion reasons—of the effective date of a contemplated change in operations,[94] required adaptation of the remedial order to the circumstance that the discontinuance of the particular operation for economic reasons was imminent, and that there was a possibility of the affected employees

[90] *Barbers Iron Foundry, supra.* Member Rodgers dissented. The remedial order in the case, from which Members Jenkins and Fanning dissented, is discussed below.
[91] *Herman Nelson Division, American Air Filter Co., Inc.,* 127 NLRB 939.
[92] *Brown-Dunkin Co., Inc.,* 125 NLRB 125. See footnote 88, *supra.*
[93] Members Jenkins and Fanning dissenting.
[94] *Consumers Gasoline Stations,* 126 NLRB 1041; see footnote 88, *supra.*

being reassigned. The Board here directed that if it should be found, at the compliance stage of the proceeding, that the employer normally reassigned employees under similar circumstances, appropriate reassignment be offered the displaced employees with backpay to the date of such offer. Absent a reassignment policy, the employer was to bargain with the employees' representative regarding their transfer to other positions, and was to make the discriminatees whole for wages lost during the period from their unlawful layoff to the date when they would have been terminated for nondiscriminatory reasons.

In one case, where the employer sought to avoid bargaining by changing its operations from manufacturing to jobbing, thereby drastically reducing its employee complement,[95] the 8(a)(3) violation was remedied by an order requiring the employer to offer reinstatement to the discriminatorily discharged employees in the event of a resumption of the discontinued manufacturing operations, and to place them on a preferential hiring list, with notice to them, for reinstatement purposes. The trial examiner's recommendation that, as in the *Mahon* case,[96] the employer be ordered to reopen the closed department was rejected. It was pointed out that in *Mahon* the employer was directed to resume with his own employees a discriminatorily farmed-out operation which was still required, whereas here the employer had disposed of its manufacturing machinery and equipment, had withdrawn from the manufacture of the particular product, and could not "by mere administrative action" effect resumption of manufacturing, an operation which was unwanted and not essential to the conduct of the remaining business.[97]

In the case of permanent closing of a plant and discontinuance of all business operations for antiunion reasons, the Board ordered the offending employer to establish a preferential hiring list and notify the discharged employees of their reinstatement rights should the employer resume its former operations.[98] However, the Board declined to award monetary compensation to the discriminatorily discharged employees for the period following the permanent cessation of business by the employer as requested by the General Counsel.[99] The Board was of the view that, while a discriminatory cessation of business operations with resulting hardships to the employees is not to be condoned, an employer who closes his plant permanently may not be ordered to continue paying wages to the employees, be it for a

[95] *Bonnie Lass Knitting Mills, Inc.*, 126 NLRB 1396; see footnote 88, *supra*.

[96] *The R. C. Mahon Company*, 118 NLRB 1537; 269 F. 2d 44 (C.A. 6).

[97] Member Rodgers dissented from the majority's 8(a)(3) finding on the ground that here, as in *Barbers Iron Foundry* (*infra*), permanent abandonment of a business was involved.

[98] *Barkers Iron Foundry*, 126 NLRB 30; see footnote 89, *supra*

[99] Backpay was awarded, however, for the period during which the plant was first closed on a temporary basis.

fixed period or for an indefinite period contingent upon the employees obtaining some substantially equivalent employment.

(3) Union-Security Agreements

The act permits an employer to enter into an agreement with a labor organization requiring membership therein as a condition of employment, subject to certain limitations set out in the union-security proviso to section 8(a)(3) and the new section 8(f) which became effective November 13, 1959.[1] Under the section 8(a)(3) proviso a union-security agreement is valid (1) if made with the majority representative of the employees in an appropriate unit, whose authority to make such an agreement has not been revoked in an election pursuant to section 9(e);[2] and (2) if the agreement affords the employees 30 days' grace within which to acquire union membership "following the beginning of [their] employment, or the effective date of [the] agreement, whichever is later."[3] Section 8(f) makes specific provision for contracts in the construction industry, permitting, *interalia*, contracts with unions whose majority status has not been established, and union-security clauses requiring membership after 7 rather than 30 days.

The Board has consistently held that a union-security agreement to be valid must set forth terms which clearly conform to statutory requirements and must be "explicit in the matter of rights and obligations of employees affected by it."[4] In particular, the Board has declined to give effect to union-security agreements whose validity turned on a general "savings clause," as, for instance, a provision that "as a condition of employment employees shall be, or become, members of the [union] to the extent and in the manner provided by law."[5] In the Board's view, such a provision does not "set forth in clear and unambiguous terms limitations on the requirement of union membership that conform the provision to the union-security standards of section 8(a)(3) of the Act."[6] As stated in *Perry Coal*, the Board "[does] not believe that the burden of statutory and judicial inter-

[1] Labor-Management Reporting and Disclosure Act of 1959, Public Law 86–257, 73 Stat. 519.

[2] Prior to September 14, 1959, the contracting union also had to be in compliance with the non-Communist and filing requirements of the now repealed sec. 9 (f), (g), and (h),

[3] See *Orfeo Kostrencich, et al.*, 127 NLRB 96, where an employer was held to have violated sec. 8(a)(3) by entering into a union-security agreement requiring employees to join and pay "support money" to the union without allowing the statutory 30-day grace period.

[4] See, e.g., *International Longshoremen's Assn. (Independent), (Motor Transport Labor Relations, Inc.)*, 127 NLRB 35.

[5] *Perry Coal Co.*, 125 NLRB 1256. The Board here cited *Ebasco Services, Inc.*, 107 NLRB 617, 618. See also *Red Star Express Lines* v. *N.L.R.B.*, 196 F. 2d 78 (C.A. 2); *N.L.R.B.* v. *Broderick Wood Products Co., et al.*, 261 F. 2d 548 (C.A. 10).

[6] *Ibid.*

pretation can reasonably be placed upon an employee to be acted upon at his peril."

Union-security provisions may be enforced against employees only for failure to tender regular union dues and initiation fees.[7] An employer who honors a union's request for the discharge of an employee because of asserted nontender of dues violates section 8(a)(3) if he does so while he has reasonable cause to believe that the union's request had a discriminatory motive.[8]

(4) Unlawful Seniority Agreements

Several cases turned on whether the employer's agreement with a labor organization affecting the employees' seniority rights was violative of the nondiscrimination provision of section 8(a)(3). In two cases,[9] the agreement involved was challenged on the ground that it delegated to the contracting union exclusive control over seniority and was unlawful under the Board's *Pacific Intermountain* doctrine.[10]

In *Miranda Fuel*, the Board held that the employer violated section 8(a)(3) in the foregoing sense by maintaining a collective-bargaining agreement which provided, in substance, that employees who do not have steady employment during slack season must report to the union's shop steward and sign the seniority roster to maintain full seniority, and that the employer must accept the shop steward's certification of the availability of such employees when called by the employer. The employer here was found to have further violated section 8(a)(3) by acquiescing in the union's request for reduction of an employee's seniority pursuant to the contract clause in a situation not covered by its terms.[11]

On the other hand, in *Florida Power* the Board found no unlawful delegation of power to determine seniority rights. Here the challenged

[7] In a sec. 8(b)(2) case (*District Lodge 94, IAM (Consolidated Rock Products Co.)*, 126 NLRB 1265, see *infra*, p. 96), the Board held during the past year that a valid union-security agreement could properly be implemented by a supplemental provision that an employee lawfully discharged for dues delinquency "shall not be reemployed by the employer until notified by the union that the employee has paid any such initiation fees or dues then delinquent, or unless such employee presents a work clearance from the union to the employer."

[8] See, e.g., *Hall-Scott, Inc.*, 124 NLRB 1305.

[9] *Miranda Fuel Co., Inc.*, 125 NLRB 454; *Florida Power & Light Co.*, 126 NLRB 967.

[10] *Pacific Intermountain Express Co.*, 107 NLRB 837, enforced, with modification of the scope of the Board's order, 225 F. 2d 343 (C.A. 8).

[11] In holding that a seniority clause, such as the one here involved, is in itself unlawful, the Board adhered to its decision in the earlier *Meenan Oil Co.* case (121 NLRB 580), although the Second Circuit Court of Appeals reached a contrary conclusion and denied enforcement in that case (266 F. 2d 552). After the close of the fiscal year, the Second Circuit in the *Miranda* case reaffirmed its view but granted enforcement of the Board's 8(a)(3) order because of the employer's discriminatory reduction of the complaining employee's seniority. The issue of contractual delegation of control over seniority is now pending before the Supreme Court in the *News Syndicate Co.* case (279 F. 2d 323 (C.A. 2), *infra*, pp. 130–131), the Board's petition for certiorari in that case having been granted on November 7, 1960 (364 U.S. 877).

agreement to which the employer was a party provided that there could be no deviation from prevailing departmental seniority, and that interdepartmental transfers of employees without loss of seniority required the mutual consent of the employer and the local unions involved. According to the Board, the employer's power to veto such transfers under the agreement was not, as contended, effectively impaired by the grievance and arbitration provisions which could be invoked if the employer disapproved a seniority transfer. Nor, in the Board's view, did the agreement vest final power in the union to determine seniority rights after an interdepartmental transfer. It was pointed out that the unions involved themselves were wholly without power to deviate from the departmental seniority standard established by the contract, and that the rights of the employees under the contract could not be adversely affected except by mutual or joint action of the contracting parties. The Board recognized that the union had valid interests in the subject of interdepartmental transfers which justified the requirement of mutual consent. The Board noted the union's argument that in a plant where, as here, different departments require different qualifications, a transferee becomes a new employee for seniority purposes, and that the old employees in the department should be permitted, through their departmental representative, some authority to approve a transferee's preferred status. This authority, it was urged, is necessarily limited and does not relate to compelling deviation from normal, *viz*, departmental seniority, but is concerned only with preventing such deviation in a given situation.

One case concerned the validity under section 8(a)(3) of a contract clause providing that a rank-and-file employee who leaves the contract unit to become a supervisor may retain his seniority and may return to his job in the unit if, while in supervisory status, he pays to the contracting union the equivalent of monthly dues.[12] A majority of the Board held that this provision was unlawful and that by maintaining and enforcing it the employer violated section 8(a)(3), as well as section 8(a)(1) and (2). The provision, in the majority's view, was unlawfully discriminatory because it conditioned reemployment in the unit on payment of union membership obligations accruing during a period when the individual, being a supervisor, was outside the contract unit and therefore under no contractual obligation to maintain membership as a condition of employment. Section 8(a)(3) was further violated, the majority held, when the unlawful contractual provisions were applied to the detriment of a group of individuals who sought to return to their jobs in the contract unit after serving in a supervisory capacity. The majority viewed these individuals as

[12] *Kaiser Steel Corp.*, 125 NLRB 1039, Member Fanning dissenting.

applicants for rank-and-file employment who were entitled to the protection of the act.[13]

(5) Other Forms of Discrimination

The employer in one case was found to have unlawfully terminated a musician at the request of a union which insisted that the employment of the musician for a particular recording assignment violated the union's "quota system."[14] The Board held that section 8(a)(3) was violated because "[D]iscrimination aimed at compelling obedience to union rules embodying a job rotation principle encourages membership in a labor organization."

One case involved the recurring problem of an employer's changing its seniority policy during a strike so as to accord superseniority to nonstrikers and thereby insuring their preferential status in future layoffs.[15] The court-approved test of the legality of an employer's action in such situations is whether the action was based on valid business reasons or was motivated by antiunion considerations.[16] Here the adoption of strike seniority was held violative of section 8(a)(3) because the employer's unlawful motive was indicated by its unfair labor practices, as well as by the absence of evidence that the employer sought replacements during the strike or that preferred seniority was necessary to induce nonstriking employees to remain at work.

d. Special Remedial Problems

In the case of agreements between employers and labor organizations resulting in the illegal exaction of union charges as a condition of employment, the Board has continued to apply the *Brown-Olds* remedy[17] requiring that the employees be reimbursed for their payments to the union.[18] However, as the Board indicated during the

[13] *Namm's, Inc.*, 102 NLRB 466, on which the trial examiner had based his finding that no violation occurred, was overruled to the extent that it is inconsistent with the decision here. Compare *Central States Petroleum Union, Local 115 (Standard Oil Co.)*, 127 NLRB 223 (*supra*, p. 65) where the layoff, for lack of seniority, of a group of craft employees who severed from the existing bargaining unit was held not to have constituted unlawful discrimination because, following severance, the craft group could no longer claim the seniority and job-security rights under the contract of their former bargaining representative for the unit from which they had severed.

[14] *Verve Records, Inc.*, 127 NLRB 1045. The union's violation of sec. 8(b)(2) is discussed at p. 89, *infra*.

[15] *Ballas Egg Products, Inc.*, 125 NLRB 342.

[16] See the following cases cited by the Board: *Olin Mathieson Chemical Corp.*, 114 NLRB 486, enforced 232 F. 2d 158 (C.A. 4), affirmed without opinion, 352 U.S. 1020; and *California Date Growers Assn.*, 118 NLRB 246, enforced 259 F. 2d 587 (C.A. 9).

[17] *J. S. Brown-E. F. Olds Plumbing & Heating Corp.*, 115 NLRB 594.

[18] The reimbursement directive is limited to the 6-month period immediately preceding the filing of unfair labor practice charges because of the provision in sec. 10(b) of the act that events occurring more than 6 months before charges are filed may not be made the basis of unfair labor practice findings. See, e.g., *H. K. Ferguson Co.*, 124 NLRB 544, 550, 568; *Gay Engineering Corp.*, 124 NLRB 451.

past year, it considers reimbursement necessary only where the closed-shop prohibitions of the act are flagrantly violated.[19] Thus, the *Brown-Olds* remedy was held inappropriate where union dues had been exacted under union-security agreements which were defective in that they failed to afford the full 30-day grace period required by the proviso to section 8(a)(3) but did not condition initial employment on union membership or in any way grant to the union control over the hiring of employees.[20]

The question of appropriate relief in one case arose in connection with the employer's discriminatory contribution of money to a union's welfare and pension trust funds for the sole benefit of employee-members, without providing similar benefits for nonmember employees.[21] The Board here found it appropriate to direct the employer not only to cease from making such contributions without providing equivalent benefits for nonmember employees, but also to take certain affirmative action. In holding that it was within its statutory power to afford the discriminatees affirmative relief the Board stated:

> Where, as here, an employer denies certain employment benefits to employees solely because they are not members of a union, but grants such benefits only to members of that organization, it is only equitable that the nonmembers be given the same or equivalent benefits which they would otherwise have enjoyed, were it not for their nonmembership. Effectuation of the policies of the Act requires it.

The Board therefore directed the employer (1) to make the complaining employees whole for losses resulting from the failure to provide benefits for them comparable to those given union members; (2) if contributions to the union pension fund for its members are continued, to make similar arrangements with the union for comparable benefits for nonmembers, in case of the union's willingness to do so, or to provide for other similar benefits; (3) to pay into a proper pension fund whatever amounts are required to secure to nonmembers equivalent pension benefits for the period of discrimination. The Board's order further provided that, if the employer discontinues pension benefits to union members, it shall pay to nonmember discriminatees the amount it would have had to pay into a pension fund to provide comparable pension benefits from the date of discrimination to the date of discontinuance of pension benefits.

An employer, whose eviction or attempted eviction of unfair labor practice strikers from company rental units was held violative of section 8(a)(3),[22] was directed (1) to cease from the discriminatory

[19] See *Gay Engineering Corp., supra.*

[20] *Nordberg-Selah Fruit, Inc.*, 126 NLRB 714; *Chun King Sales, Inc.*, 126 NLRB 851; *Orfeo Kostrencich, et al.*, 127 NLRB 96.

[21] *Northeast Coastal, Inc.*, 124 NLRB 441.

[22] *Florida Citrus Canners Cooperative*, 124 NLRB 1182, *supra*, p. 67, footnote 81.

conduct; (2) to offer an evicted striker immediate occupancy of his former or substantially equivalent rental accommodations on proper terms, and to reimburse him for any loss resulting from the eviction; and (3) to dismiss all pending eviction proceedings against certain employees and to notify them of the withdrawal of outstanding terminations of tenancy and notices to vacate rental units.

4. Refusal To Bargain in Good Faith

Section 8(a)(5) makes it an unfair labor practice for an employer to refuse to bargain in good faith about wages, hours, and other conditions of employment with the representative selected by a majority of the employees in an appropriate unit. Thus, as again pointed out by the Board,[23] a bargaining representative [24] which seeks to enforce its rights under section 8(a)(5) of the act must establish that it has been designated by a majority of the employees,[25] that the unit claimed is appropriate, and that there has been both a demand that the employer bargain and a refusal by the employer.

a. Duty To Honor Certification of Representative

A bargaining representative is entitled to recognition for a reasonable time—normally a year, absent unusual circumstances—if its majority status has been certified by the Board after an election under section 9(c),[26] or by a State Government agency after an election properly conducted under its auspices.[27] But a certificate of majority to entitle its holder to recognition must be valid, and where it has been revoked because it was null and void from the beginning, because of jurisdictional or procedural defects, it cannot serve as evidence of majority in a later 8(a)(5) proceeding.[28]

A certification which has been in effect for a year is no longer conclusive as to the union's majority. However, such a certificate is re-

[23] See *Charles F. Reichert*, 124 NLRB 28.

[24] "The term 'representatives' includes any individual or labor organization." Sec. 2(4) of the act. The term "labor organization," as defined in sec. 2(5), includes any organization in which employees participate and which exists, at least in part, for the purpose of bargaining collectively with employers on behalf of employees.

[25] See *Super Sagless Spring Corp.*, 125 NLRB 1214, where the 8(a)(5) allegations of the complaint were dismissed on the basis of the trial examiner's finding that the employees' designation cards did not show conclusively that the two unions claiming joint bargaining rights had been designated by an employee majority as their joint bargaining representative. The trial examiner had ruled that the terms of the designation cards could not be supplemented or changed by oral testimony.

[26] *Ray Brooks* v. *N.L.R.B.*, 348 U.S. 96.

[27] See *Peninsula Asphalt & Construction Co.*, 127 NLRB 136, where the trial examiner cited earlier Board decisions to this effect.

[28] *Charles F. Reichert, supra.*

garded as leaving a presumption of continued majority. An employer charged with a refusal to bargain, who challenges the employee representative's majority after expiration of the certification year, must rebut this presumption by evidence sufficient to cast serious doubt on the union's continued majority status. In case of such rebuttal, the General Counsel must then show by other evidence that the union in fact did have majority status on the crucial date.[29]

b. Request To Bargain in Appropriate Unit

Section 8(a)(5) does not require an employer to bargain with the employees' representative unless a request has been made to bargain[30] in a unit which is appropriate.[31] A refusal-to-bargain complaint therefore must be supported by a showing that the unit claimed is appropriate for bargaining purposes under the standards established by the Board.[32] The burden of proof as to the appropriateness of the bargaining unit is upon the General Counsel.[33] As in the case of majority status, a certification under section 9 of the act, or a similar certification by a State agency, is *prima facie* evidence of appropriateness, provided the certificate was issued in a valid proceeding and is not intrinsically defective.[34]

In one case during the past year, the employer was held estopped from defending its refusal to bargain with the representative of an associationwide bargaining unit on the ground that its withdrawal from the association rendered the unit inappropriate.[35] The Board here found that, having bargained through the association and being bound by the results of associationwide bargaining, the employer's later resignation from the association was ineffective and could not serve to relieve the employer of its obligation to bargain with the complaining union.[36]

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[29] See Twenty-fourth Annual Report, p. 75, footnote 12. Compare *Leisure Lads, Inc.*, 124 NLRB 431, where the presumption was held not rebutted by testimony of company officials that an undisclosed number of employees expressed dissatisfaction with the certified union and that the employees no longer wore union insignia as they did at the time of the election.

[30] See *Sam Klain & Sons*, 127 NLRB 776, dismissing the 8(a)(5) allegations of the complaint for lack of a record showing that a request to bargain had been made. Compare *Consumers Gasoline Stations*, 126 NLRB 1041. Here the complaining union, which had made an adequate request for bargaining, was held not required to make another request regarding a particular subject matter because such a request would have been clearly futile in view of the employer's conduct.

[31] See, e.g., *Quality Food Markets, Inc.*, 126 NLRB 349.

[32] See ch III of this report, and the corresponding chapters of earlier reports.

[33] *Charles F. Reichert*, 124 NLRB 28.

[34] See p. 77, *supra*.

[35] *Cosmopolitan Studios, Inc.*, 127 NLRB 788.

[36] See also *Anderson Lithograph Co., Inc.*, 124 NLRB 920. Compare *Perry Coal Co.*, 125 NLRB 1256

c. Subjects for Bargaining

The statutory bargaining duty extends to all matters pertaining to "rates of pay, wages, hours of employment, or other conditions of employment." [37] Regarding such matters, the employer, as well as the employees' representative, must bargain in good faith, although the statute does not require "either party to agree to a proposal or require the making of a concession." [38] On the other hand, in nonmandatory matters, i.e., lawful matters unrelated to "wages, hours, and other conditions of employment," the parties are free to bargain or not to bargain and to agree or not to agree.[39]

The question whether certain matters were subject to mandatory bargaining was determinative of the 8(a)(5) issues presented in two cases during fiscal 1960. Thus, in one case [40] the Board was faced with a trial examiner's conclusion that premiums paid by the respondent employer under a noncontributory insurance program are not "wages" for section 8(a)(5) purposes, and that the employer was therefore under no obligation to comply with the union's request for premium cost data. The Board overruled the trial examiner, finding no legal basis for distinguishing between premium costs under a contributory and a noncontributory insurance plan. In the Board's view—

> where the employer shoulders the entire cost of a group insurance program so that the employees themselves are not required to allocate any part of their weekly wages for the purpose, there inures to the employees a benefit which constitutes an emolument of value, and . . . this benefit flows from the employment relationship. This benefit to the employees which represents part of the remuneration received by them for their labor therefore constitutes "wages" and, as such, the cost thereof to the Respondent stands on a different footing for purposes of the Act from the operating costs with which it is equated by the Trial Examiner.

In another case [41] the employer was held to have violated section 8(a)(5) within the meaning of the Supreme Court's decision in *Borg-Warner* [42] by conditioning the execution of a contract with the complaining union on the latter's agreement to a clause which in relevant part would have obligated either party not to restrain or coerce employees in their section 7 rights "by discipline, discharge, fine or otherwise." The Board pointed out that by thus encompassing virtually every form of internal union discipline, including disciplinary powers expressly reserved to unions by the union rules proviso to section

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[37] Secs. 8(d) and 9 of the act.

[38] Sec. 8(d).

[39] See *N.L.R.B.* v. *Wooster Division of Borg-Warner Corp.*, 356 U.S. 342; Twenty-fourth Annual Report, pp. 78–79. See also the chapter on 8(b)(3) violations, *infra*, pp. 96–101.

[40] *Sylvania Electric Products, Inc.*, 127 NLRB 924.

[41] *Allen-Bradley Co.*, 127 NLRB 44.

[42] *N.L.R.B.* v. *Wooster Division of Borg-Warner Corp.*, *supra*, footnote 39.

8(b)(1)(A),[43] the proposed clause intruded on the union's express statutory rights and was clearly outside the scope of mandatory bargaining. In *Borg-Warner*, the Supreme Court had agreed with the Board's view that an employer's insistence to the point of impasse on inclusion in a contract of a nonmandatory clause as a condition to agreement on mandatory matters is a refusal to bargain about subjects within the scope of mandatory bargaining.

d. Violation of Bargaining Duty

An employer who is obligated to bargain with the representative of his employees within the meaning of section 8(a)(5) must, as stated in section 8(d), "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. . . ."

An employer will therefore be found to have violated section 8(a)(5) if his conduct in bargaining, viewed in its entirety, indicates that the employer did not negotiate with a good-faith intention to reach agreement.[44] However, as pointed out by the Board again in one case,[45] the employer's good faith is not a relevant consideration where his conduct in itself constitutes a violation. Thus, the Board held in *Minute Maid* that, regardless of the employer's good faith, suspension of bargaining during a period of economic uncertainty was violative of section 8(a)(5), because "if industrial stability is to be achieved, the statutory duty to bargain cannot be held to vary with the changes of economic fortunes."[46]

(1) Refusal To Deal With Union's Designated Agent

The statutory duty of an employer to meet and confer with the employees' representative includes the duty to deal with the agent designated by the employee representative to carry on negotiation. As reiterated by the Board during the past year,[47] "an employer may not dictate to a union its selection of agents or representatives" and must recognize the designated agent unless he conducts himself in a manner reflecting "such underlying hostility to the [employer] as to

[43] Sec. 8(b)(1)(A) provides that "this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

[44] Sec, e.g., *Butcher Boy Refrigerator Door Co.*, 127 NLRB 1360; *Florida Citrus Canners Cooperative*, 124 NLRB 1182; *Lewin-Mathes Co., Div. of Cerro de Pasco Corp.*, 126 NLRB 936. Compare *Albany Garage, Inc.*, 126 NLRB 417.

[45] *Minute Maid Corp.*, 124 NLRB 355.

[46] After the close of the fiscal year the Fifth Circuit Court of Appeals denied the Board's petition for enforcement of the order in this case. 283 F. 2d 705.

[47] *Deeco, Inc.*, 127 NLRB 666.

make collective bargaining . . . a futility." [48] In the *Deeco* case, the employer was held not relieved of his duty to deal with the union's agent after an outburst which, albeit intemperate, did not evince such hostility but rather was the result of momentary irritation at the employer's procrastination in complying with a legitimate request for bargaining information. In another case, the employer was likewise held to have violated section 8(a)(5) by refusing, without justification, to deal with the complaining union's agent.[49]

(2) Refusal To Furnish Bargaining Information

The statutory duty of an employer to bargain in good faith includes the duty to supply information which is "relevant and necessary to enable the [employees' representative] intelligently and efficaciously to bargain collectively with respect to wages, hours, and other conditions of employment." [50]

Thus, the employer in one case [51] was held to have violated section 8(a)(5) by refusing to furnish the union information regarding premium costs of the employer's noncontributory insurance program. Finding that the insurance benefits to the employees constituted part of their remuneration for labor, or "wages," [52] the Board held that the union was entitled to the information which it requested in order to carry on current contract negotiations and formulate its economic demands intelligently.

Conversely, the Board dismissed a refusal-to-bargain complaint which was based solely on the employer's refusal to furnish the union copies of certain reports which, according to the Board, had no bearing on wage rates, but were obtained for the purpose of comparing work costs with national norms, and devising a system of properly scheduling and coordinating work.[53] The Board noted, for instance, that certain performance time standards contained in the work-scheduling report were never communicated to the employees or used for incentive award or disciplinary purposes, and that the employer was not shown to have sought to justify any position on the basis of the requested reports during contract negotiations or the processing of grievances. In dismissing the complaint, the Board pointed out that an "employer is not required to furnish a union with all informa-

[48] See *N.L.R.B.* v. *Kentucky Utilities Co.*, 182 F. 2d 810 (C.A. 6), which the Board cited.

[49] *Prudential Insurance Co. of America*, 124 NLRB 1390. The Third Circuit Court of Appeals which enforced the Board's order in the case with modification (278 F. 2d 181) recognized the duty of an employer to negotiate with a union's duly chosen bargaining agent.

[50] See the reference to the rule in *General Aniline and Film Corp*, 124 NLRB 1217, 1220.

[51] *Sylvania Electric Products, Inc.*, 127 NLRB 924.

[52] *Supra*, p. 79.

[53] *General Aniline and Film Corp., supra*, footnote 50. The Board distinguished the reports here from time-study reports to which a union may be entitled.

tion which the union conceives might be helpful in collective bargaining or in the processing of grievances."

In another case,[54] the employer was held not required to comply with the union's request for certain financial information or an audit of company records because, in the view of a majority of the Board, the information already furnished the union was sufficient for the purpose of current wage negotiations,[55] even if it served the purpose of substantiating a claim of inability to grant a wage increase.[56] The majority noted that the union had been given a financial statement as soon as possible after the company's books for the preceding calendar year were closed, together with a comparative sales and profits statement for earlier years; that these statements were considered adequate by banks, the Bureau of Internal Revenue, and the company's stockholders; and that the same type of information had been accepted by the union on earlier similar occasions. The majority also noted that the company's refusal to grant a wage increase was based in part on an unfavorable business forecast, and that the company offered a 6-month wage reopener in the new contract to permit an early review of wages.

(3) Unilateral Action

The duty of an employer to bargain with the statutory representative of his employees includes the duty to refrain from taking unilateral action with respect to matters as to which he is required to bargain, and from making changes in terms and conditions of employment without consulting the employees' representative.[57] Thus, the employer in one case was held to have violated section 8(a)(5) by subcontracting certain work to another employer without notifying the union which represented the affected employees and without affording the union an opportunity to bargain concerning the tenure and benefits of the employees who were to be offered employment by the subcontractor.[58] Section 8(a)(5) was held similarly violated by an employer who failed to notify the bargaining representative of its truckdrivers of the contemplated discontinuance of transportation

[54] *Albany Garage, Inc.*, 126 NLRB 417.

[55] In view of this conclusion, the majority did not pass on the question whether a union may demand, or whether an employer must submit to, an audit of its books.

[56] The majority did not decide the question whether the employer had made such a claim and, under the Supreme Court's holding in *N.L.R.B.* v. *Truitt Mfg. Co*, 351 U.S. 149, 152–153, was required to substantiate it

[57] See, e g, *Butcher Boy Refrigerator Door Co.*, 127 NLRB 1360; *Cutter Boats Inc.*, 127 NLRB 1576; *Yale Upholstering Co., Inc.*, 127 NLRB 440; *Williamsburg Steel Products Co*, 126 NLRB 288, *Chambers Manufacturing Corp.*, 124 NLRB 721; *Minute Maid Corp*, 124 NLRB 355; *Leisure Lads, Inc*, 124 NLRB 431; *Intracoastal Terminal Inc*, 125 NLRB 359 Compare *General Electric Co.*, 127 NLRB 346, where no violation was found because the complaining union had failed to avail itself of the opportunity offered by the employer to discuss the matter involved.

[58] *Brown-Dunkin Co., Inc.*, 125 NLRB 1379.

operations, and failed to confer with the union regarding the change and its effect on the drivers; [59] as well as by an employer who abolished a department and transferred the employees to other employment without consulting the employees' certified representative.[60]

In one case during the past year, an employer association was found to have violated section 8(a)(5) by causing members to make unilateral changes in the working conditions of the employees in the multi-employer unit represented by the complaining union.[61] The remedial problems presented by the association's violation—effectuation by the employer-members of an across-the-board wage cut, substitution of the respondent association's welfare plan for that of the union, and the discontinuance of payments into the union's pension fund—were met by an order against the association [62] directing it to cease and desist from violating section 8(a)(5) in the manner found, and an affirmative restoration order which the Board considered necessary "to prevent a wrongdoer from enjoying the fruits of his unfair labor practices." Specifically, this order required that, if the employees, through their union, expressed their desire for restoration of former working conditions,[63] (1) the employees be paid the difference between the wages actually received during the period involved and the wages they would have received absent the illegal reduction in wage rates, and (2) the union's welfare and pension funds be reimbursed in an amount equal to what would have been paid into those funds absent the illegal termination of payment. In view of the circumstance that the association's members, not being parties to the proceeding, could not be reached directly, the Board's order also directed the association to "invoke such powers and rights as [it] may have as to each of such member-employers in order to discharge its financial obligations under this Order, and to insure the cooperation of each such employer in effectuating the . . . Order."

In another case under section (8)(a)(5) the respondent trucker was found to have entered into individual contracts with its drivers, who were members of an appropriate bargaining unit, in an effort to change their employee status to that of independent contractors.[64] The Board held that the employer's action was unlawful under section 8(a)(5) because (1) the employer bargained individually

[59] *Consumers Gasoline Stations*, 126 NLRB 1041.

[60] *Herman Nelson Division, American Air Filter Co., Inc.*, 127 NLRB 939.

[61] *Cascade Employers Assn., Inc.*, 126 NLRB 1014.

[62] The member-employers were not included in the order since they were not parties respondent in the case and no unfair labor practice charges against them directly were alleged or found.

[63] A majority of the Board was of the view that the order should be so conditioned because of the respondent's assertion that the matter of unilateral changes had been settled with the complaining union.

[64] *Smith's Van & Transport Co., Inc*, 126 NLRB 1059.

with employees when it was obligated to bargain collectively with their statutory representative; (2) the execution of the individual contracts, which did not effectively change the drivers' status and did not remove them from the coverage of the union's collective-bargaining agreement, constituted an unlawful midterm modification of the union's contract, having been made without the notices required by section 8(d);[65] and (3), in any event, the union was entitled to bargain with respect to any change in the status of the drivers which the employer may have contemplated for economic reasons, as such a change affected the tenure of employees in the bargaining unit represented by the union. In remedying the 8(a)(5) violation here, the Board again held that affirmative relief was necessary to prevent the employer from enjoying the fruits of its unlawful action. The employer was therefore directed to abrogate its individual contracts with the drivers and to reimburse them for any loss incurred by them because of the employer's unilateral modification of their terms and conditions of employment through the substitution of the individual contracts for the existing collective-bargaining agreement.

B. Union Unfair Labor Practices

The several subsections of section 8(b) of the act, since its amendment during fiscal 1960,[66] specifically proscribe as unfair labor practices seven [67] separate types of conduct by labor organizations or their agents.

Cases decided by the Board during fiscal 1960 under subsections (1), (2), (3), (4), (5), and (7) are discussed below. No cases came to the Board for decision involving subsection (6) which forbids so-called featherbedding practices.

1. Restraint and Coercion of Employees

Section 8(b)(1)(A) makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce employees" in the exercise of their right to engage in or refrain from concerted activities directed toward self-organization and collective bargaining.

[65] Under sec. 8(d), the statutory bargaining duty is violated by a party which terminates or modifies an outstanding collective-bargaining agreement without first giving specific 60 days' notice to the other party to the contract, and 30 days' notice to Federal and State mediation and conciliation agencies

[66] See Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257. In amending the act, Congress also added a new section—sec. 8(e)—which prohibits employers and labor organizations alike from entering into "hot cargo" type contracts. See *infra*, p. 104.

[67] Subsec (7) (*infra*, pp. 117–120) which was added during the past year, became effective on November 13, 1959.

However, section 8(b)(1)(A) also provides that it "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." This proviso, the Board has stated, is "intended to . . . remove the application of a union's membership rules to its members from the proscriptions of Section 8(b)(1)(A), irrespective of any ulterior reasons motivating the union's application of such rules or the direct effect thereof on particular employees," [68] subject to the limitation that internal union rules may not be enforced so as to affect the hire or tenure of employees.[69]

a. Forms of Restraint and Coercion

Section 8(b)(1)(A) is violated by conduct which independently restrains or coerces employees in their statutory rights without regard to whether the conduct also violates other subsections of 8(b). While employer violations of subsections (2) to (5) of section 8(a) have been held to constitute derivative violations of subsection (1)—which prohibits interference with, restraint, and coercion of employees in their section 7 rights—the Board has adhered to the view that there is no like relation between subsection (1) and other subsections of 8(b).[70]

(1) Threats and Violence—Other Coercive Conduct

As heretofore, some of the cases under section 8(b)(1)(A) involved conduct intended to compel strike participation or observance of picket lines by employees. As again pointed out during the past year, such conduct is unlawful regardless of whether it succeeds in restraining nonstriking employees from exercising their right to work.[71] The Board has adhered to the view that a union is liable for coercive conduct of a striker, such as a threat of bodily harm to a nonstriker, if the threat was made in the presence of a union representative and was not repudiated by him.[72]

Strike activities which were found violative of section 8(b)(1)(A) included mass picketing, actual and threatened physical violence, and damage to vehicles, carried on against rank-and-file employees or, in

[68] *Allen-Bradley Co*, 127 NLRB 44. As noted above (*supra*, pp. 79–80), the Board here held that in the light of sec. 8(b)(1)(A), internal discipline is a right guaranteed unions by the act and therefore is not a matter regarding which a union must bargain at the insistence of an employer.

[69] See. Twenty-fourth Annual Report, P. 85.

[70] See Twenty-fourth Annual Report, p 85.

[71] *Local 761, International Union of Electrical, Radio & Machine Workers, AFL–CIO (General Electric Co.)*, 126 NLRB 123.

[72] *Chauffeurs, Teamsters & Helpers Local Union No. 795, etc (Grant-Billingsley Fruit Co., Inc.)*, 127 NLRB 550. The Board here reaffirmed its position after reconsidering it in the light of the disagreement of the Court of Appeals for the Fifth Circuit in *N.L.R.B.* v. *Dallas General Drivers, etc.*, 264 F. 2d 642.

their presence, against supervisors and others, for the purpose of preventing their entering a struck plant.[73] Recording by pickets of automobile license numbers of nonstriking employees was also held coercive within the meaning of section 8(b)(1)(A) where it occurred in a context of mass picketing accompanied by threats of violence, because nonstriking employees could reasonably anticipate that the license numbers were taken for the purpose of identifying the nonstrikers for reprisals.[74]

Union utterances addressed to employees have been held violative of section 8(b)(1)(A) where they contained express or implied threats of loss of employment or employment opportunities because of the employees' exercise of statutory rights. Thus, section 8(b)(1)(A) coercion was found where an employee who had filed unfair labor practice charges against his union was threatened with expulsion and loss of employment, and was informed by a union representative that his employment would depend on securing union approval.[75] Section 8(b)(1)(A) was held similarly violated by a union which threatened a member with disciplinary action for filing unfair labor practice charges.[76] Here the Board pointed out that the prospect of charges against the member under the union's constitution carried with it a threat of the loss of union membership which, under the union's hiring arrangements, could readily lead to the loss of employment opportunities. In one case a union, which had unsuccessfully sought a contractual anti-open-shop commitment from a contractor permitting employees to refuse to work with nonunion workers on a job, was held to have violated section 8(b)(1)(A) by exhorting the contractor's member employees either to cease work or to withdraw from union membership.[77] Such withdrawal, as noted by the trial examiner, would have involved hazard to the workers' employment. In another case, the respondent union was held to have unlawfully coerced employees by threatening them with eventual loss of their jobs, unless they signed a "petition" on behalf of, and paid initiation fees and dues to, the union before the execution of the contract with the employer which was to contain a union-shop clause.[78] And employees subject to the contract of their incumbent bargaining representative were held to have been unlawfully coerced in their section

[73] See *Local 761, International Union of Electrical, Radio & Machine Workers, AFL–CIO (General Electric Co.), supra. Hermandad de Trabajadores de la Construccion (Puerto Rico District Council) etc., (Levitt Corp.)*, 127 NLRB 900.

[74] *Local 761, International Union of Electrical, Radio & Machine Workers (General Electric Co.), supra.*

[75] *Bordus & Co*, 125 NLRB 1335.

[76] *Local 401, International Brotherhood of Boilermakers (M. A. Roberts & Co.)*, 126 NLRB 832.

[77] *Bricklayers, Masons & Plasterers International Union (Selby-Battersby & Co.)*, 125 NLRB 1179 (117 NLRB 366, 385).

[78] *Detroit Plastic Products Co.*, 126 NLRB 1182.

7 rights when the respondent union notified them that it was requiring their employer to cease recognizing the incumbent and to "comply" with its contract which, in turn, required membership in the respondent union.[79] Here section 8(b)(1)(A) was held violated (1) because the effect of the notice to the employees was that they would be required, as a condition of employment, to become members of the union, and (2) because of the curtailment of the employees' right to select their own bargaining representative.

(2) Illegal Union-Security and Employment Practices

The Board has consistently held that the execution and maintenance, or the enforcement, of illegal union-security and employment agreements, which condition employment on union membership, is not only violative of section 8(b)(2)[80] but is also violative of section 8(b)(1)(A) in that such action inevitably restrains and coerces employees in their section 7 right to acquire and maintain, or refrain from acquiring or maintaining, union membership.

The numerous interrelated 8(b)(1)(A)-8(b)(2) cases decided during fiscal 1960[81] again involved union-security agreements which did not conform to statutory limitations;[82] unlawful hiring agreements;[83] and agreements giving preference to union members in terms of employment[84] or giving to the union control over the employees' seniority.[85]

In one case the Board again pointed out that an illegal union-security provision is violative of section 8(b)(1)(A) even if the parties do not intend to enforce it, because "an unlawful provision serves no less as a restraint on employees' right to refrain from joining an organization than if the parties intend to enforce it. . . ."[86]

Other cases in this category were concerned with coercion resulting from unlawful union requests for the discharge of, or refusal of

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[79] *Perry Coal Co., et al.*, 125 NLRB 1256.

[80] See *infra*, pp. 94–96

[81] These cases are more fully discussed in the chapter dealing specifically with 8(b)(2) violations, *infra*, pp. 90–96.

[82] *Masters-Lake Success, Inc.*, 124 NLRB 580; *Nordberg-Selah Fruit, Inc.*, 126 NLRB 714; *Chun King Sales, Inc.*, 126 NLRB 851; *Local 569, United Packinghouse Workers of America, AFL–CIO (Frank Jaworski Sausage Co.)*, 126 NLRB 870.

[83] See *The H. K. Ferguson Co.*, 124 NLRB 544, *Local 425, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, etc. (Lummus Corp.)*, 125 NLRB 1161, *International Hod Carriers, Building and Common Laborers' Union, etc. (Fenix & Scisson, Inc.)*, 126 NLRB 226; *McCormick Construction Co.*, 126 NLRB 1246; *Local 401, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, etc. (M. A. Roberts & Co.)*, 126 NLRB 832; *Hillbro Newspaper Printing Co.*, 127 NLRB 591.

[84] See *Buitoni Foods Corp.*, 126 NLRB 767; *District Lodge 94, International Association of Machinists, etc. (Consolidated Rock Products Co.)*, 126 NLRB 1265; *Montauk Iron & Steel Corp.*, 127 NLRB 993.

[85] See *Miranda Fuel Co.*, 125 NLRB 454

[86] *Nordberg-Selah Fruit, Inc.*, 126 NLRB 714, *supra*.

employment to, individuals for nonmembership or nonobservance of union rules.[87]

2. Restraint and Coercion of Employers

Section 8(b)(1)(B) prohibits labor organizations from restraining or coercing employers in the selection of their bargaining representatives.

In one of the three cases where unions were charged with having violated section 8(b)(1)(B) during the past year, the union had insisted on bargaining with the company's owners only and refused to meet with them while accompanied by the attorney the company had engaged to conduct contract negotiations.[88] The union followed up its refusal to negotiate in the presence of the company's authorized representative with a threat to strike, which it carried out, to compel the company to accept the union's contract demands. The Board held, contrary to the trial examiner, that the union's threat of not bargaining and of a strike in an attempt to veto the employer's selection of a bargaining representative constituted restraint and coercion within the clear meaning of section 8(b)(1)(B). The Board also rejected the trial examiner's conclusion that, in any event, a violation could not be found here because it was not shown that the respondent union was the majority representative of the employees in the bargaining unit. According to the Board, section 8(b)(1)(B) applies regardless of the respondent union's majority status, having been enacted "to safeguard the rights of employers freely to designate representatives of their own choosing for the purpose, *inter alia*, of collective bargaining." The Board found no evidence of a congressional intent "that section 8(b)(1)(B) was to be subsidiary to section 8(b)(3)," i.e., that a violation of its provision necessarily is also a refusal to bargain within the meaning of section 8(b)(3).

Two cases turned on whether the respondent union's strike against some, but not all, members of a multiemployer bargaining unit constituted unlawful coercion within the meaning of section 8(b)(1)(B), as well as a refusal to bargain under section 8(b)(3).[89] In one case [90] the Board adopted the trial examiner's view that such a strike by the employee representative of a multiemployer unit is not unlawful

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[87] See *United Brotherhood of Carpenters and Joiners of America (Endicott Church Furniture Inc.)*, 125 NLRB 853; *Hall-Scott, Inc.*, 124 NLRB 1305; *Carpenters District Council of Detroit County, et al. (W. J. C. Kaufmann Co.)*, 125 NLRB 546; *International Hod Carriers, etc, Local Union No. 78 (Knowlton Construction Co)*, 125 NLRB 704; *Verve Records, Inc.*, 127 NLRB 1049.

[88] *Local 294, International Brotherhood of Teamsters, etc. (K–C Refrigeration Transport Co, Inc.)*, 126 NLRB 1.

[89] See *infra*, pp. 99, 100.

[90] *Arizona District Council of Construction, Production and Maintenance Laborers (Associated General Contractors)*, 126 NLRB 1110.

per se, and that a violation of those sections cannot be found where, as here, there is no evidence that the strike was intended to force member employers to bargain individually rather than through their common representative. Conversely, the Board held in another case [91] that similar strike action against two members of an associationwide unit, which brought about the execution of individual contracts by the struck employers, was violative of section 8(b)(1)(B) and 8(b)(3). Here the record showed that the union's manifest purpose was to destroy the multiemployer unit and to eliminate the employer association as bargaining representative.

3. Causing or Attempting To Cause Discrimination

Section 8(b)(2) prohibits a labor organization from causing or attempting to cause an employer to discriminate against employees within the meaning of section 8(a)(3). That section outlaws discrimination in employment which encourages or discourages union membership, except insofar as it permits the making of union-security agreements on certain specified conditions.[92]

The 1959 amendments to the act affect section 8(b)(2) only in the matter of union security. As noted above,[93] section 9 (f), (g), and (h) having been repealed as of September 14, 1959, the validity of a union-security agreement is no longer dependent on the contracting union's compliance with the non-Communist affidavit and other filing requirements of those sections. Moreover, the section 8(a)(3) limitations on union security were modified by the act's new section 8(f) which permits union-security agreements covering employees "in the building and construction industry" on less restrictive terms.

a. Forms of Violations

The cases under section 8(b)(2) have continued to present both individual instances of union conduct amounting to a request for discrimination against employees because of the lack of union membership or failure to abide by union rules,[94] and agreements or arrangements with employers unlawfully conditioning employment on union membership or performance of union obligations.

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[91] *General Teamsters Local Union No. 324, International Brotherhood of Teamsters, etc. (Cascade Employers Association, Inc.)*, 127 NLRB 488.

[92] See "Discrimination Against Employees" *supra*, pp. 64–77.

[93] *Supra*, p 72

[94] See, e g, *United Brotherhood of Carpenters and Joiners of America (Endicott Church Furniture, Inc.)*, 125 NLRB 853, and *Local 20, Bakery & Confectionery Workers International Union of America (Berwick Cake Co.)*, 126 NLRB 22, each involving termination of an employee because of his nonmembership in the respondent union; and *Verve Records, Inc.*, 127 NLRB 1049, where the union caused a musician's engagement for a recording session to be canceled because his participation was in conflict with the union's quota system.

The Board has consistently held that to find that a union caused prohibited employer discrimination it is not necessary that an express demand was made. Thus, a union's conduct accompanied by statements advising or suggesting action expected of an employer may be sufficient to support an 8(b)(2) finding,[95] so long as a causal connection between the union's actions and the ensuing discrimination is shown.[96]

Also, as held again by the Board, union pressure intended to bring about discrimination against employees may be violative of section 8(b)(2) even where applied indirectly, rather than to the employees' immediate employer, as in the case of pressure on a contractor through persons awarding the contract.[97]

The Board, in one case,[98] rejected the trial examiner's conclusion that secondary pressure intended to compel an employer to execute a union-security agreement, notwithstanding the incumbency of another union, did not constitute an attempt to cause discrimination within the meaning of section 8(b)(2) [99] because the proposed action was not to take place immediately but at a future time after the incumbent union's current contract expired. The Board found no support in the act for so construing section 8(b)(2).

(1) Illegal Employment Agreements and Practices

As in prior years, a substantial number of the cases against unions arose from complaints alleging contractual or informal arrangements under which the participating employer was to give preferential treatment to the union's members,[1] or the union was to have control over such matters as hiring and seniority. The maintenance of agreements which in effect condition employment or employment benefits on union membership and compliance with union rules—other than as permitted by the act's union-security provisions—has consistently been held violative of the nondiscrimination provisions of section 8(b)(2) and 8(a)(3) [2] in that such arrangements inevitably encourage union

[95] See *Local 20, Bakery & Confectionery Workers International Union (Berwick Cake Co.)*, *supra*, and see the trial examiner's report in *Northwestern Montana District Council of Carpenters' Unions (Glacier Park Co.)*, 126 NLRB 889. See also *United Brotherhood of Carpenters and Joiners of America (Endicott Church Furniture, Inc.)*, 125 NLRB 853, 858.

[96] See *Gibbs Corp.*, 124 NLRB 1320, 1321, 1330

[97] See, e g, *United Brotherhood of Carpenters, etc (Endicott Church Furniture, Inc.)*, *supra*, at 866; *United Brotherhood of Carpenters, etc, Local Union 1281 (Fuller Paint and Glass Co.)*, 127 NLRB 565

[98] *Sheet Metal Workers International Association, etc. (Burt Manufacturing Co)*, 127 NLRB 1629.

[99] The 8(b)(4) aspects of the case are noted at pp 110 and 111, *infra*

[1] See, for instance, *District Lodge 94, International Association of Machinists, etc. (Consolidated Rock Products Co.)*, 126 NLRB 1265, involving an agreement requiring that preference in overtime work be given to the union's members.

[2] *Supra*, pp. 73–75.

membership.[3] The Board had occasion to reiterate that a finding of a violation is therefore not precluded where it is shown that the challenged agreement has not been enforced or has been abandoned and a lawful agreement has taken its place.[4]

(a) Discriminatory hiring practices

Several cases decided during fiscal 1960 were based on discriminatory hiring practices resulting from arrangements whereby control over hiring was placed in a foreman, who in turn was required to be a union member and as such was subject to the union's laws.

In one case,[5] where the respondents were found to have been parties to a discriminatory hiring arrangement, the employer's master mechanic, a member of the respondent union, had been entrusted with supervision over the company's operating engineers and with authority to recruit engineers as needed. As a union member, the master mechanic was obligated to hire only union members in good standing, and also was required to obtain men exclusively through the union's hiring hall. The Board here said:

> [I]t is clear that [the master mechanic] served in a dual capacity. On the one hand, he acted as agent for the Company in hiring operating engineers; on the other hand, he acted as agent for the Union bound by the International constitution and the Union's rules in enforcing its restrictive hiring policies. In such circumstances, we find that the Company and the Union, in effect, entered into an arrangement or agreement to operate under closed-shop conditions, which the Act plainly prohibits. The fact that [the master mechanic] did not also determine initially when and how many operating engineers to hire does not detract from the unlawful nature of the hiring arrangement.[6]

The union here was held to have further violated section 8(b)(2) by refusing to clear an engineer and thereby preventing his reemployment by the contractor under the existing hiring agreement.

In another case,[7] the respondent union was held liable under section 8(b)(2) for the refusal of a foreman on a construction job to hire a carpenter who had no work permit such as was required by the union's working rules. In appointing a union member as job foreman, the contractor had carried out its obligation under the union's collective-bargaining agreement by which the contractor had agreed to be bound although he was not a signatory. The Board noted that by requiring

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[3] See *Local Union No. 466, International Brotherhood of Electrical Workers (Moore Electric Co.)*, 126 NLRB 912; *McCormick Construction Co.*, 126 NLRB 1246; *Kaiser Steel Corp.*, 125 NLRB 1039; *Ingalls Steel Construction Co.*, 126 NLRB 584; *Buitoni Foods Corp.*, 126 NLRB 767; *Nordberg-Selah Fruit, Inc.*, 126 NLRB 714.

[4] *The Ingalls Steel Construction Co., supra.*

[5] *McCormick Construction Co., supra.*

[6] See also *H. K. Ferguson Co.*, 124 NLRB 544, where the Board adopted the trial examiner's similar conclusions.

[7] *Carpenters District Council of Detroit, etc. (W. J. C. Kaufmann Co.)*, 125 NLRB 546.

job foremen to be members, the union assigned itself a degree of control over hiring inasmuch as member foremen were obligated to enforce the union's working rules. These rules prohibited members to work on a job without a work permit, or to work with any member who did not have such a permit. The Board here rejected the union's contention that it was not responsible for the actions of the foreman because it had notified the membership that work permits were no longer required. Noting that the complaining employee belonged to a foreign local and was not a member of the respondent, the Board pointed out that the employee had no notice of the nonenforcement of the respondent's work permit rule. In these circumstances, the Board held, the respondent union was not relieved of responsibility for the foreman's action because, in the employees' eyes, the foreman apparently acted within the scope of authority entrusted to him by the union.[8]

On the other hand, the Board held in one case [9] that the respondent union could not be considered a party to an unlawful hiring arrangement solely because the construction foremen of the employers involved were union members and were bound by the union's rules and laws which required all jobs to be "strictly union in every detail." Disagreeing with the trial examiner's conclusion that a closed-shop hiring agreement existed here, the Board pointed out that:

> No employer involved here in fact was required to hire through the Union; and none of their foremen hired only through the Union. Absent any evidence that the Employers had agreed to be bound by the bylaws, trade, and working rules, it cannot be found that closed-shop arrangements existed solely by reason of such rules and bylaws.

The Board has adhered to the view that an exclusive hiring agreement which obligates the employer to hire personnel exclusively through the union is violative of the nondiscrimination provisions of section 8(b)(2) and 8(a)(3), unless the agreement incorporates the safeguards first set out in the *Mountain Pacific* case.[10] It is the

[8] Issues similar to those in the cases just discussed are now awaiting decision by the Supreme Court which granted the Board's petition for certiorari in *News Syndicate Co., Inc.*, where the Court of Appeals for the Second Circuit denied enforcement, 279 F. 2d 323.

[9] *Miami Valley Carpenters District Council, United Brotherhood of Carpenters etc. (Bowling Supply & Service, Inc., et al.)*, 127 NLRB 1073.

[10] *Mountain Pacific Chapter of the Associated General Contractors, Inc.*, 119 NLRB 883; see Twenty-fourth Annual Report, p. 92. See also *Local 401, International Brotherhood of Boilermakers etc. (M. A. Roberts & Co.)*, 126 NLRB 832.

The question of the legality of exclusive hiring agreements is now pending in the Supreme Court in *N.L.R.B.* v. *Hod Carriers, Building and Common Laborers Union of America, Local No. 324 (Roy Price, Inc.)*, where the Court of Appeals for the Ninth Circuit denied enforcement, having previously expressed its disagreement with the Board's conclusion in the *Mountain Pacific case*, see 270 F 2d 425, *infra*, p. 132

Board's belief that, without the safeguards,[11] an exclusive hiring clause [12] in an existing contract inevitably coerces employees to become or remain union members and to make payments to the union.[13] As stated in another case,[14]

> Such an agreement, giving a union complete and unfettered control over hiring, tends to encourage union membership in violation of the Act. It enables the union to cause the employer to violate Section 8(a)(3). Cases before us have revealed that such arrangements operate to give preference to union members.[15]

(b) Illegal seniority practices

Some cases required decision regarding the legality of seniority agreements or practices under the nondiscrimination provisions of section 8(b)(2) and 8(a)(3).[16]

In one of two cases which turned on whether the parties' agreement was discriminatory in that it gave to the union exclusive control over the employees' seniority status,[17] the Board found unlawful delegation.[18] It also found that the parties further violated the act by reducing an employee's seniority standing pursuant to the agreement although the employee was in a category to which the agreement did not apply. In the other case, however, the Board held that the challenged agreement did not, as alleged, delegate to the union control over seniority in like manner.[19] The agreement here, dealing with seniority in the case of interdepartmental transfers, provided for "[interdepartmental] transfers . . . without loss of seniority . . . by mutual consent between the Company and the particular Local Unions involved. . . ." The parties had interpreted the agreement to mean that "seniority would not be transferred if any one Local

[11] The substance of the safeguards is "that all applicants must be referred for employment without regard to their union membership or obligations; that the employer retains the right to reject any job applicant referred by the union; and that the provisions relating to the functioning of the hiring arrangement be posted." See *McCormick Construction Co.*, 126 NLRB 1246.

[12] Compare *Miami Valley Carpenters District Council, United Brotherhood of Carpenters, etc.*, 127 NLRB 1073, where *Mountain Pacific* was held inapplicable because there was no contract granting exclusive hiring to the union.

[13] *Local 425, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, etc.* (*Lummus Corp*), 125 NLRB 1161.

[14] *International Hod Carriers, etc., Local No. 1445* (*Fenix & Scisson, Inc.*), 126 NLRB 226.

[15] Discriminatory denial of employment to job applicants was found to have actually resulted in the foregoing cases from the performance of the exclusive hiring agreements which did not conform with the *Mountain Pacific* standards. See also *International Hod Carriers, etc., Local No. 83* (*Consolidated Construction Co., Inc*), 124 NLRB 1131.

[16] See also the chapter on employer discrimination against employees, pp. 73–75, *supra*.

[17] *Pacific Intermountain Express Co.*, 107 NLRB 837; see also 225 F. 2d 343 (C.A. 8).

[18] *Miranda Fuel Co., Inc.*, 125 NLRB 454; see also *supra*, p. 73. As noted above (p. 73, footnote 11), the Second Circuit Court of Appeals disagreed with the Board's views in this respect (47 LRRM 2178). The question of the legality of such delegation is one of the issues in the *News Syndicate Co.* case (279 F. 2d 323 (C.A. 2)) which is now pending before the Supreme Court.

[19] *Florida Power & Light Co.*, 126 NLRB 967.

Union voted to disapprove such transfer of seniority," and also that the company shall have "the right to disapprove any such transfer of seniority." The Board was of the view that the contract gave the unions at most a "very remote and tenuous" control in the matter of seniority transfers, and that the extent of the unions' participation in the determination of such transfers was not unlawful when viewed in the light of their substantial and valid interest in the subject of interdepartmental seniority.[20]

In one case, the respondents were found to have violated the act by maintaining and enforcing a contract clause providing that a rank-and-file employee in the contract unit who becomes a supervisor may return to his job in the unit without loss of seniority if, while in supervisory status, he makes payments to the unit's bargaining representative which are the equivalent of monthly union dues.[21] According to a majority of the Board, employees who transfer to supervisory positions, being no longer in the bargaining unit, are not subject to any union obligations under the contract of the unit's representative and, for the same reason, may not be made to pay union dues accruing during the period of supervisory status as a condition of reemployment in the unit.[22]

(2) Illegal Union-Security Agreements and Practices

The act's limitations on the right of labor organizations and employers to make and enforce agreements conditioning employment on union membership are—as stated earlier in this report [23]—contained in the so-called union-security proviso to section 8(a)(3), as supplemented by section 8(f) which was enacted during fiscal 1960.

Union-security agreements which fail to conform to any one of the statutory requirements have been held to subject the affected employees to unlawful discrimination.[24] A union which seeks to compel an employer to enter into such an agreement,[25] or executes or maintains such an agreement, therefore violates section 8(b)(2) which prohibits unions from attempting to cause, as well as causing, unlawful discrim-

[20] For the Board's reasoning see also p. 74, *supra.*

[21] *Kaiser Steel Corp.,* 125 NLRB 1039, Member Fanning dissenting.

[22] *Namm's Inc,* 102 NLRB 466, on which the trial examiner relied in recommending dismissal of the complaint, was overruled insofar as inconsistent with the decision here. Compare *Central States Petroleum Union, Local 115 (Standard Oil Co.),* 127 NLRB 223 (*supra,* p 65), where the Board held that severance of the complaining craft employees from the existing bargaining unit resulted in the loss of their seniority and job-security rights under the contract of their preseverance representative, and that the employees' discharge after severance for lack of seniority was not violative of the act.

[23] See p. 72, *supra.*

[24] See, e.g., *Masters Lake Success, Inc.* 124 NLRB 580, 591.

[25] See, e.g., *Local 208, International Brotherhood of Teamsters, etc. (Sierra Furniture Co.),* 125 NLRB 159; *Sheet Metal Workers International Association, et al. (Burt Manufacturing Co.),* 127 NLRB 1629, Members Bean and Fanning dissenting.

ination.[26] The cases where violations of this type were found during fiscal 1960 involved maintenance of union-security agreements which were unlawful because the contracting union did not have majority status among the employees,[27] or, having received unlawful employer assistance, was not their bona fide representative; [28] as well as agreements which exceeded statutory limitations by failing to afford all the employees 30 days within which to acquire union membership.[29] In one case, the union-security clause of the union's contract was held illegal in that (1) current employees, who had signed membership applications but revoked them before becoming employed in the contract unit, were required to perfect and maintain membership without any grace period, and (2) employees subject to the contract, but hired after its execution date, were required to pay dues retroactively for a period during which they were not employed in the contract unit.[30]

Section 8(b)(2) violations were also found where the respondent unions enforced valid union-security clauses in a manner not permitted by the act. Thus, a union's request for the discharge of an employee for dues delinquency was held unlawful because it appeared that the employee had made a bona fide tender which the union refused for the manifest purpose of getting rid of a dissident member.[31] In another case, the union had requested that an employee, who was a union member when hired, pay dues for the period beginning with his employment, and demanded the employee's discharge when he failed to comply.[32] The request for payment of dues as of the time of hire was contrary to the applicable union-security clause which extended to employees a 6-week probationary or grace period for acquiring membership. Another union requested the discharge of an employee pursuant to the existing union-security agreement although the employee was not subject to its terms, since he had not "applied for membership" as provided in the contract.[33] While the employee here signed a membership card, she did so for the limited purpose of supporting a petition for a Board election, and, in the Board's view, could therefore not be regarded as having "applied for membership" for union-

[26] As to the Board's policy not to give effect to a general "saving clause" accompanying unlawful union-security provisions, see *Perry Coal Co.*, 125 NLRB 1256, pp 72–73, *supra.*

[27] *Local 208, International Brotherhood of Teamsters, etc, supra;* see also *Merlin Novelty Co., Inc.*, 127 NLRB 359.

[28] *Detroit Plastic Products Co*, 126 NLRB 1182.

[29] See, e g, *Local 569, United Packinghouse Workers, etc. (Frank Jaworski Sausage Co.)*, 126 NLRB 870; *Chun King Sales, Inc.*, 126 NLRB 851.

[30] *Nordberg-Selah Fruit, Inc., et al.*, 126 NLRB 714. See also *Local Union 1842, International Brotherhood of Electrical Workers (Avco Manufacturing Corp.)*, 124 NLRB 794, where the Board had occasion to reiterate that a union-security agreement, requiring immediate payment of dues without any preliminary grace period for new employees who are union members, would clearly exceed the statutory limitations.

[31] *Hall-Scott, Inc., et al.*, 124 NLRB 1305.

[32] *Local Union 1842, International Brotherhood of Electrical Workers, et al., supra*

[33] *Nordberg-Selah Fruit, Inc., et al., supra.*

security purposes. In one case, the union refused to accept tender of back dues from an employee who had been lawfully discharged for dues delinquency, requiring him to work first for another employer under contract with the union for 30 days, as a condition to the employee's clearance for reinstatement to his former job.[34] The Board rejected the union's contention that it was justified in refusing to clear the discharged employee for immediate reinstatement, because such clearance would have negated his lawful discharge. The Board's decision in the earlier *Standard Brands* case,[35] on which the union relied, was held inapplicable since here, the employee's request for reemployment could not be viewed as a request for a reconsideration of the merits of his discharge. Moreover, the Board pointed out, the union was contractually committed to notify the employer of the employee's tender of delinquencies and his consequent eligibility for reemployment. The union's failure to notify the employer and its request that the employee comply with conditions other than the payment of back dues was clearly violative of section 8(b)(2), the Board held.[36]

4. Refusal To Bargain in Good Faith

Section 8(b)(3) prohibits a labor organization from refusing "to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a)." The

[34] *District Lodge 94, International Association of Machinists, et al.* (*Consolidated Rock Products Co.*), 126 NLRB 1265. However, the Board here also held that the parties' union-security agreement provided lawfully that a delinquent member shall not be reinstated to his former position until the employer shall have been notified by the union that the employee has paid his delinquencies, or unless the employee presents a work clearance.

[35] *Standard Brands, Inc.*, 97 NLRB 737.

[36] In the cases involving unlawful exclusive hiring arrangements, or agreements establishing closed-shop conditions, the Board's order usually requires that employees be reimbursed for moneys exacted by the union under the unlawful agreement. (*J. S. Brown-E. F. Olds Plumbing & Heating Corp*, 115 NLRB 594.) The Board has consistently taken the view that such agreements inevitably coerce employees into making payments to the union (see, e.g., *International Hod Carriers, etc.* (*Consolidated Construction Co., Inc.*), 124 NLRB 1131). Testimony of employees offered in one case, that notwithstanding the existing unlawful hiring agreement the employees' payments to the union were voluntary, was, therefore, rejected as unpersuasive. (*Local 425, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry* (*Lummus Corp.*), 125 NLRB 1161.)

The *Brown-Olds* reimbursement remedy, on the other hand, was not applied in cases where the challenged union-security clauses were unlawful only because not all employees were granted the required 30-day grace period for joining the union, and did not grant the union any control over hiring (*Nordberg-Selah Fruit, Inc, et al*, 126 NLRB 714; *Chun King Sales, Inc.*, 126 NLRB 851; *Orfeo Kostrencich, et al.*, 127 NLRB 96. See also *Local 569, United Packinghouse Workers, etc.* (*Frank Jaworski Sausage Co.*), 126 NLRB 870).

The question of the propriety of requiring reimbursement as directed by the Board in varying situations is now pending before the Supreme Court. See *infra*, p 136.

statutory bargaining duty of both unions and employers,[37] as defined in section 8(d), includes the duty of the respective parties "to meet at reasonable times and confer in good faith[38] with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party." However, "such obligation does not compel either party to agree to a proposal or require the making of a concession." Each party also must refrain from terminating or modifying an existing collective-bargaining agreement without giving proper notice to the opposing party and to Federal and State Mediation and Conciliation Services, as required by subsections (1) and (3) of section 8(d), or without observing the provisions of subsections (2) and (4) which require the parties to negotiate new contract terms, and to continue the existing contract in effect without strike or lockout during a specified 60-day period.[39]

a. Subjects for Bargaining

The statutory representative of an appropriate employee unit—as the employer of the employees[40]—must bargain as to all matters pertaining to "wages, hours, and other terms and conditions of employment." In other matters, which are lawful, bargaining is permissible though not mandatory. But insistence on inclusion in a contract of clauses dealing with matters outside the category of bargaining subjects specified in the act, as a condition to bargaining on mandatory matters, constitutes an unlawful refusal to bargain on mandatory matters.[41]

Applying these principles to three cases under section 8(b)(3) during the past year,[42] the Board held that the respective unions violated their statutory bargaining duty by conditioning the execution of a contract on the inclusion of clauses as to which the employers were not

[37] *Supra*, pp. 78–84.

[38] See the Supreme Court's decision in *N.L.R.B.* v. *Insurance Agents' International Union, AFL–CIO*, 361 U.S. 477, *infra*, pp. —, regarding the impact of the "good faith" requirement on the right of labor organizations to resort to certain forms of economic pressure in support of bargaining demands. See also *Local 220, International Union of Electrical, etc., Workers (Package Machinery Co.)*, 127 NLRB 1514.

[39] See *infra*, pp. 100–101.

[40] *Supra*, pp. 78–80.

[41] *N.L.R.B.* v. *Wooster Division of Borg-Warner Corp.*, 356 U.S. 342; Twenty-third Annual Report, pp. 104–106.

[42] *Local 164, Brotherhood of Painters, etc. (A. D. Cheatham Painting Co.)*, 126 NLRB 997; *Local 19, International Brotherhood of Longshoremen, AFL–CIO (Chicago Stevedoring Co., Inc.)*, 125 NLRB 61; *Bricklayers, Masons & Plasterers International Union, etc. (Selby-Battersby & Co.)*, 125 NLRB 1179.

required to bargain, *viz*, a performance bond clause,[43] clauses relating to the working conditions of employees outside the bargaining unit,[44] and a union-security clause which was unlawful.[45]

(1) Performance Bond

In the *Local 164* case, the Board rejected the union's contention that a contractual requirement that the employer post a $5,000 performance bond, to be forfeited upon any "substantial" breach of contract, was a mandatory subject for bargaining, its purpose being to insure that the employer abide by its contractual obligations. The fact, relied on by the union, that many locals of its International had negotiated similar performance bond clauses did not, the Board noted, support the union's position. It was pointed out that under the Supreme Court's *Borg-Warner* decision,[46] the fact that a particular subject is outside the scope of mandatory bargaining does not preclude the parties from including it in their negotiations and in the contract,[47] and that such inclusion of a particular matter does, therefore, not establish that the matter is one of compulsory bargaining.

(2) Employment Conditions of Employees Outside Bargaining Unit

In the *Local 164* case, the union also insisted that the complaining contractor agree to a "residence" clause, requiring that on jobs in a locality "outside the jurisdiction of [the] agreement" the contractor employ three journeymen from that locality for every supervisor, journeyman, or apprentice employed from other areas. The asserted purpose of the clause was to prevent "undercutting" of wages and employment terms in other areas by maintaining the "numerical superiority of local workers." Holding that the proposed clause was not within the scope of mandatory bargaining, the Board noted that the clause in effect imposed residence requirements for employees outside the appropriate unit represented by the respondent union, and that the union's insistence on the clause as a condition to entering into a contract was therefore violative of section 8(b)(3).

The *Local 19* case arose from the union's refusal to sign a contract unless it included a "work jurisdiction" clause covering work in which the employer was not presently engaged but which, if performed by the employer, would fall within the coverage of the union's proposed

[43] *Local 164, Brotherhood of Painters, etc, supra.*

[44] *Local 164, Brotherhood of Painters, etc., supra; Local 19, International Brotherhood of Longshoremen, AFL–CIO, supra.*

[45] *Bricklayers, Masons & Plasterers International Union, supra.*

[46] *Supra,* footnote 41.

[47] See also *Detroit Window Cleaners Union, Local 139, etc. (Daelyte Service Co.),* 126 NLRB 63.

contract. The clause required the employer to secure from its predecessor, who at one time had performed the work in question, a guarantee that it would give the work to the employer or any other firm under contract with the union. The Board here held that the union violated section 8(b)(3), not only because it insisted on a work guarantee from a firm not subject to the employer's control, but also because the union's demand involved a commitment concerning the working conditions of employees not represented by the respondent union. It was pointed out that "the scope of another employer's operations, or the terms and conditions of employment of another employer's employees who are themselves outside the bargaining unit, are not proper subjects for mandatory bargaining."

b. Refusal To Bargain in Multiemployer Unit

Two cases [48] presented the question whether strikes by a union representing employees in a multiemployer unit [49] against individual members of the employer group, while joint bargaining was in progress, constituted a violation of the union's duty to bargain under section 8(b)(3), as well as of the prohibition against coercing employers in the selection of their bargaining representative.[50]

In *Arizona District Council*, the Board, as previously noted,[51] sustained the trial examiner's finding that, having failed to show unlawful intent, the General Counsel did not establish that the respondent union violated section 8(b)(3) and 8(b)(1)(A) by striking some of the members of the employer association which was conducting contract negotiations for the associationwide bargaining unit. The union contended that the purpose of the strikes was to secure lawful contract provisions and that there was no intent to secure individual bargaining. The General Counsel's contention was, however, that strikes against only a few members of a multiemployer unit, in a situation such as the present one, necessarily exert economic pressure which tends to cause the struck employers to withdraw from the unit and to bargain individually rather than through the joint representative, and that such strikes are therefore *per se* violative of both section 8(b)(3) and 8(b)(1)(B). In *General Teamsters Local No. 324*, on the other hand, the Board held that the respondent union violated those sections by striking two members of an employer association en-

[48] *Arizona District Council of Construction, etc., Laborers (Associated General Contractors, Arizona Chapter)*, 126 NLRB 1110; *General Teamsters Local No. 324, etc. (Cascade Employers Assn., Inc.)*, 127 NLRB 488.

[49] Cases dealing with the proper scope of multiemployer units are discussed in ch. III of this report, at pp. 40–42, *supra*.

[50] See pp. 88–89, *supra*.

[51] *Supra*, pp. 88–89.

gaged in bargaining, and entering into individual contracts with them, since it was clearly shown that the union's entire conduct was designed to drive a wedge between the association and its members with the object of compelling them to abandon the association as their bargaining agent and to substitute individual for group bargaining.

In one case,[52] the respondent union was held to have unlawfully refused to bargain with an employer association when it refused the request of one association member to execute a contract, identical with the contracts uniformly entered into with all other members, except on condition that the particular employer's contract provide for a "work jurisdiction" clause regulating matters as to which the employer was not obligated to bargain.[53]

c. Section 8(d) Requirements

One case under section 8(b)(3), where the respondent union was charged with violating its statutory bargaining duty by unilaterally terminating an existing contract and by striking for a new contract, without observing the requirements of section 8(d),[54] turned on the union's defense that the existing contract was illegal and therefore was not a collective-bargaining agreement whose termination required compliance with the notice and no-strike requirements of section 8(d) (1), (3), and (4). Specifically, the union asserted that (1) in the representation proceeding, in the course of which it was certified as bargaining agent of the employer's employees, the Board had held that the contract was not a bar to an election; and (2) the contract was otherwise unlawful because it was made at a time when the union received assistance from the contracting employer in violation of section 8(a)(2) of the act. The Board rejected the union's defense, pointing out, as to (1), that a ruling on the contract-bar effect [55] of a collective-bargaining agreement does not determine the validity of the agreement for other purposes. As to (2), the union was held clearly estopped from asserting invalidity of the contract to which it had contributed. "We do not believe," the Board stated, "that the statutory duty to bargain imposed by [section 8(d)] can be so easily evaded.

[52] *Local 19, International Brotherhood of Longshoremen, AFL–CIO (Chicago Stevedoring Co., Inc.)*, 125 NLRB 61.

[53] See pp. 98–99, *supra*. Compare *Detroit Window Cleaners Union, Local 139, etc. (Daelyte Service Co.)*, 126 NLRB 63, where the Board dismissed a section 8(b)(3) complaint alleging that the respondent union unlawfully refused to enter into a separate agreement with the complaining employer and insisted on his execution of the agreement negotiated with an association although the employer asserted withdrawal from the latter. Here it was found that the employer was estopped from requiring individual bargaining because it did not give notice of withdrawal from the association until after association contract negotiations had been concluded. See p. 98, *supra*.

[54] *Meat and Provision Drivers, Local 626, etc. (Washington Rendering Co.)*, 126 NLRB 572

[55] For contract-bar rules see ch. III of this report.

As the Board has held in other situations, a party may not assert misconduct in which it participated as a defense to actions otherwise in violation of the Act."

5. Prohibited Strikes and Boycotts

Section 8(b)(4) of the act, before its amendment on September 14, 1959, prohibited labor organizations from engaging in, or inducing, strikes or concerted work stoppages by employees for any of the purposes specified in subsections (A) through (D). The prohibition had been interpreted as contemplating work stoppages by "employees" of "employers" as defined in section 2(2) and 2(3) of the act.

a. The 1959 Amendments to Section 8(b)(4)

The 1959 amendments to section 8(b)(4),[56] which became effective November 13, 1959, enlarged the prohibition against union conduct for the designated purposes in several respects. Clause (i) of the amended section 8(b)(4) now forbids unions to strike or to induce or encourage strikes or work stoppages by "any individual employed by any person engaged in commerce."[57] The prohibition is thus no longer limited to the inducement of "concerted" work stoppages,[58] or to strikes and work stoppages by "employees of any employer" within the act's definitions.[59] In addition, clause (ii) of the amended section 8(b)(4) also makes it unlawful for a union to "threaten, coerce, or restrain any person engaged in commerce or any industry affecting commerce" for the proscribed purposes.[60] It is therefore no longer material that, in seeking to achieve one of the specified objectives, the union addressed itself to an employer rather than to employees.[61]

A further amendment to section 8(b)(4) is contained in subsection (A) which now also prohibits a labor organization from resorting to conduct described in clauses (i) and (ii) for the purpose of compelling an employer to enter into a "hot cargo" type contract in violation of the act's new section 8(e).[62]

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[56] Title VII, Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519.

[57] See *International Hod Carriers, etc., Local 1140 (Gilmore Construction Co.)*, 127 NLRB 541.

[58] See, e.g., *Sheet Metal Workers International Assn., et al. (Burt Mfg. Co.)*, 127 NLRB 1567; *American Federation of Television and Radio Artists (L. B. Wilson, Inc.)*, 125 NLRB 786.

[59] See *Seafarers' International Union, etc. (American Coal Shipping, Inc.)*, 124 NLRB 1079; *Lumber and Sawmill Workers Local Union 2409 (Great Northern Railway Co.)*, 126 NLRB 57; *Seafarers' International Union, etc. (Superior Derrick Corp.)*, 127 NLRB 207.

[60] See *International Hod Carriers, Local No. 1140, supra*

[61] See *Sheet Metal Workers International Assn., supra; Local 560, International Brotherhood of Teamsters, etc (Riss and Co., Inc.)*, 127 NLRB 1327.

[62] See *infra*, p 104.

b. Inducement and Encouragement of Work Stoppage

The question whether a union has engaged in conduct amounting to inducement or encouragement of a work stoppage is relevant in all 8(b)(4) cases irrespective of whether the union's alleged objective falls within subsection (A), (B), (C), or (D).

The words "induce and encourage" in section 8(b)(4) have been held to be broad enough to include every form of influence and persuasion.[63] Thus, for instance, a work stoppage on a picketed construction project was held to have been unlawfully induced by the unions' business agents who, advised of the picketing, told the job stewards that they would not work behind the picket line.[64] This advice, in the Board's view, not only induced the stewards to act accordingly themselves, but also to transmit the message to their fellow employees. The stewards, in turn, were held to have engaged in further inducement, one steward having ceased work stating to the employees that he was leaving, and another steward having stayed away from the job after telling the employees that it was up to them to do what they wanted. This conduct, according to the Board, informed the employees that they were expected not to work behind the picket line. In another case[65] a majority of the Board found that the respondent union unlawfully induced radio artists not to make transcriptions for use over a radio station the union had designated as "unfair." The artists here had been ordered to require producers of transcriptions to fill out a questionnaire stating whether or not transcriptions were intended for use by the "unfair" station. In the majority's view, the purpose of this order was not, as contended, merely to compile information, but constituted in fact a "signal or invitation" to the union's members to refuse to make transcriptions for use by the boycotted station.

Conversely, in another case[66] the Board found no basis for holding that the refusal of an employee on a job to install a struck prefabricated product was attributable to the respondent union. The evidence here showed only that (1) the employee refused to handle the particular product because he believed that to do so would be contrary to union orders, and (2) the union's business agent had refused the company's request for permission to install the product. The Board pointed out that the installation employee only acted in accordance

[63] *International Brotherhood of Electrical Workers, Local 501 (Samuel Langer)* v. *N.L.R.B.*, 341 U.S. 694, 701–702.

[64] *Local Union No. 789, International Hod Carriers, etc. (Doyle and Russell)*, 125 NLRB 571.

[65] *American Federation of Television and Radio Artists (L. B. Wilson, Inc.)*, 125 NLRB 786, Members Bean and Fanning dissenting.

[66] *Local Union 49, Sheet Metal Workers International Assn. (Driver-Miller Plumbing and Heating Corp.)*, 124 NLRB 888.

with what he assumed to be the union's position, having received no orders from the union's business agent; and that no employee was present when the union's business agent refused to consent to the installation of the boycotted product.

c. Coercion Under Section 8(b)(4)(ii)

The question whether a union engaged in threats, coercion, or restraint within the meaning of clause (ii) of the amended section 8(b)(4) arose in one case during the latter part of fiscal 1960.[67] The respondent union here sought to bring about the removal of one of the subcontractors, who was nonunion, on a construction job in violation of section 8(b)(4)(B). To this end the union picketed the project and induced employees of several contractors to stop work. When questioned by the general contractor as to what he could do to stop the picketing, the union's business agent replied that the picketing would stop only if the nonunion subcontractor were removed from the job. This, the Board held, constituted "coercion and restraint" such as is prohibited by the amended section 8(b)(4).

d. Prohibited Objectives

The objectives which a union heretofore could not lawfully seek to achieve by specified means continue to be outlawed by the amended section 8(b)(4). In addition, unions are also forbidden to bring pressure on employers and self-employed persons to enter into "hot cargo" type contracts to the extent that such contracts are unlawful under section 8(e).

Subsection (A) of section 8(b)(4) was amended by extending its coverage so as to include union pressure for "hot cargo" purposes, and also by transferring its secondary-boycott provisions to subsection (B).

(1) Compelling Membership in Employer or Labor Organization

Section 8(b)(4)(A) prohibits unions from compelling an employer or self-employed person to join any labor or employer organization. This prohibition was found to have been violated in two cases, in one by a union which brought pressure to force an employer to join its ranks,[68] and in another case by a union which sought to force the complaining employer to join an employer association.[69]

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[67] *International Hod Carriers, etc., Local No. 1140 (Gilmore Construction Co.)*, 127 NLRB 541.

[68] *Brewery and Beer Distributor Drivers, etc., Local 830, et al. (Delaware Valley Beer Distributors Assn.)*, 125 NLRB 12.

[69] *International Longshoremen's and Warehousemen's Union, Local 8 (General Ore, Inc.)*, 126 NLRB 172.

The *Delaware Valley* case was concerned with union pressure on a retail beer distributor who had joined a distributors' association but was not, as the other association members, a member of the union. To force the distributor to acquire membership, the union prevented the distributor from obtaining beer from a brewery by inducing the brewery's employees to refuse to fill the distributor's order. The union in *General Ore*, seeking to secure for its members stevedoring work required at the complaining employer's unloading operation, demanded that the employer either join an employer association with which the union had a contract, or that it hire the services of a stevedoring firm which was a member of the association. The union supported its demand by picketing. The Board held that under the circumstances here the union's first as well as its second proposal was unlawful under section 8(b)(4)(A). It was pointed out that, while the second demand that the employer subcontract the work, standing alone, was not unlawful, it was not a genuine alternative because practical considerations precluded the employer from employing a stevedoring firm in preference to joining the association and hiring stevedoring employees directly.

(2) Compelling Agreement Prohibited by Section 8(e)

The amended subsection (A) also prohibits unions from resorting to conduct specified in clauses (i) and (ii) of 8(b)(4) for the purpose of forcing an employer to enter into "hot cargo" type contracts which, with certain exceptions, are forbidden by the act's new section 8(e).

In two cases under section 8(b)(4),[70] the Board had occasion to consider the effect of the proviso to section 8(e) which exempts from its operation agreements between unions and employers "in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work." Upon examining the legislative history of section 8(e), the Board concluded that the construction industry proviso was not intended to affect the law developed under section 8(b)(4), and to permit unions to resort to practices otherwise prohibited by 8(b)(4) for the purpose of compelling an employer to make an agreement within the scope of the proviso.

[70] *International Union of Operating Engineers, Local Union No. 12 (Tri-County Assn. of Civil Engineers and Land Surveyors)*, 126 NLRB 688; *Sheet Metal Workers International Assn., et al. (Burt Mfg Co.)*, 127 NLRB 1567.

(3) Secondary Strikes and Boycotts

The act's secondary-boycott provision, now contained in section 8(b)(4)(B), prohibits pressure on "any person" rather than, as heretofore, on "any employer or other person." This change merely brings the statutory language in line with the broad construction that had been given to the former wording of the secondary-boycott clause.[71]

The cases where unions were charged with seeking to advance primary disputes by causing strangers to the dispute to cease doing business with the primary employer presented the usual factual questions as to whether there had been inducement of work stoppages,[72] and whether the union's object in fact was a cessation of business by neutrals with the primary employer.

In addition, some of the cases required a determination as to whether employers complaining of secondary action were in fact neutrals, or had so allied themselves with the employer with whom the union had a dispute as to be outside the statutory protection. Other cases, in substantial number, again turned on whether pressure against the primary employer, ostensibly through his own employees, was carried out at a location and in a manner which justified a conclusion that inducement of work stoppages by employees of neutral employers was intended.

(a) The "ally" doctrine

For secondary-boycott purposes, an employer has been held not a neutral but an "ally" of the primary employer, and therefore not protected, in two situations. As stated during fiscal 1960 in one case,[73]

> [T]he Board has held that when the primary and secondary employers, although separate legal entities, are commonly owned or controlled, or are engaged in closely integrated operations, they would be regarded, under certain circumstances, as a single employer under the Act and hence "allies" in, and parties to, a union's dispute with the primary employer. The other test of the "ally" relationship is predicated upon the conduct of the secondary employer. If a third party employer engages in conduct which is inconsistent with his professed neutrality in the dispute such as performing the farmed-out struck work of the primary employers, it may be properly assumed that, by knowingly engaging in such conduct, the third party employer had abandoned his "neutral" status and laid himself open to economic pressure by the union.

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[71] See *Local Union No. 313, International Brotherhood of Electrical Workers (Peter D. Furness Electric Co.)*, 117 NLRB 437, where the Board conformed its holding to the views expressed by the Supreme Court in *Local No. 25, International Brotherhood of Teamsters, etc.* v. *New York, New Haven & Hartford Railroad Co.*, 350 U.S. 155. See also *Plumbers, Steamfitters, etc., Local 298* v. *County of Door*, 359 U.S. 354; Twenty-fourth Annual Report, pp. 118–119.

[72] *Supra*, pp 102–103 As noted above, only one case involved coercion against a neutral employer to boycott another employer within the meaning of clause (ii) of 8(b)(4).

[73] *United Steelworkers of America, AFL–CIO (Tennessee Coal & Iron Division of United States Steel Corp.)*, 127 NLRB 823.

Applying the stated tests to the facts of the case, the Board rejected the trial examiner's conclusion that certain contractors on a plant-extension project were the primary employer's allies because their employees performed work which the respondent union claimed should have been performed by the primary employer's employees under the union's collective-bargaining agreement. Finding no ally relationship, the Board noted, first, that the contractors and the company were neither commonly owned and controlled, nor engaged in integrated operations. Nor, according to the Board, was the work performed by the independent contractors "farmed-out 'struck' work." In this respect the Board said:

When we think of "struck" work, we have in mind work which the struck employer would under normal circumstances perform himself, but because of the strike, transfers such work to an "ally." We are not faced with that situation here. The construction work assigned to the contractors did not operate to withdraw work or employment from TCI's own employees. Instead, it involved functions beyond, or in addition to, those performed by TCI employees. While it may be true that regular TCI employees, or those in layoff status in pertinent job classifications, could have performed some of the work on the project, that work was part of, or related to, a major expansion of the existing plant facilities. It did not affect either the regular plant operations or employment. No plant employees have been laid off or discharged after the construction work began. As the employees of the subcontractors were not doing work which, but for the assignments, would have been normally performed by TCI employees, we find no merit in the contention that the work performed by the subcontractors was farmed-out "struck" work.

The Board went on to say:[74]

Similarly, there is no basis for the contention that the subcontractors by their own conduct have stripped themselves of their "neutral" status. Apart from such considerations, we note that there is no showing that either of them had notice before the execution of the contracts that the Respondents were claiming, or about to claim, some of the work covered by the contracts. Although after the picketing began, they became aware of the Respondents' claim to part of the work performed by them and have attempted to continue the work that their contracts had called for them to perform, it is well established that business dealings with the struck employer, in the same manner and to the same extent as it had before the strike, cannot be regarded as a forfeiture of their neutral status.

Likewise rejected was the contention that the respondent union's claim to part of the work contracted out by the primary employer converted the independent-contractor relationship into an "ally" relationship, the Board noting that:

[74] See also the trial examiner's report in *Local 35, United Association of Journeymen, etc. (Delbert Hunter and Richard E. Buettner)*, 126 NLRB 708; *Local No. 36, International Chemical Workers Union (Virginia-Carolina Chemical Corp.)*, 126 NLRB 905; and *Enterprise Association of Steam, Hot Water, etc., and General Pipefitters, Local Union No. 638 (Mechanical Contractors Assn. of New York, Inc.)*, 124 NLRB 521.

To find . . . that under a colorable claim to work assigned to independent contractors, the Respondents could unilaterally establish an "ally" relationship tween TCI and its contractors, would result in an unwarranted extension of the "ally" doctrine and thereby defeat the legislative intent by means of Section 8(b)(4)(A) to extend immunity against secondary pressure to neutral third party employers who became involved in the dispute of others through no fault of their own.[75]

The Board also rejected the "ally" defense of a union which had induced food market employees to cease work in order to force their employers to discontinue the handling of products of "rack-jobbers" which were customarily placed on the food markets' shelves by the rack-jobbers' nonunion driver-salesmen.[76] Asserting that all shelving work belonged to its members under the contract with the markets, the union contended that the rack-jobbers and the markets were allied through their mutual concern over the union's efforts to enforce its asserted contractual rights. The Board, however, pointed out that notwithstanding the existing business relationship and the division of shelving work on the market premises, the markets and rack-jobbers were separate entities and "no employer or employer group was attempting to assist another by performing struck work."

(b) Ambulatory and common-situs picketing

In situations involving picketing at locations where business was carried on by both the primary employer—the employer with whom the union had a dispute—and neutral employers, the Board has continued to determine whether the picketing was primary and protected, or secondary and therefore prohibited, on the basis of the evidentiary tests established in the *Moore Dry Dock*[77] and *Washington Coca Cola*[78] cases. As restated during the past year,[79] under the *Moore Dry Dock* tests picketing of the premises of a neutral employer will be considered primary picketing if: "(a) The picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the situs; (c) the picketing is limited to places reasonably close to the location of the situs; and (d) the picketing discloses clearly that the dispute is with the primary employer."

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[75] See also the earlier *Catalina Island* case cited by the Board; *International Longshoremen & Warehousemen's Union, et al. (Catalina Island Sightseeing Lines)*, 124 NLRB 813.

[76] *Retail Clerks International Assn., AFL–CIO, and Retail Clerks Union, Local 770, AFL–CIO (Food Employers Council)*, 127 NLRB 1522

[77] *Sailors' Union of the Pacific, AFL (Moore Dry Dock Co.)*, 92 NLRB 547; approved in *N.L.R.B.* v. *Service Trade Chauffeurs, etc. (Howland Dry Goods)*, 191 F. 2d 65, 68 (C.A. 2).

[78] *Brewery and Beverage Drivers and Workers, Local No. 67, etc, AFL (Washington Coca Cola Bottling Works, Inc.)*, 107 NLRB 299.

[79] See *Local 660, International Brotherhood of Electrical Workers, etc. (Traffic Safety, Inc.)*, 125 NLRB 537, 539.

Thus, for instance, picketing of construction sites on which the general contractor and some subcontractors employed nonunion men was held unlawful because, despite the known presence of union employees of secondary employers, the union "took no affirmative steps, by signs or otherwise, to limit the impact of its picketing to the employees of the primary employers." [80] And picketing ostensibly directed against an employer engaged in the offshore transfer of ore from ships to barges, with whom the union had a dispute, was held secondary rather than primary under the *Moore Dry Dock* tests in view of these circumstances: Picketing here was carried on at two locations: (1) on a public highway at a point over 300 yards from a ferry where the primary employer's workmen were picked up for transportation to the offshore installation, at a distance of some 400 yards; and (2) by boat at the offshore loading installation. The installation being the common business situs of the primary employer and the neutral employers engaged in the movement of ore shipments, and neutral employees on their way to and from work having to pass the point on the highway at which picketing took place, the union was required, but failed, to make it clear that its dispute was with the primary employer only. The Board rejected the union's contention that it had no knowledge of the exact identity of the primary employer and therefore was not in a position to indicate to whom the picketing was addressed. It was pointed out that absence of such knowledge, even if shown, was no defense, because the union could reasonably be expected to make an effort to learn the identity of the employer it was going to label as "unfair." Having, in fact, had knowledge, the union's failure to make use thereof in connection with the picketing, according to the Board, was relevant in establishing the union's intent to involve neutral employers in its dispute. That this was the union's intent was held further evidenced by the picketing at the highway location. The Board noted that this picket line was not visible to employees at the offshore installation, the situs of the union's dispute, and that if the union intended to reach only primary employees by picketing on land, it could have accomplished its objective by picketing at the ferry landing where only the primary employer's employees embarked for work.

In one case,[81] where the trial examiner held that the respondent union's picketing at a secondary location was unlawful under the *Moore Dry Dock* tests, the Board [82] made clear that the picketing also was secondary rather than primary under the *Washington Coca Cola*

[80] *Wilmington Building and Construction Trades Council, AFL–CIO (James H. Wood)*, 126 NLRB 621.

[81] *Local 560, International Brotherhood of Teamsters, etc. (Rise and Co., Inc.)*, 127 NLRB 1327.

[82] Member Fanning dissenting in this respect.

decision,[83] because the primary employer had a permanent place of business where the respondent union could have adequately publicized its dispute.

(i) Picketing contractors' gate

The Board again had before it situations where unions extended their primary picketing to a plant gate which the employer had expressly reserved for the use of independent contractors performing work on the plant premises.[84] In each case, the Board affirmed the trial examiner's finding that the union, being fully aware of the limited use of the picketed gate, must have intended to involve neutral contractors in its dispute in clear violation of section 8(b)(4).[85] In each case, the decision was based on the similar conclusions in the *General Electric* case,[86] decided during the preceding year and sustained upon enforcement during fiscal 1960.[87] In each case, the trial examiner had held it immaterial that, unlike in the *General Electric* case, the separate contractors' gate was not established until after the union's dispute with the primary employer began.

(4) Compelling Recognition of Uncertified Union

Section 8(b)(4)(B) prohibits secondary action to compel recognition or bargaining by an employer with a union which is not the certified representative of his employees. To find a violation it must therefore appear that (1) the means resorted to by the respondent union were secondary rather than primary under the tests discussed above; and (2) the union's object was, in fact, recognition.

In several cases complaints alleging violations of the foregoing provision of section 8(b)(4)(B) were dismissed during fiscal 1960 because the respondent unions were not shown to have made a demand for recognition or bargaining.[88] However, a specific request that the

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[83] *Brewery and Beverage Drivers and Workers, Local No. 67, etc (Washington Coca Cola Bottling Works, Inc.)*, 107 NLRB 299

[84] *Local No. 86, International Chemical Workers Union, AFL–CIO (Virginia-Carolina Chemical Corp.)*, 126 NLRB 905; *United Steelworkers of America, AFL–CIO, etc. (Phelps Dodge Refining Corp.)*, 126 NLRB 1367.

[85] Regarding the inducement of work stoppages by employees of independent contractors engaged in work on the primary employer's premises, the Board again pointed out in one case (*United Steelworkers of America, AFL–CIO (Tennessee Coal & Iron Division of the United States Steel Corp.)*, 127 NLRB 823), that "the ownership of the premises where the picketing occurs is but one of the elements to be taken into consideration in ascertaining the nature of the picketing," i.e., whether it is primary rather than secondary.

[86] *Local 761, International Union of Electrical, Radio & Machine Workers (General Electric Co.)*, 123 NLRB 1547; Twenty-fourth Annual Report, pp. 105–106.

[87] *Local 761, International Union of Electrical, Radio & Machine Workers* v *N.L.R.B.* 278 F. 2d 282 (C.A.D.C.), *infra*, p. 140 The case is now pending in the United States Supreme Court which granted the union's petition for certiorari.

[88] *United Brotherhood of Carpenters, etc., Local Union 1281, AFL–CIO (Fuller Paint & Glass Co.)*, 127 NLRB 565; *United Brotherhood of Carpenters, etc., AFL–CIO; Local Union No. 889 (Endicott Church Furniture, Inc.)*, 125 NLRB 853. Compare *Retail Clerks International Assn., AFL–CIO (Food Employers Council, Inc.)*, 127 NLRB 1522.

employer "recognize or bargain with" the union is not required. A demand for a contract has been held sufficient since such a demand "usually implies recognition, and at the very least 'bargaining.'" [89] Moreover, the union's recognition objective may be inferred from the context in which secondary pressure was applied. Thus, the Board found in one case [90] that a strike to force a contractor to incorporate in its contract with the union the latter's anti-open-shop "Standard Agreement" was part of an areawide organizing campaign, and was ultimately intended to force open-shop contractors to recognize the union although it was not the certified representative of their employees. The Board noted that under the "Standard Agreement" the signatory union subcontractors and general contractors were to do business only with other signatories, and that nonsignatory contractors in the area in turn were thereby compelled to sign the agreement also. In another case [91] it was similarly found that, in striking construction projects whose owners used the services of a nonunion surveyor firm, the respondent union had a dual object: first, to force the owners to cancel their contracts with the nonunion surveyor firm and, secondly, to compel that firm to bargain with the union although it had not been certified as the representative of their employees. The union's ultimate objective to achieve recognition as representative of the nonunion surveyors, according to the Board, could be inferred both from the fact that construction employees on the jobs involved were told to stop work because the surveyors on the jobsite were nonunion, and the further fact that the union was currently engaged in a campaign to organize the employees of all members of the employer association to which the boycotted surveyor firm belonged.

The Board in one case rejected the trial examiner's conclusion that strike pressure for recognition of a noncertified union was not violative of section 8(b)(4)(B) because the union did not seek immediate recognition but recognition at some future time after the employer's current contract with the incumbent union expired.[92]

(5) Strikes for Recognition Against Certification

Section 8(b)(4) forbids a labor organization from exerting pressure on an employer,[93] be it directly or through a neutral employer, for the

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[89] *International Hod Carriers, etc., Local No. 1140, AFL–CIO (Gilmore Construction Co.)*, 127 NLRB 541.

[90] *Bricklayers, Masons & Plasterers International Union, etc., AFL–CIO, et al. (Selby-Battersby & Co.)*, 125 NLRB 1179.

[91] *International Union of Operating Engineers, Local Union No. 12, AFL–CIO (Tri-County Association of Civil Engineers)*, 126 NLRB 688.

[92] *Sheet Metal Workers International Assn., AFL–CIO, et al. (Burt Mfg. Co.)*, 127 NLRB 1657. See also p. 90, *supra*, and p. 111, *infra*.

[93] As noted above (p. 101), sec. 8(b)(4) was amended, effective Nov. 13, 1959, so as to encompass conduct not covered before the amendment. See clauses (i) and (ii) of 8(b)(4).

purpose specified in subsection (C),[94] *viz*, forcing the employer to recognize a labor organization other than the current, certified representative of his employees.

In two of the three cases where violations of this section were alleged, the respective 8(b)(4) charges were dismissed, the Board finding in one case that no request for recognition or bargaining had been made,[95] and in the other case that section 8(b)(4)(C) had no application because the "Committee," which made the alleged request for recognition, was but "an internal and integral functioning part" of an established labor organization rather than a separate labor organization.[96]

In one case,[97] the Board found that the respondent union, in furtherance of a policy not to install a nonunion product, caused work stoppages on projects where the boycotted product was to be used. Since one of the union's objectives was to force the manufacturer of the product to recognize the union, although the manufacturer was presently under contract with another union which had been certified as the employees' representative, section 8(b)(4)(C) was held clearly violated. The Board found no support in the act for the trial examiner's conclusion that a violation could not be found here because the object of the union's boycott was not immediate recognition but only recognition at a future time after the company's current contract with the incumbent union expired.[98]

6. Jurisdictional Disputes

Section 8(b)(4)(D) forbids a labor organization from engaging in or inducing strike action for the purpose of forcing any employer to assign particular work tasks to "employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work."

An unfair labor practice charge under this section, however, must be handled differently from charges alleging any other type of unfair labor practice. Section 10(k) requires that parties to a jurisdictional dispute be given 10 days, after notice of the filing of charges with the Board, to adjust their dispute. If at the end of that time they are unable to "submit to the Board satisfactory evidence that they have

[94] Subsec. (C) was not amended

[95] *Comite de Empleados de Simmons, Inc., et al*, (*Simmons, Inc*), 127 NLRB 1179 *Glass Co.*), 127 NLRB 565.

[96] *Comite ded Empleados de Simmons, Inc., et al.*, (*Simmons, Inc.*), 127 NLRB 1179

[97] *Sheet Metal Workers International Assn., AFL-CIO* (*Burt Mfg. Co*), 127 NLRB 1567.

[98] See also *supra*, p. 110 and 90.

adjusted, or agreed upon methods for the voluntary adjustment of, the dispute," the Board is empowered to hear and determine the dispute.

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

The 1959 amendments to the act made no changes in either subsection (D) of section 8(b)(4), or in section 10(k).[99]

a. Proceedings Under Section 10(k)

In order for the Board to proceed with a determination under section 10(k), the record made at the hearing must show that a work assignment dispute within the meaning of sections 8(b)(4)(D) and 10(k) exists; that there is reasonable cause to believe that the respondent union has resorted to conduct which is prohibited by section 8(b)(4)[1] in furtherance of its dispute;[2] and that the parties have not adjusted their dispute or agreed upon methods for its voluntary adjustment.

(1) Disputes Subject to Determination

A dispute to be subject to determination under section 10(k) must concern the assignment of particular work to one group of employees rather than to members of another group. If the dispute is not of this kind, a determination will not be made. Thus, the Board dismissed a section 10(k) proceeding where the evidence showed that the dispute between the complaining employer and the respondent union was not jurisdictional, but arose from the employer's cancellation of the contract under which the union had supplied men required by the employer for the installation and repair of refrigeration equipment.[3] Because of the cancellation, the union refused to com-

[99] However, after the close of the fiscal year, the Supreme Court ruled that the statute requires the Board to determine work assignment disputes affirmatively, and that, where the respondent union in a 10(k) proceeding has established no valid claim to the disputed work, a determination that the union is not entitled to the work is insufficient unless accompanied by a determination as to which union has a valid claim to the work. *N.L.R.B. v. Radio & Television Broadcast Engineers Union Local 1212, IBEW, AFL–CIO (Columbia Broadcasting System)*, 364 U.S. 573.

[1] Compare the cases discussed above, pp 102–103.

[2] See *Local 243, Brotherhood of Painters, Paperhangers & Decorators of America (Richardson Paint Co.)*, 125 NLRB 336, 340.

[3] *Local 562, United Association of Journeymen, etc. (General Refrigeration Service Co.)*, 124 NLRB 1125

ply with the employer's later requests for installation men. The employer then secured needed help from another union. The respondent, in turn, sought to persuade the employees so hired to cease work, but indicated at no time that it would furnish replacements if the employer discharged the new employees. Section 10(k) was also held inapplicable where the alleged dispute arose from the employer's termination of its contract with the respondent union, the ensuing discharge of the union's members for economic reasons, and the assignment of their duties to other workers on the employer's force.[4] Pointing out that the union's sole object was to obtain the reemployment of the discharged members and to persuade the employer to sign a new contract, the Board held that the dispute here was neither a traditional dispute between two unions, each seeking to have certain duties assigned to its members, nor a dispute over the employer's assignment of work to employees other than the respondent's members.

(a) Work assignment by contract

The Board has consistently held that it has jurisdiction under section 10(k) not only where there is a demand for the present assignment of work to one group of employees rather than another group, but also where the demand is for a contract reassigning disputed work. Thus, the Board reiterated on two occasions,

> Where, as in the instant case, the underlying basic dispute between the parties is over the assignment of work to employees in a particular labor organization or in a particular trade, craft, or *class* rather than to the employer's own employees, the fact that the demand for the assignment of such work is made under the guise of a contractual demand confers no immunity for a violation of Section 8(b)(4)(D). [Citing cases.] To hold otherwise would permit a labor organization to subvert the clear intent of the statute proscribing jurisdictional strikes and picketing by the simple expedient of recasting a demand for assignment of work into a demand for a contract. . . .[5]

In one case, the Board held that section 10(k) was properly invoked by an employer faced with the respondent union's insistence that it was entitled to certain work under its contract, and that the employer accept the union's interpretation.[6] The work was presently done by employees of other employers, so that, as noted by the Board, compliance with the union's demand could be effected only by reassigning the work from one group to another group.

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[4] *International Brotherhood of Electrical Workers, Local 292, AFL–CIO (Franklin Broadcasting Co.)*, 126 NLRB 1212.

[5] *International Longshoremen's and Warehousemen's Union, Local 8 (General Ore, Inc.)*, 124 NLRB 626; *Local 525, International Brotherhood of Teamsters, etc. (E. A. Weinel)*, 127 NLRB 1377.

[6] *Retail Clerks International Assn., etc. (Food Employers Council, Inc.)*, 125 NLRB 984. The case is further discussed below.

(b) Indirect assignment of work

In holding that the dispute in the *Retail Clerks* case[7] was cognizable under section 10(k), the Board rejected the union's request for dismissal on the ground that no conflicting work assignment demands had been made on a single employer who was in a position to comply. The union here was charged with having brought pressure on certain food market employers to have all shelving work done by their clerks who were members of the union, rather than to permit some shelving to be done by delivery salesmen of "rack-jobbers" who were members of another union. The Board pointed out that, even if the respondent union did not demand that rack-jobbers employ its members, and the bargaining representative of the rack-jobbers' salesmen demanded no work assignment from the markets, the dispute was nevertheless one within section 10(k), because what the union demanded was that the markets either directly assign store clerks to do shelving work, or indirectly assign the work to the respondent union by transferring the markets' business to rack-jobbers who employed members of the respondent. According to the Board "[a demand] for an indirect as well as for a direct assignment of work is, in these circumstances, an object proscribed by Section 8(b)(4)(D)." The Board here also rejected the union's further contention that a basis for a 10(k) determination was lacking because the markets here, as the employer in the earlier *Austin* case,[8] had no power to reassign the disputed work to the union. It was pointed out that here the employer could reassign the work either by banning rack-jobbers' salesmen from the markets' selling areas, or by substituting suppliers who employed the union's members for the present suppliers whose employees were not members.

Similarly, the Board held in another case that it had jurisdiction over a dispute arising from the respondent union's demand that certain waterfront pier operators abide by the asserted contractual commitment to have "fork-lift" work performed by the union's members, and that they discontinue to permit truckers on the piers to do the work with their own employees who were members of another union.[9] The Board here again made clear that the provisions of section 8(b)(4)(D) are not limited to employees of a particular employer, but extend "to an attempt, as here, to force the indirect assignment of work from employees of one employer . . . to employees of another employer. . . ."

[7] *Supra*, footnote 6

[8] *Local 450, International Union of Operating Engineers, AFL–CIO (The Austin Co.)*, 119 NLRB 135; Twenty-third Annual Report, p 101.

[9] *International Longshoremen's Assn (Independent), et al (Motor Transport Labor Relations, Inc.)*, 127 NLRB 35

(2) Voluntary adjustment

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

As noted again by the Board in one case,[10] this limitation is intended to afford the parties an opportunity to settle jurisdictional disputes among themselves without Government intervention whenever possible. To give full scope to the statutory objective, the Board declined to determine a dispute at the instance of a party which conceded the existence of an agreed-upon method for adjustment but insisted that the agreement was not brought to the Board's attention within 10 days after notice of the filing of 8(b)(4)(D) charges.[11] To construe procedural language to override the plain purpose of the substantive provisions of section 10(k) would not be reasonable, the Board stated.

The Board has held that to constitute "satisfactory evidence" of an agreed-upon method, the parties' agreement need not be contained in a single document signed by all parties to the dispute.[12] It was therefore considered sufficient that the disputing unions had agreed to submit jurisdictional disputes to the National Joint Board for decision, and that later the employer, who filed the charges in the case, signed a separate instrument in which he agreed to be bound by Joint Board decisions of the unions' disputes.[13]

No sufficient evidence of a controlling agreement on adjustment methods was found where the parties' asserted contract providing for referral of jurisdictional disputes to the National Joint Board had expired; where the parties did not anticipate conclusion of a new contract including such a referral clause; and where the assertion that the employer submitted to Joint Board processes was supported only by a statement that the employer supplied certain unidentified information to the Joint Board in connection with the pending dispute.[14] An arbitration agreement between the disputing union and the employer in one case was held not to provide for voluntary adjustment within the meaning of section 10(k), because the parties agreed only that jurisdictional disputes "may be" submitted to arbitration,

[10] *International Association of Bridge, Structural & Ornamental Iron Workers, Local Union No. 25, AFL–CIO (Pittsburgh Plate Glass Co.)*, 125 NLRB 1035.

[11] *Ibid.*

[12] *Ibid.*

[13] The Board here had testimony before it to the effect that jurisdictional agreements customarily are signed only by the disputing unions, and the employers involved usually agree to be bound in separate instruments, or by other means.

[14] *Local 59, Wood, Wire & Metal Lathers International Union, AFL–CIO (Jacksonville Tile Co., Inc.)*, 125 NLRB 138.

and that if disputes are so submitted "either party shall be permitted all economic recourse." [15]

To bar a section 10(k) determination an agreement on voluntary adjustment must bind all the parties to the dispute.[16]

(3) Work Claims Based on Contract or Practice

Where the respondent union in a 10(k) proceeding claims the disputed work under a contract with the employer, the Board will find that the union is entitled to the work only if the contract provides for the assignment of the work to the union "in clear and unambiguous terms." [17] In one case the union's assertion of a contractual claim to certain work was held unsupported because the parties had not concluded negotiations on the terms of the proposed collective-bargaining agreement but had merely engaged in discussions of an exploratory nature.[18] The Board will not give effect to the work assignment clause of a contract which contains an unlawful union-security clause.[19] In the case of contractual work assignments, past assignment practices may be considered in construing the contract if the asserted practice clearly favors the disputing union.[20]

b. Violation of Section 8(b)(4)(D)

During fiscal 1960 section 8(b)(4) was found to have been violated in one case.[21] Here, the Board's complaint was issued after the respondent union indicated to the regional director that it would only partially comply with the Board's determination of the dispute which had given rise to the filing of the unfair labor practice charges in the case.[22] In finding in the unfair labor practice proceeding that the union actually failed to comply with the 10(k) determination, the Board pointed out that the union conceded the continuation of the

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[15] *Local 525, International Brotherhood of Teamsters, etc. (E. A. Weinel)*, 127 NLRB 1377.

[16] See *Local 59, Wood, Wire & Metal Lathers, supra. Teamsters, Chauffeurs, Warehousemen & Helpers, Local 386 (John M. King Co.)*, 124 NLRB 1375; *Millwrights Local 1102, United Brotherhood of Carpenters, etc. (General Riggers and Erectors, Inc.)*, 127 NLRB 26; *Retail Clerks International Assn., AFL–CIO (Food Employers Council, Inc.)*, 125 NLRB 984.

[17] See *Theatrical Protective Union No. 1, etc. (Columbia Broadcasting System, Inc.)*, 124 NLRB 249; *Paperhandlers' & Straighteners' Union No. 1, etc. (News Syndicate Co., Inc.)*, 124 NLRB 738.

[18] *Clerks and Checkers Local Union No. 1692, ILA (Independent) (J & R Contractors Inc.)*, 127 NLRB 676.

[19] *International Longshoremen's Association (Independent), et al. (Motor Transport Labor Relations, Inc.)*, 127 NLRB 35.

[20] *Theatrical Protective Union No. 1, supra; Paperhandlers' & Straighteners' Union No 1, supra.* See also dissenting opinion in *Motor Transport Labor Relations, Inc., supra.*

[21] *International Typographical Union, AFL–CIO, et al. (Worcester Telegram Publishing Co.)*, 125 NLRB 759.

[22] *International Typographical Union, AFL–CIO, et al. (Worcester Telegram Publishing Co.)*, 121 NLRB 793; Twenty-fourth Annual Report, p. 109.

strike which was in progress at the time of the 10(k) hearing without in any way showing that the object of the strike had changed.

7. Excessive or Discriminatory Membership Fees

Section 8(b)(5) makes it an unfair labor practice for a union to charge employees covered by a valid union-security agreement a membership fee "in an amount which the Board finds excessive or discriminatory under all the circumstances." The section further provides that "In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected."

The prohibition against excessive and discriminatory membership fees was involved in one case decided during the past year.[23] Adopting the trial examiner's findings that the respondent union's $250 initiation fee was both excessive and discriminatory within the meaning of section 8(b)(5), the Board directed the union to discontinue the unlawful membership requirement and to reimburse employees for sums paid in excess of $75—the union's former fee—toward the $250 fee from the date of its adoption. The trial examiner had found that the fee, which amounted to about 4 weeks' wages, was excessive when viewed in the light of the prevailing union practice in the area to levy initiation fees approximating one-half of the employee's first week's pay. Regarding the discriminatory aspect of the $250 fee, the trial examiner concluded that the union's object in increasing the initiation fee was not to provide needed additional revenue, but to maintain a closed shop through the imposition of an initiation fee sufficiently high to discourage entrance into the industry. As noted by the trial examiner, the Board had previously held that section 8(b)(5) was intended to prevent unions from accomplishing this very objective.[24]

8. Organization and Recognition Picketing by Noncertified Union

Section 8(b) of the act was augmented during fiscal 1959 by the addition of subsection 7 which in specified situations prohibits a labor organization from picketing, or threatening to picket, an employer for the purpose of being recognized by the employer, or accepted by his employees as bargaining representative, unless the labor organization

[23] *Local 611, International Brotherhood of Teamsters, etc. (White Baking Co of Missouri, Inc.)*, 125 NLRB 1392.

[24] *Motion Picture Screen Cartoonists, Local 839, I.A.T.S.E. (Animated Film Producers Assn.)*, 121 NLRB 1196; Twenty-fourth Annual Report, p. 113.

has been certified as such representative. Recognition or organization picketing is prohibited where (a) another union is lawfully recognized by the employer; (b) a valid election has been held within the preceding 12 months; or (c) the picketing union has failed to petition for a Board election "within a reasonable period of time not to exceed thirty days from the commencement of such picketing." If the picketing union files a petition, the representation proceeding must be conducted on an expedited basis as provided in subsection (C).[25] Picketing which has only informational purposes is exempted from the prohibition of subsection (C), unless it has the effect of inducing work stoppages by employees of persons doing business with the picketed employer.[26]

Two cases under the new section 8(b)(7) came to the Board after November 13, 1959, the effective date of the section. In one case the respondent union was charged with having violated subsection (B),[27] while the other case was concerned with the provisions of subsection (C).[28]

The issues raised in the *Stan-Jay* case required construction of the provisions of section 8(b)(7) in several respects. The union here, being charged with picketing the employer for purposes proscribed

[25] In a representation case based on a petition filed after the effective date of sec 8(b)(7) and while 8(b)(7)(C) charges were pending, the Board upheld the regional director's action in proceeding under the expedited election provisions of sec 8(b)(7)(C) because of the pendency of the charges under that section *Bright Foods, Inc*, 126 NLRB 553

[26] Sec 8 (b)(7) makes it an unfair labor practice for a union "to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

"(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

"(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

"(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: Provided, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: Provided further, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services

"Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b)"

[27] *Dallas General Drivers, etc, Local Union No 745 (Macatee, Inc)*, 127 NLRB 683

[28] *Local 239, International Brotherhood of Teamsters, etc (Stan-Jay Auto Parts, etc.)*, 127 NLRB 958

by the section without filing an election petition within a reasonable time as required by subsection (C), contended, first, that the picketing was peaceful and therefore outside the scope of the statutory prohibition. The Board, however, held that section 8(b)(7) outlaws all picketing, be it peaceful picketing or picketing accompanied by force, such as violent or mass picketing. The Board cited legislative history which directly supports this conclusion.[29] The fact that section 8(b)(7) prohibits picketing for the purpose of "forcing or requiring" employer recognition, or employee acceptance, was held not to compel a different conclusion. The Board pointed out that section 8(b)(4), which contains similar language, also was interpreted as applying to peaceful picketing for the purposes proscribed by that section.

The union also contended that its picketing—which began some 2 months before the effective date of section 8(b)(7) and continued thereafter for 17 days until the issuance of the complaint—had not run for a "reasonable period" within the meaning of subsection (C), and therefore was legal although no petition for an election had been filed. Rejecting this contention, the Board took the view that both the language and the legislative history [30] of subsection (C) indicate that it was intended to place a 30-day limit on picketing without, however, precluding a finding in a given case that a period of less than 30 days was a "reasonable period" within which an election petition should have been filed. Here, the Board held, the 17-day period from the time section 8(b)(7) became effective to the date of the complaint was such a period when viewed in the light of the fact that the picketing began 2 months before the section's effective date and continued uninterruptedly until issuance of the complaint.

The union contended further that after the effective date of section 8(b)(7) its picketing had only informational purposes and was therefore lawful under the second proviso to subsection (C).[31] The fact that the allegedly informational picketing resulted in the failure of delivery and pickup services at the picketed plant, the union urged, did not bring the picketing within the exception of the proviso, because this failure was not an *intended* effect of the picketing and therefore not chargeable to the union. The Board declined so to construe the proviso to subsection (C), finding no support therefor in the section's legislative history.[32] In any event, the Board held, the union manifestly intended to disrupt services at the employer's place of business. The union, the Board stated, could reasonably

[29] See especially, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, (NLRB) (U.S. Government Printing Office, 1959), p 1523.

[30] Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, (NLRB) (U S Government Printing Office, 1959), p. 1812.

[31] See footnote 26.

[32] Member Fanning found it unnecessary to decide this issue.

anticipate that delivery and pickup service employees would not cross the picket line, and should have taken, but failed to take, steps to insure that the picket line would not have its normal effect. Moreover, the Board found no merit in the union's claim that the objective of its picketing changed after section 8(b)(7) became effective. Viewing the union's conduct before and after that date in its entirety,[33] the Board concluded that the union's objective remained the same. Thus, it was pointed out, the old picket signs continued to be used for some time; the union proposed a "deal" whereby the employer would sign a collective-bargaining agreement in return for the cessation of the picketing; and the union sought to persuade employees to become members.

In *Macatee, Inc.*, the Board adopted the trial examiner's finding that the respondent union, which was not the certified representative of the employees, violated section 8(b)(7)(B) by picketing for recognition less than 12 months after a valid election had been held. The union's principal defense to the 8(b)(7)(B) charges was that the election was invalid. The trial examiner found, however, that the issues raised by the union had been fully litigated in the representation proceeding before the Board and could not be relitigated in the unfair labor practice proceeding.

[33] The Board rejected the union's argument that events preceding the effective date of section 8(b)(7) could not be considered.

V

Supreme Court Rulings

During fiscal 1960, the Supreme Court decided six cases involving issues regarding the administration of the National Labor Relations Act. Three cases turned on the scope of certain prohibitions against unfair labor practices in section 8(b), two being concerned with the meaning of the term "restrain or coerce" in section 8(b)(1)(A),[1] and one with the meaning of good-faith bargaining under section 8(b)(3).[2] One case involved the Board's right to discovery in connection with a petition for adjudication in contempt.[3] In the two remaining cases, the Supreme Court was called upon to determine the scope of cease-and-desist orders the Board may issue in particular situations,[4] and the effect to be given the 6-month limitation on unfair labor practice charges in section 10(b).[5]

In one case in the Supreme Court, the Board participated as *amicus curiae* in order to state its position that the State court action in the case was improper in that the Board had exclusive jurisdiction over the underlying labor dispute because the employer involved was engaged in commerce within the meaning of, and therefore subject to, the National Labor Relations Act.[6] Citing *San Diego Building Trades Council et al.* v. *Garmon*, 359 U.S. 236, the Supreme Court held that the State court was without jurisdiction in the case.

1. Minority Union Picketing for Recognition: Legality Under Section 8(b)(1)(A)

In the *Curtis* case, and the companion *O'Sullivan* case,[7] the Court had before it the question "whether peaceful picketing by a union, which does not represent a majority of the employees, to compel immediate recognition as the employees' exclusive bargaining agent, is

[1] *N.L.R.B.* v. *Drivers, Chauffeurs & Helpers, Local Union No. 639 etc. (Curtis Bros.)*, 362 U.S. 274; *United Rubber, Cork, Linoleum & Plastic Workers of America etc.* v. *N.L.R.B. (O'Sullivan)*, 362 U.S. 329.

[2] *N.L.R.B.* v. *Insurance Agents' International Union, AFL–CIO (Prudential Ins. Co.)*, 361 U.S. 477.

[3] *N.L.R.B.* v. *Deena Artware, Inc.*, 361 U.S. 398.

[4] *Communications Workers of America, AFL–CIO, and Local No. 4372 etc.* v. *N.L.R.B. (Ohio Consolidated Tel. Co.)*, 362 U.S. 479.

[5] *Local Lodge No. 1424, I.A.M., et al.* v. *N.L.R.B. (Bryan Mfg. Co.)*, 362 U.S. 411.

[6] *Superior Court of State of Washington for King County, et al.* v. *State of Washington on the relation of Yellow Cab Service, Inc.*, 361 U.S. 373.

[7] *Supra*, footnote 1.

conduct of the union 'to restrain or coerce' the employees in the exercise of rights guaranteed in § 7 . . . of the Taft-Hartley Act." The Board (one member dissenting[8]) had held that the picketing was within the purview of section 8(b)(1)(A) and was unlawful.[9] The Board's conclusion was rejected by the Court of Appeals for the District of Columbia in the *Curtis* case, and sustained by the Fourth Circuit Court of Appeals in the *O'Sullivan* case.[10] The Supreme Court sustained the holding of the District of Columbia Circuit and reversed the Fourth Circuit's decision.

"In the sensitive area of peaceful picketing," the Court stated, "Congress has dealt explicitly with isolated evils which experience has established flow from such picketing. Therefore, unless there is the clearest indication in the legislative history of § 8(b)(1)(A) supporting the Board's claim of power under that section, we cannot sustain the Board's order here." The Court concluded that both the structure and legislative history of the statute affirmatively established that section 8(b)(1)(A) was not intended to encompass peaceful picketing or organizational activity even though the object thereof might be unlawful. The Court found additional support for its interpretation of section 8(b)(1)(A) in the intervening 1959 enactment of section 8(b)(7) of the act which, according to the Court, specifically delimits the area in which peaceful organizational strikes are proscribed.[11]

2. Union's Duty To Bargain in Good Faith

In the *Insurance Agents'* case,[12] the Board had found that certain harassing tactics, resorted to by the union to force acceptance of demands made during current bargaining negotiations, reflected bad faith and were inconsistent with the union's bargaining duty under section 8(b)(3). The union's conduct consisted of successive directives pursuant to which member agents refused to write new business or to remain at work during customary hours; engaged in picketing and mass demonstrations; solicited policyholders' signatures on petitions; refused to attend business conferences and to make required reports; and engaged in other activities which likewise tended to disrupt and curtail the employer's business.[13]

[8] Former Board Member Murdock.

[9] 119 NLRB 232; Twenty-third Annual Report, pp 81–82; see also Twenty-fourth Annual Report, pp. 86–87.

[10] *Drivers, Chauffeurs & Helpers, etc, Local Union No. 639 v. N.L.R.B. (Curtis Bros.)*, 274 F. 2d 551 (C.A.D.C.), *N.L.R.B. v. United Rubber, etc. Workers (O'Sullivan)*, 269 F. 2d 694 (C A. 4); Twenty-fourth Annual Report, p 127.

[11] Justices Stewart, Frankfurter, and Whittaker were of the view that the act's new sec. 8(b)(7) squarely covered the conduct involved, and that the case should be remanded to the Board for reconsideration in the light of the 1959 enactment

[12] *Supra*, footnote 2

[13] See 119 NLRB 768, Twenty-third Annual Report, pp 88–89.

The Supreme Court agreed with the District of Columbia Court of Appeals [14] that the harassing tactics which accompanied the bargaining negotiations did not furnish a proper basis for finding that the union failed in its statutory duty to bargain in good faith. "At the present statutory stage of our national labor relations policy," the Court pointed out, "the two factors—necessity for good-faith bargaining between parties, and the availability of economic pressure devices to each to make the other party incline to agree on one's terms—exist side by side." According to the Court, the scope of section 8(b)(3), and the limiting definition of the statutory bargaining duty in section 8(d), preclude the Board from "inferring a lack of good faith not from any deficiencies of the union's performance at the bargaining table by reason of its attempted use of economic pressure, but solely and simply because tactics designed to exert economic pressure were employed during the course of the good faith negotiations." If the Board could regulate what economic weapons may be used as part of collective bargaining, the Court stated, it would be in a position to exercise considerable influence upon the substantive terms under negotiation. Proceeding again from the premise that there is no inconsistency between the application of economic pressure and good-faith bargaining, the Court also held that the Board's refusal-to-bargain finding was not strengthened by the fact that the union's conduct may not have been protected concerted activity,[15] or may not have been time-honored or may deserve public condemnation. The Court found no indication "that Congress had put it to the Board to define through its processes what economic sanctions might be permitted negotiating parties in an 'ideal' or 'balanced' state of collective bargaining." In conclusion, the Court stated, however,

> It is suggested here that the time has come for a reevaluation of the basic content of collective bargaining as contemplated by the federal legislation But that is for Congress. . . . To be sure, then, Congress might be of the opinion that greater stress should be put on the role of "pure" negotiation in settling labor disputes, to the extent of eliminating more and more economic weapons from the parties' grasp, and perhaps it might start with the ones involved here; or in consideration of the alternatives, it might shrink from such an undertaking. But Congress' policy has not yet moved to this point, and with only § 8(b)(3) to lean on, we do not see how the Board can do so on its own.[16]

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[14] *Insurance Agents' International Union, AFL–CIO* v. *N.L.R.B.* (*Prudential Ins. Co.*), 260 F. 2d 736.

[15] The Board had taken the view, and the Court assumed, *arguendo,* that under the Court's *Briggs & Stratton* decision (*International Union, U.A.W.A.* v. *Wisconsin Board,* 336 U.S. 245) the harassing tactics here were outside the protection of sec. 7 of the act.

[16] Justices Frankfurter, Harlan, and Whittaker would have remanded the case to the Board for the purpose of receiving evidence of the union's lack of good faith other than the harassing tactics considered by the Board.

3. Board's Right to Discovery in Contempt Proceeding

In *Deena Artware*,[17] the Supreme Court reversed the action by which the Sixth Circuit Court of Appeals denied both the Board's petition to adjudicate the employer in contempt of the court's outstanding backpay decree, and the Board's motion for discovery regarding facts which would support the allegation that the employer's failure to make the required payments to employees constituted contempt.[18]

The Board's contempt petition asked that certain business transactions of the respondent company, which resulted in the dissipation of its assets, be disregarded because (1) they were intended to frustrate the court's backpay decree, and (2) the parties to the transactions in fact constituted a single enterprise. The discovery sought by the Board was to enable it to prove the allegations of the petition. The court of appeals denied the petition for adjudication in contempt on the ground that, at the relevant times, the exact amount of the respondent company's back obligation had not been finally determined. The court of appeals did not consider the "single enterprise" issue raised by the Board's petition and denied the motion for discovery in its entirety. The Supreme Court held, however, that the Board was entitled to a hearing on the "single enterprise" question and to discovery in aid of it. It therefore directed the court of appeals to reinstate the contempt petition and to grant the Board's motion for discovery of the pertinent facts.

4. Scope of Order Remedying Union Coercion Against Employees

In the *Communications Workers* case,[19] the Supreme Court was concerned with the scope of the order issued by the Board against a union which had violated section 8(b)(1)(A) of the act by coercive conduct, violence, and threats against employees at a struck plant. To prevent further violation of the same kind, the order required the union to cease and desist from coercing employees of the struck employer "or any other employer." The Court held, however, that the inclusion of the words "or any other employer" was unwarranted because the Board did not find that the union had coerced employees of any employer other than the struck employer. The Court cited its earlier decisions in the *Express Publishing* [20] and *May Department Store* [21] cases.

[17] *Supra*, footnote 3.
[18] See Twenty-fourth Annual Report, p. 115.
[19] *Supra*, footnote 4.
[20] *N.L.R.B. v. Express Publishing Co.*, 312 U.S. 426.
[21] *May Department Stores v. N.L.R.B.*, 326 U.S. 376.

5. Six-Month Limitation on Unfair Labor Practice Charges

In the *Bryan Manufacturing Co.*[22] case, the question before the Court was whether the statutory 6-month limitation on the filing of unfair labor practice charges[23] precluded the Board's finding that the enforcement of a union-security agreement within the limitations period was unlawful where the finding of illegality was solely dependent on evidence outside the period, i.e., that the contracting union did not have majority status among the employees when the contract was executed. The Supreme Court[24] rejected the Board's view[25]—which had been sustained by the District of Columbia Court of Appeals[26]—that its finding was not barred by section 10(b). According to the Court, while that section "does not prevent all use of evidence relating to events transpiring more than 6 months before the filing and service of an unfair labor practice charge," utilization of antecedent events is permissible only to shed light on matters within the limitations period which "in and of themselves may constitute, as a substantive matter, unfair labor practices." On the other hand, the Court held, where, as here, conduct occurring within the limitations period—*prima facie* lawful enforcement of a union-security agreement—can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice—unlawful execution of the agreement—"the use of the earlier unfair labor practice is not merely 'evidentiary,' since it does not simply lay bare a putative current unfair labor practice. Rather, it serves to cloak with illegality that which was otherwise lawful."

[22] *Supra*, footnote 5.

[23] Sec. 10(b) contains a proviso that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge."

[24] Justices Whittaker and Frankfurter dissenting.

[25] 119 NLRB 502 (two members dissenting).

[26] 264 F. 2d 575 (one judge dissenting).

VI

Enforcement Litigation

Board orders in unfair labor practice proceedings were reviewed by the courts of appeals in 125 enforcement cases during fiscal 1960.[1] The more important issues decided by the respective courts are discussed in this chapter.

1. Employer Unfair Labor Practices

Excluding evidentiary issues, the cases arising under section 8(a) which are discussed below had to do with the scope of employees' section 7 right to engage in "concerted activity" for the purpose of union organization or other "mutual aid or protection"; the limits of the protection of employer preelection statements under section 8(c) (which permits the expressing of "views, argument, or opinion" if it "contains no threat of reprisal or force or promise of benefit"); and the scope of an employer's bargaining obligations under section 8(a)(5). Cases dealing with employer-union agreements violative of both section 8(a) and 8(b) are discussed separately.[2]

a. Concerted Employee Activity Protected by the Statute

(1) Strikes

In two cases, in the First and Third Circuits, respectively, the employers defended their conduct in discharging employees for strike activity on the ground that the strike was unprotected because timed to cause maximum damage. In each case, the court rejected the contention. The First Circuit pointed out that the employer in the case before it,[3] unlike the employer in *Marshall Car Wheel*,[4] had advance notice of the strike. The court also held that the economic pressure which resulted from the employer's asserted vulnerability to the loss of double production just prior to a holiday could not be equated with "the aggravated physical injury" which threatened the employer's plant in the *Marshall* case. The Third Circuit found inapplicable to the case before it[5] the doctrine that employees who participate in

[1] Results of enforcement litigation are summarized in table 19 of Appendix A

[2] See pp 129–135, below.

[3] *N L.R B* v. *M & M Bakeries Inc*, 271 F. 2d 602

[4] *N L R B* v *Marshall Car Wheel & Foundry Co*, 218 F 2d 409 (C A 5).

[5] *N L R B* v. *Morris Fishman & Sons, Inc.*, 278 F. 2d 792.

a work stoppage deliberately timed to cause maximum damage are not engaged in protected activity, on the ground that there was no threat of aggravated physical injury to the plant and the employer produced no proof that the work stoppage, which began in the morning before work had actually started, was peculiarly dangerous at that time.[6]

(2) Retail Store Employees' Right To Engage in Union Activity on Company Time or Property

In one case decided during the fiscal year,[7] the Fifth Circuit considered the extent to which an employer which operated a chain of retail grocery stores could lawfully prohibit its employees from engaging in union activity on company time or property. The employer had promulgated a rule which forbade employees to disseminate information concerning other employees' names, addresses, and telephone numbers, even where obtained from noncompany sources. The court agreed with the Board that this rule was invalid as applied to exchange of information between employees. The court (one judge dissenting) rejected the contention that the employer had the right to prohibit such exchange in public places and during working hours for the same reason that it could have prohibited solicitation under such circumstances. The court agreed with the employer, however, that it might lawfully restrict the furnishing of such information to a labor organization to nonworking times and areas, in order to ensure the employees' full attention to their duties during working hours.

In the same case, the court passed on the validity of a rule which forbade employees to solicit union membership during nonworking time and in nonwork, nonpublic areas of their own stores and other stores included in the same bargaining unit. The court agreed with the Board that the no-solicitation rule was invalid as applied to solicitation by employees who worked in the same store as the employees solicited. However, the court held, contrary to the Board, that the rule was valid as applied to employees who worked in other stores, even though such stores were in the same bargaining unit. The court stated that the marking of the limits of a no-solicitation rule is an accommodation between the right of the union to espouse its cause to all the employees in a unit, and the right of the employer to maintain the security of his establishment against possible damage or injury to his property or business through the visits of those not immediately employed in that store. The Board's determination that a multistore unit was appropriate for representation purposes, although a

[6] One judge dissented on the ground, *inter alia*, that the employees had not gone on strike.
[7] *N.L.R.B.* v. *The Great Atlantic & Pacific Tea Co.*, 277 F 2d 759.

"factor," was not "controlling," the court held. The court found other offsetting factors, noting particularly the absence of "ready and practicable facilities" for screening or checking nonstore employees.

b. Extent of Protection of Preelection Statements Under Section 8(c)

In one case decided during the fiscal year,[8] the District of Columbia Circuit rejected the Board's finding that an employer did not violate section 8(a)(1) of the act by telling an employee that the employer would lose two large customers and might then be forced to reduce operations if the union won a forthcoming election. Absent evidence that the employer had a reasonable basis for its categorical statement regarding future action of its customers, it was not protected by section 8(c) of the act, in the court's view.

c. Employer's Duty To Bargain—Duty To Bargain With Union Which Had Represented Former Owner's Employees

Several cases decided by the courts arose from the refusal of the purchaser of a business to bargain with the union which had represented the employees of the former owner. In two cases before the Fifth Circuit,[9] where the complaining union claimed bargaining rights under a Board certification, the court reaffirmed the principle that the "crucial question in determining if the certification is binding on the successor employer is whether the employing industry remains essentially the same after the transfer of ownership." Applying this test, the court in *Auto Ventshade* affirmed the Board's finding that the respondent corporation was a successor to a predecessor corporation and, therefore, violated section 8(a) (5) and (1) by refusing to honor the complaining union's certification, issued 7 years earlier. The record as a whole led the court to conclude that for all practical purposes there was continuity in the nature and function of the same employing industry and, therefore, that the certification was binding on the respondent corporation.

Conversely, the court disagreed with the Board's conclusion in *Alamo White* that a "successorship" existed and that the union's certification was binding on the purchaser. In the court's view, the evidence here showed a "clean break" between seller and purchaser, as well as a difference in policies, operations, personnel, and employer-employee relationship.

The Third Circuit agreed with the Board's finding in another case[10] that the alleged successor corporation did not violate section

[8] *International Union of Electrical, Radio and Machine Workers, AFL–CIO* v. *N.L.R.B. (NECO)*, 46 LRRM 2534.

[9] *N.L.R.B.* v. *Auto Ventshade, Inc.*, 276 F. 2d 303.

[10] *Piasecki Aircraft Corp.* v. *N.L.R.B.*, 280 F. 2d 575, certiorari denied 364 U.S. 933.

8(a) (5) and (1) by refusing to bargain with the union which had represented the employees of the company from which the "successor" had bought its plant and machinery. The court found no "successorship," even though there was a transfer of the supervisory personnel and much of the work-in-process, because there was no identity of the parties, no recent certification of the union, no assumption of liabilities, and no transfer of a trade name or goodwill. The court referred to the requirement in section 8(a) (5) that an employer bargain with the representative of "his employees," and approved the Board's finding that here the seller's employees never became the purchaser's employees.

2. Employer-Union Agreements and Practices

During the fiscal year, the courts decided a number of cases involving unfair labor practices allegedly committed by employers and unions jointly. Some of these cases involved collective-bargaining agreements allegedly executed when the union was not the employees' statutory representative. Others put at issue employer-union agreements and practices which allegedly imposed unlawful conditions of employment. Some of the more significant of these cases are discussed below.

a. Execution of a Collective-Bargaining Agreement by an Employer and a Minority Union

Two cases decided by the courts involved cease-and-desist orders against both parties to a collective-bargaining agreement which recognized as the employees' exclusive bargaining representative a union which did not have majority status among the employees. In one of these cases,[11] the District of Columbia Circuit (one judge dissenting) agreed with the Board that by engaging in such conduct the employer violated section 8(a) (1) and (2), and the union violated section 8(b) (1) (A). The court saw no material distinction, from the viewpoint of the employees' organizational rights, between the case before it—where the employer's interference affected the employees' choice of whether to bargain through a collective-bargaining representative or individually—and the cases where contractual recognition of a minority union as exclusive representative was aggravated by the presence of a rival union or the imposition of a union-security provision. Regarding the legality of the execution of the contract here, the court held that employer liability under section 8(a) (1) and (2) and union

[11] *International Ladies' Garment Workers' Union, AFL–CIO* v. *N.L.R.B.; N.L.R.B.* v. *Bernhard-Altmann Texas Corp.*, 280 F. 2d 616; union's petition for certiorari granted 364 U.S. 811.

liability under section 8(b)(1)(A) depended not merely on whether the parties entertained a good-faith belief that the union had majority support, but on whether that belief was arrived at through an adequate effort to determine the true facts. The court held that the parties had not made such an adequate effort before entering into the contract at issue. The Supreme Court has agreed to review this case.[12]

b. Bargaining Agreements and Practices Which Unlawfully Give Control Over Employment to Union

(1) Agreements and Practices Which Delegate Control Over Employment to Union Members Required by Union Rule To Hire Only Members or To Give Them Preference

In several cases the courts of appeals approved the Board's finding that an employer violates section 8(a)(3) and (1), and a union section 8(b)(2) and (1)(A), by entering into an agreement or participating in a practice under which exclusive control over hiring is delegated to a union member who is required by union rules to hire only union members or to give them preference.[13] In some of these cases, however, the courts rejected the Board's factual findings as unsupported by the record.[14] In one case,[15] the court ruled that it could not be inferred from the fact that employment was under the control of a union member foreman that hiring would be in compliance with union rules (which restricted employment to members), rather than with the provisions of the contract between his employer and the union (which, the court found, required no discrimination between members and nonmembers).

In another case,[16] the Second Circuit rejected the Board's finding that the collective-bargaining agreements in question delegated to the union unrestricted control over hiring and seniority matters. The contracts vested in the foremen the sole power to hire and discharge employees and required all foremen to be members of the union, whose

[12] See also *N.L.R.B.* v. *Revere Metal Art Co., Inc., and Amalgamated Union Local 5, UAW, Ind.*, 280 F. 2d 96, certiorari denied 364 U.S. 894. Here the Second Circuit noted "the force of the Board's argument," as well as precedent, for the proposition that contractual exclusive recognition of a minority union is unlawful under sec. 8(a)(1) and (2) and 8(b)(1)(A). However, the court found it unnecessary to determine the issue because the employees had been clearly coerced in their sec. 7 rights when told that they had to sign checkoff cards on behalf of the union.

[13] *N.L.R.B.* v. *United States Steel Corp.* (*American Bridge Division*), *and Local Union 542, International Union of Operating Engineers*, 278 F. 2d 896 (C.A. 3); *N.L.R.B.* v. *American Dredging Co.*, 276 F. 2d 286 (C.A. 3) (8(a) finding only; union not charged); *N.L.R.B.* v. *Local 1566, International Longshoremen's Assn.* (*Maritime Ship Cleaning*) 278 F. 2d 883 (C.A. 3) (8)(b) finding only, employers not charged), *N.L.R.B.* v. *Millwrights' Local 2232 etc.* (*Farnsworth & Chambers*), 277 F. 2d 217 (C.A. 5) (same).

[14] *International Union of Operating Engineers, Local 150, AFL–CIO* v. *N.L.R.B.* (*Fluor*), 273 F. 2d 833 (C.A.D.C.); see also footnote 28, *infra*.

[15] *Honolulu Star-Bulletin, Ltd.* v. *N.L.R.B.*, 274 F. 2d 567 (C.A.D.C.).

[16] *N.L.R.B.* v. *News Syndicate Co., Inc., and New York Mailers' Union No. 6, International Typographical Union, AFL–CIO*, 279 F. 2d 323.

general laws limited employment and seniority to members and provided for a seniority list made up by the local union. The court held, however, that under the contract the foremen were "solely" the employer's agents and were not subject to "the conflicting obligations of two masters," because the contracts provided that the union would not discipline the foremen for carrying out the employer's instructions pursuant to the contracts, and gave the employer power to appoint and remove foremen. The Board's conclusion that the contract gave the union sole control over hiring and seniority was also inconsistent, the court held, with the fact that the order of hiring priority and seniority was clearly spelled out in the contract, and with the fact that disputes over seniority were arbitrable.[17]

(2) Hiring-Hall Arrangements and Practices Which Result in Preference to Union Members

In two cases the courts agreed with the Board's unfair labor practice findings based upon hiring-hall arrangements and practices which resulted in preference to members. In one of these cases,[18] the Second Circuit held that the employers violated section 8(a)(3) and (1) by entering into a hiring-hall arrangement under which the union selected the men to be hired. The union gave first preference to its own members and second preference to members of sister locals, and required nonmembers to pay work permit fees as a condition of hire and continued employment. The court held that, regardless of the extent of the employer's knowledge of the union's practices, these practices were chargeable to the employers because the union acted as their agent in selecting employees.

In another case,[19] the Eighth Circuit affirmed the Board's finding of an implied or tacit unlawful hiring-hall understanding or arrange-

[17] The Board's petition for certiorari in *News Syndicate* was granted on November 7 1960, 364 U.S. 877. The petition primarily seeks review of the Second Circuit's determination that only the union's legal general laws were incorporated in the contract (see p 134, *infra*). However, the Board's petition also seeks review of the other aspects of the case which are discussed in the text, on the ground that they are directly related to, and intertwined with, the principal question presented.

Cf *International Typographical Union Local 38, AFL–CIO* v *N.L.R.B.* (*Haverhill Gazette*), 278 F. 2d 6, certiorari granted 364 U.S. 878, in which the First Circuit upheld the Board's finding that the union violated the act by insisting on a contractual provision which required foremen to be union members and vested in foremen the sole power to hire composingroom employees and to control the composingroom The court held that because the foremen's duties necessarily included participation in the adjustment of employee grievances, by insisting that the foremen must be union members the unions were restraining and coercing the employers in the selection of their representatives for grievance adjustment purposes in violation of sec 8(b)(1)(B). The court also held that the effect of such a clause would be to cause the employers to discriminate in favor of union men in appointing their foremen, thereby encouraging aspirants for that position to join the union, in violation of sec. 8(b)(2).

[18] *Morrison-Knudsen Co, Inc., et al* v *N.L.R.B*, 275 F. 2d 914

[19] *N.L.R.B* v. *International Union of Operating Engineers, Little Rock Local 382, 382A, AFL–CIO* (*Armco*), 279 F. 2d 951.

ment between the employer and the respondent local which led to the discharge of a member of a sister local who could not obtain clearance from respondent local. The respondent local had refused clearance because some of its own members were unemployed. The court stated that a showing of actual preferential discrimination in the maintenance of a hiring-hall arrangement renders such arrangement unlawful. The court upheld the Board's finding that the employer and the respondent local had agreed that nonmembers of the local could not work unless cleared by the local.

(3) The *Mountain Pacific* Rule Relating to Exclusive Hiring-Hall Agreements

The Board's rule on hiring halls, set forth in previous annual reports,[20] and commonly referred to as the *Mountain Pacific* rule because of the name of the case in which it was first fully explicated,[21] was considered by the courts of appeals for the first time during the fiscal year.

In the *Mountain Pacific* case itself,[22] the Ninth Circuit ruled that the Board cannot hold illegal, as a matter of law, an exclusive hiring clause which neither provides for nor contemplates job preference to union members. The court stated that the Board could find as a fact that a "loosely" drawn or "wide open" hiring clause, i.e., one which did not contain "protective" clauses, was evidence of an intent by the parties to leave the union free to give its members preference in employment and could then properly hold that the parties therefore violated the act by executing and maintaining such a clause. However, the court said, "such a rule of evidence should operate prospectively, since the burden is thereby shifted." The court remanded the case to the Board for further consideration in the light of its opinion.

A few months later, the District of Columbia Circuit approved *per curiam* (one judge dissenting) a finding by the Board that a union violated the act by enforcing an exclusive hiring-hall contract which did not contain the *Mountain Pacific* safeguards.[23] The court stated that the agreement constituted discrimination which encouraged union membership within the meaning of section 8(a) (3) and (1) and

[20] Twenty-third Annual Report, pp. 85–86; Twenty-fourth Annual Report, p. 92

[21] *Mountain Pacific Chapter of the Associated General Contractors, Inc.*, 119 NLRB 883, decided in the 1958 fiscal year.

[22] *N.L.R.B.* v. *Mountain Pacific Chapter of Associated General Contractors, Inc.*, 270 F. 2d 425. See also *N.L.R.B* v. *Hod Carriers, Building and Common Laborers Union of America, Local No. 324 (Roy Price, Inc.)*, 46 LRRM 2069, remanding 121 NLRB 508, on authority of *N.L.R.B.* v. *Mountain Pacific Chapter, supra.* The Board has petitioned for a writ of certiorari in the *Hod Carriers* case.

[23] *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *N.L.R.B.*, 275 F. 2d 646, enforcing as modified *Los Angeles-Seattle Motor Express, Inc.*, 121 NLRB 1629; certiorari granted 363 U.S. 837.

8(b) (2) and (1)(A). The Supreme Court has agreed to review this holding.

The Sixth Circuit set aside the Board's finding that the employer violated section 8(a) (3) and (1) by discharging an employee because he had not obtained referral from the union hiring hall, and that the union violated section 8(b) (2) and (1)(A) by causing the discharge.[24] As a defense to the discharge, the employer and the union had relied on an exclusive hiring-hall contract which did not contain the *Mountain Pacific* safeguards. The court denied enforcement because, in its view, "a hiring hall agreement, either with or without the so-called 'safeguards' or 'protective clauses,' is not *per se* illegal," and because the Board had not previously found that an exclusive hiring-hall agreement without the safeguards has a tendency to encourage union membership. According to the court, such an inference, while permissible, could only be given prospective effect but could not now be applied retroactively. The Board has asked the Supreme Court to review this holding.

The First Circuit, on the other hand, approved the Board's *Mountain Pacific* rule, stating:

> The inference drawn by the Board was not that union hiring halls are presumptively operated in a discriminatory manner, but, rather, that the applicant for employment will so believe, and govern his conduct accordingly. In our opinion the Board could well conclude that an applicant who must be "cleared" for a job by a union hiring hall will fear that his opportunity of selection will be small if he does not become a union member, in view of the widely-accepted belief (often encouraged by unions themselves) that hiring halls do operate in a discriminatory manner, and in view of the difficulties facing the applicant if he chooses to enforce his rights (well illustrated in the factual situation in the Mountain Pacific case itself). The Board might further conclude that this apprehension would be materially lessened if there were posted at the hiring hall a notice outlining the exact, nondiscriminatory methods by which selection would be made. In other words, the Board was finding that without such, an exclusive hiring hall constitutes undue encouragement of union membership. This inference would not be rebuttable by proof that the union's operation of the hall involved no discrimination in fact. See Local 357, etc. v. N.L.R.B. [275 F. 2d 646 (C.A.D.C.), certiorari granted 363 U.S. 837]. This was not a shifting of the burden of proof. It was simply a modification of the Board's views, in the continuing development of its expertise, as to undue encouragement. If this determination of the Board was retroactive, it was no more so than whenever a court of law decides, on further consideration, to modify earlier views.[25]

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[24] *N.L.R.B.* v. *E & B Brewing Co.*, 276 F. 2d 594.

[25] *N L R.B* v. *Local 176, United Brotherhood of Carpenters and Joiners of America, AFL–CIO (Dimeo Construction Co.)*, 276 F. 2d 583.

The *Mountain Pacific* issue was also presented in several other cases, but for various reasons the courts did not reach the question. *Morrison-Knudsen Co., Inc.* v. *N L R B.*, 275 F. 2d 914 (C.A. 2) (see p. 131, *supra*); *Honolulu Star-Bulletin, Ltd.* v. *N L.R B.*, 274 F 2d 567 (C A D C.) (see p. 130, *supra*); *N L.R B.* v. *News Syndicate Co, Inc*, 279 F 2d 323 (C.A. 2) (see p. 130, *supra*); *N.L.R.B.* v. *International Union of Operating Engineers, Little Rock, Local 382, 382A (Armco)*, 279 F. 2d 951 (C.A. 8) (see p. 131, *supra*).

(4) Contracts Which Incorporate Union Rules Calling for Unlawful Employment Conditions

Several cases decided during the year involved the question whether the incorporation in collective-bargaining agreements of union rules calling for closed-shop and other unlawful conditions of employment was effectively neutralized by a "savings clause" to the effect that only rules not in conflict with the contract or with law were to be part of the contract. The First Circuit [26] agreed with the Board that the contract before it was illegal because it provided for illegal union security through the incorporation of the union's general laws. The "savings clause" of the contract was held insufficient to remove the illegal provisions because it failed to specify which, if any, rules were to be excluded from the contract as illegal, and, therefore, would not help the ordinary employee to understand that the union-security rules were not included.

Two other courts of appeals reached a different result. In one case,[27] the District of Columbia Circuit rejected the Board's conclusion that the parties' contract was unlawful in that it incorporated the closed-shop provisions of the union's general laws and provided for hiring through a union foreman who was bound by those laws. Contrary to the Board, the court took the view that the specific provisions of the contract that employment in the foreman's department was not to be limited "to members of the . . . union" were not offset by the closed-shop provisions of the general laws. The court pointed out that under the contract only union laws "not in conflict with federal law or this contract" were to govern relations between the parties. According to the court, this contractual language was not merely a "savings clause" in view of the fact that the contract did not contain an explicit union-security clause. The court further pointed out that the laws themselves specifically stated that illegal provisions therein were "suspended," and that closed-shop conditions were not observed in practice.[28] The Second Circuit reached a similar result in express reliance on the District of Columbia Circuit's opinion.[29]

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[26] *International Typographical Union Local 38, AFL–CIO* v *N L R B.* (*Haverhill Gazette Co.*, 278 F. 2d 6, certiorari granted 364 U S. 878

[27] *Honolulu Star-Bulletin, Ltd.* v. *N.L R.B.*, 274 F. 2d 567

[28] Cf. the same circuit's opinion in *International Union of Operating Engineers, Local 150, AFL–CIO* v. *N.L R B.* (*Fluor*), 273 F. 2d 833. The court here rejected, as unsupported by the evidence, the Board's finding that the union's working rules, which the employer agreed to follow, included a provision from the constitution of the union's parent international which required members to "hire none but those in good standing with the Union."

[29] *N.L R.B.* v. *News Syndicate Co.*, 279 F. 2d 323. The Board's petition for certiorari in *News Syndicate*, and the Union's petition in *Haverhill Gazette* (p 131, *supra*), have been granted.

(5) Contract Which Requires Union Membership in Good Standing as Condition of Continued Employment

In one case decided during the fiscal year,[30] the Second Circuit set aside a Board order which prohibited an employer and a union from executing or maintaining any agreement which provided for employee obligations to the union, other than dues and initiation fees, as a condition of employment. The order had been based upon the parties' execution and maintenance of a contract which required employees, as a condition of employment, to become members within the allowable period under the statute, and to remain in good standing with the union. The constitution and bylaws of the union, however, had numerous requirements, other than payment of dues and initiation fees, for remaining a member in good standing. The court concluded that while the act proscribes the enforcement of a contract which conditions employment upon fulfillment of union obligations other than payment of dues and initiation fees, the act does not make the mere execution or maintenance of such a contract unlawful.

(6) Seniority Clauses and Practices Which Illegally Discourage Union Membership

In one case decided during the year,[31] the Ninth Circuit upheld the Board's finding that a union violated section 8(b)(2) and (1)(A) by maintaining and enforcing a collective-bargaining agreement under which employees retained bargaining-unit seniority if they transferred from the contract unit to an unrepresented unit, but lost bargaining-unit seniority (subject to restoration on agreement by respondent union) if they transferred into a unit represented by another union. The court stated that the plain inference to be drawn with reason from these provisions is that the contract tends to discourage membership in unions other than the contracting union by those employees who transfer from the contract unit. Because such discouragement was a "natural consequence" of the contract, the court held, the record supported the inference that the discouragement was intentional.

c. Remedial Orders for Reimbursement of Union Dues

In a number of cases where union membership or referral was unlawfully compelled as a condition of employment, the courts considered the propriety of a Board order which required that employees be reimbursed for moneys which they paid under such illegal compulsion.

[30] *N L R B.* v. *Revere Metal Art Co., Inc, and Amalgamated Union Local 5, UAW, Ind*, 280 F. 2d 96; certiorari denied 364 U.S. 894

[31] *N L R.B.* v *International Association of Machinists, Aeronautical Industrial District Lodge 727 and Local Lodge 758, AFL–CIO (Menasco)*, 279 F. 2d 761

In some of these cases the courts sustained the order, in whole or in part; in others, they set the reimbursement order aside in its entirety. The Supreme Court has granted certiorari in two cases where the courts passed on such a remedy—in one case where the Seventh Circuit approved it,[32] in another where the District of Columbia Circuit rejected it in part.[33] Petitions for certiorari have been filed in other cases which present the same issue.

3. Union Unfair Labor Practices

The more important issues decided by the courts of appeals in cases under section 8(b), aside from the employer-union agreements and practices discussed above, concerned the organizations subject to the proscriptions of this subsection; the nature of the duty to bargain under section 8(b)(3); and the reach of subsection (4) which, *inter alia*, bans union attempts to "induce or encourage" strikes or employee boycotts for certain specified purposes.[34]

a. Organizations Subject to the Proscriptions of Section 8(b)

Section 8(b) proscribes certain conduct by "a labor organization or its agents." Two cases which arose during the year involved the

[32] *N.L.R.B.* v. *Local 60, United Brotherhood of Carpenters & Joiners of America, AFL–CIO, et al.* (*Mechanical Handling*), 273 F. 2d 699 (C.A. 7), certiorari granted 363 U.S. 837. For other cases where reimbursement orders were enforced see *N.L.R.B.* v. *Local 111, United Brotherhood of Carpenters & Joiners of America, AFL–CIO* (*Clemenzi Construction Co.*), 278 F. 2d 823 (C.A. 1); *N.L.R.B.* v. *Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America* (*Grand Union Co.*), 279 F. 2d 83 (C.A. 2); *N.L.R.B.* v. *Revere Metal Art Co., Inc., and Amalgamated Union Local 5, UAW, Ind.*, 280 F. 2d 96 (C.A. 2), certiorari denied 364 U.S. 894; *Paul M. O'Neill International Detective Agency, Inc.* v. *N.L.R.B.*, 280 F. 2d 936 (C.A. 3).

[33] *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *N.L.R.B.* (*Los Angeles-Seattle Motor Express*), 275 F. 2d 646 (C.A.D.C.), certiorari granted 363 U.S. 837.

For other cases rejecting the reimbursement remedy either in part or *in toto* see *Morrison-Knudsen Company, Inc* v. *N.L.R.B.* (*International Hod Carriers, Building & Common Laborers Union of America, Local 341, AFL–CIO* v. *N.L.R.B.*), 276 F. 2d 63 (C.A. 9); *N.L.R.B.* v. *Halben Chemical Co., Inc.*, 279 F. 2d 189 (C.A. 2); *N.L.R.B.* v. *Local 176, United Brotherhood of Carpenters & Joiners of America, AFL–CIO* (*Dimeo Construction Co.*), 276 F. 2d 583 (C.A. 1); *Morrison-Knudsen Co., Inc., et al.* v. *N.L.R.B.*, 275 F. 2d 914 (C.A. 2); *Building Material Teamsters Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *N.L.R.B* (*Crawford Clothes, Inc*), 275 F. 2d 909 (C.A. 2); *N.L.R.B.* v. *American Dredging Co.*, 276 F. 2d 286 (C.A. 3); *N.L.R.B.* v. *United States Steel Corp.* (*American Bridge Division*) *and Local Union 542, International Union of Operating Engineers*, 278 F. 2d 896 (C.A. 3); *N.L.R.B.* v. *Local 1566, International Longshoremen's Assn.* (*Maritime Ship Cleaning Co.*), 278 F. 2d 883 (C.A. 3); *Lakeland Bus Lines* v. *N.L.R.B.*, 278 F. 2d 888 (C.A. 3); *N.L.R.B.* v. *Local Union No. 85, Sheet Metal Workers' International Assn., AFL–CIO* (*Mahon Construction Co.*), 274 F. 2d 344 (C.A. 5); *N.L.R.B.* v. *Millwrights' Local 2232 etc.* (*Farnsworth & Chambers*), 277 F. 2d 217 (C.A. 5); *N.L.R.B.* v. *International Union of Operating Engineers, Little Rock Local 382, 382A, AFL–CIO* (*Armco Drainage & Metal Products, Inc.*), 279 F. 2d 951 (C.A. 8); *Puerto Rico Steamship Assn.* v. *N.L.R.B.*, 281 F. 2d 615 (C.A.D.C.).

[34] The Board's *Curtis* doctrine regarding recognition picketing by a minority union (119 NLRB 232) was involved in one case (*N.L.R.B.* v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 182* (*Alling & Cory*), 272 F. 2d 85 (C.A. 2)). For the Supreme Court's rejection of the Board's views, see *supra*, pp 121–122

question of whether particular organizations were answerable for conduct proscribed by section 8(b). In one of these cases,[35] the Second Circuit sustained the Board's finding that the respondents were "labor organizations" within the meaning of section 2(5) and, hence, answerable for a work stoppage which was violative of the secondary boycott provisions of section 8(b)(4)(A) and (B) of the 1947 act. The court stated that the determination whether a labor union charged with an unfair labor practice under section 8(b) is a "labor organization" turns on whether "employees participate" in the organization charged, even though the workers on behalf of whom the organization was acting in the particular case were all supervisors.

Farnsworth & Chambers [36] put at issue the responsibility of an international for the preferential-hiring practice administered by one of its locals. The Fifth Circuit agreed with the Board that respondent international was responsible for the unlawful practices even though it was not a signatory to the underlying contract and did not, through persons unconnected with its subordinates, actively participate in the hiring practices. The court relied on the fact that the local was carrying out the arrangement contemplated and prescribed by the international's constitution and bylaws.

b. Bargaining Obligations Imposed by Section 8(b)(3)

Section 8(b)(3) forbids a union which is the employees' statutory representative to refuse to bargain collectively with the employer. Two cases decided during the year dealt with the obligations imposed by this section. In *Haverhill Gazette*,[37] the First Circuit agreed with the Board's finding that the unions violated section 8(b)(3) of the act by insisting on a contract provision which was illegal *per se*.[38] The court stated that as to this clause the unions were not saved by the finding that they negotiated with the genuine desire to arrive at a contract, for to hold good faith to be a defense to such conduct would "put a premium on ignorance of the law or blind intransigency."

In the *Slate Belt* case,[39] the Third Circuit rejected the Board's finding that the unions violated section 8(b)(3) and (1)(B)[40] by refusing to meet and negotiate with a particular employer represent-

[35] *National Marine Engineers Beneficial Assn., AFL–CIO* v. *N.L.R.B.* (*S & S Towing*), 274 F. 2d 167.

[36] *N.L.R.B.* v. *Millwrights' Local 2232, District Council of Houston and Vicinity, and United Brotherhood of Carpenters and Joiners of America, AFL–CIO*, 277 F. 2d 217.

[37] *International Typographical Union Local 38, AFL–CIO* v. *N.L.R.B.*, 278 F. 2d 6, certiorari granted 364 U.S. 878.

[38] The provision in question is discussed on p. 131, *supra*.

[39] *N.L.R.B.* v. *International Ladies' Garment Workers' Union, AFL–CIO*, 274 F. 2d 376.

[40] Sec. 8(b)(1)(B) forbids a union to "restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."

ative. The court found that the unions had refused to deal with this individual because he had previously held highly confidential positions with them in the labor-management field. By hiring this individual because of his familiarity with union strategy and operations, the court continued, the employers "clearly displayed an absence of fair dealing," and accordingly had not offered to bargain with the unions in good faith. To require the unions to negotiate with him, said the court, would be to require bargaining in which, at best, intensified distrust of the employers' motives would be engendered.

c. Strikes and Boycotts Prohibited by Section 8(b)(4) (A) and (B) of the 1947 Act

Section 8(b)(4) (A) and (B) of the 1947 act [41] prohibited inducement of work stoppages by employees of employers who were neutral in the underlying, or primary, labor dispute. Several cases decided during the year presented the question of whether the employer of the employees induced was in fact neutral. One of these cases also presented the question of whether a union's refusal to refer employees through a hiring hall could violate section 8(b)(4) of the 1947 act; and another also involved the effect of section 8(e) of the 1959 amendments on the provisions of the 1959 amendments (section 8(b)(4)(i)(ii)(B)) which generally correspond to section 8(b)(4) (A) and (B) of the 1947 act. Several cases concerned the legality of picketing in "common situs" situations.

(1) What Constitutes a "Neutral" Employer

The rule that section 8(b)(4) (A) and (B) of the 1947 act forbade the inducement of work stoppages only where the employees induced were employed by neutral employers was followed by the Fifth Circuit in *Superior Derrick*.[42] The court held that the union did not violate these provisions by inducing work stoppages among the employees of a company which was an "affiliate" of, and consequently a company "allied with," the primary employer.

However, in *Detroit Edison*,[43] the District of Columbia Circuit agreed with the Board that the general contractor on a construction project for an electric company was a neutral employer and that, therefore, a local union and its parent international violated section 8(b)(4)(A) of the 1947 act by inducing the general contractor's employees to refuse to handle pipe which was fabricated by a manu-

[41] The 1959 amendments to sec 8(b)(4) are discussed at p. 101, above.

[42] *Superior Derrick Corp* v. *N.L.R.B.*, 273 F. 2d 891, certiorari denied *sub nom. Seafarers' International Union of North America* v. *N.L.R.B.*, 364 U.S. 816

[43] *Local 636, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. and Canada, AFL–CIO, et al.* v *N.L.R.B.*, 278 F. 2d 858.

facturer whose employees were not members of any local affiliated with the international. Pursuant to the contract between the electric company and the general contractor, the former had brought the pipe in question onto the job and the latter was attempting to install it. The court agreed with the Board that the unions' primary dispute was with the pipe manufacturer and that the general contractor did not become the primary employer merely because its collective-bargaining agreement with the international prohibited such pipe on the job.

The First Circuit considered another case where a collective-bargaining agreement was offered as a defense to alleged secondary picketing.[44] A union and a general building contractor had executed an agreement which provided for union recognition; for certain wages, hours, and other employment conditions; and, further, that the agreement was also to cover subcontractors. The court agreed with the Board that the contracting union and the other respondent unions violated section 8(b)(4)(A) of the 1947 act by picketing the general contractor because of a subcontractor's failure to abide by the agreement. The court further held that section 8(e) of the act (added by the 1959 amendments after the Board's order had issued) did not effect any changes in section 8(b)(4) so as to permit unions in the construction industry to enforce subcontracting clauses with employers in the construction industry. The court said, "The law remains that unions must hope for voluntary compliance on the part of the contracting employer."

(2) Refusal To Refer "Employees"

In *Detroit Edison*,[45] the District of Columbia Circuit held that both the terms "strike" and "concerted refusal in the course of employment" set forth in section 8(b)(4)(A) of the 1947 act restricted its application to situations where there was an employment relation between the employees induced and the employer. Accordingly, the court set aside that part of the Board's order which was based upon the refusal of a local and its parent international to refer employees to a secondary employer, even though the secondary employer had requested such employees pursuant to an exclusive hiring agreement with the international.[46]

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[44] *N L R B.* v. *Bangor Building Trades Council (J. R. Cianchette)*, 278 F. 2d 287.

[45] *Local 636, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. and Canada, AFL–CIO, et al.* v. *N L.R.B.*, 278 F. 2d 858

[46] It has been held that sec. 8(b)(4)(i)(ii) of the 1959 act encompasses such refusals to refer. *Penello* v *Local 5, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. and Canada (Arthur Venneri Co.)*, 46 LRRM 2740 (U.S.D.C., D.C., July 1, 1960); *Cosentino* v. *Local 553, United Association of Journeymen & Apprentices of Plumbing & Pipe Fitting Industry of U S. and Canada (Illinois Power Co.)*, 46 LRRM 2992 (U S D C, S D Ill, Aug. 15, 1960)

(3) Picketing at a Common Situs

Several cases decided during the year involved the scope of the picketing prohibitions contained in section 8(b)(4)(A) and (B) where the situs of the primary dispute harbors both employees of the primary employer and employees of secondary employers. In *Superior Derrick*,[47] the Fifth Circuit rejected the union's contention that all that need be done to avoid the impact of section 8(b)(4)(A) and (B) in "common situs" cases is "to compose a suitable sign and thereafter maintain a discreet silence or at least a noncommittal attitude if words are spoken." Rather, said the court, the picketing must be conducted in such a way that all secondary employees will know that the union does not seek pressure on the primary employer through pressure from the secondary employer because of concerted pressure of secondary employees on the secondary employer. "Neither signs nor papers nor pamphlets nor silence automatically insulate the activity," the court said.

In another common situs case,[48] the District of Columbia Circuit agreed with the Board that a union violated section 8(b)(4)(A) of the 1947 act by picketing in front of a gate to the primary employer's plant which was restricted to employees of secondary employers whose place of employment was on such premises. The court stated that in any of these secondary-boycott situations the ultimate determination turns upon the union's objective. The court approved, as supported by substantial evidence, the Board's finding that the union by peaceful picketing sought to encourage the employees of the independent contractors to engage in a concerted refusal to perform any services for their employers, and thus to force their employers to cease doing business with the primary employer. The court relied, *inter alia*, on the fact that the picket signs did not specifically disavow a dispute with the secondary employers.

Similarly, in *Morgan Drive-Away, Inc.*,[49] the Seventh Circuit affirmed the Board's finding that a union violated section 8(b)(4)(A) of the 1947 act by picketing in front of a factory to protest the pay scale of certain truckdrivers used by an independent trucker which hauled the manufacturer's product away from the plant, and whose trucks were then on the factory premises waiting to be loaded. In finding that the picketing had as an objective the stoppage of deliveries to the plant, the court relied, *inter alia*, on the fact that the

[47] *Superior Derrick Corp* v. *N.L.R.B.*, 273 F. 2d 891, certiorari denied *sub nom Seafarers' International Union of North America* v. *N.L.R.B.*, 364 U.S. 816.

[48] *Local 761, International Union of Electrical, Radio and Machine Workers, AFL–CIO* v. *N.L.R.B.* (*General Electric Co.*), 278 F. 2d 282, certiorari granted, 364 U.S. 869.

[49] *N.L.R.B.* v. *Local 691, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America*, 270 F. 2d 696.

picket signs bore the manufacturer's name as well as the trucker's name.

4. Board Determinations Under Section 10(k)

Section 8(b)(4)(D) of the 1947 and 1959 acts prohibits a union from engaging in certain forms of pressure where "an object thereof is . . . forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work." Section 10(k), in turn, provides that "[w]henever" such violations are charged, "the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen" (with certain exceptions not material here). The charge is to be dismissed "[u]pon compliance by the parties to the dispute with the decision of the Board."

During the year two courts of appeals considered what kind of Board determination is required by section 10(k). In the *Local 450* cases,[50] the Fifth Circuit agreed with the Board's position that where the employer has assigned the disputed work, the Board's "determination of the dispute" under section 10(k) is complete when it ascertains whether the employer's assignment violates a contract by which the employer is bound or is in contravention of an order or certification of the Board. The Board is not required to make an adjudication as between the employer and the union assigning the work to one or the other, the court said.

On the other hand, in *Columbia Broadcasting*,[51] the Second Circuit rejected the Board's interpretation of the statute. The Second Circuit held that where a meritorious charge is filed under section 8(b)(4)(D), section 10(k) of the act requires the Board affirmatively to allocate the work to one of the competing unions.

The Supreme Court, which granted certiorari in *Columbia Broadcasting*, resolved the conflict among the circuits after the close of fiscal 1960 by sustaining the Second Circuit's ruling.[52]

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[50] *N.L.R.B.* v. *Local 450, International Union of Operating Engineers (Sline Industrial Painters)*, 275 F. 2d 408; *N.L.R.B.* v. *Local 450, International Union of Operating Engineers (Industrial Painters & Sandblasters)*, 275 F. 2d 413; *N.L.R.B.* v. *450, International Union of Operating Engineers (Hinote Electrical Co.)*, 275 F. 2d 420.

[51] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL–CIO*, 272 F. 2d 713 (C.A. 2).

[52] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union Local 1212, International Brotherhood of Electrical Workers, AFL–CIO (Columbia Broadcasting System)*, 81 S. Ct. 330 (January 9, 1961).

5. Representation Matters

Bargaining orders issued by the Board in several cases arising under section 8(a)(5) were contested on the ground that the Board had exceeded its discretion in ruling on issues pertaining to an election conducted in an antecedent representation case, or in holding that the unit of employees represented by the complaining union was appropriate.

a. Elections

Two cases decided by the Seventh Circuit involved preelection events which, the court found, should have led the Board to set aside the election. In one of these cases,[53] the Seventh Circuit found an election to be invalid where the notice of election and ballots referred to the employer as "Mattison Machine Manufacturing Company" rather than "Mattison Machine Works," the employer's correct name.

In another case,[54] the same circuit held an election invalid where, immediately prior to the election, the union had distributed to the employees a letter claiming credit for obtaining, by bargaining negotiations at other plants operated by the employer, fringe benefits described by the employer in support of its contention that the employees did not need the union to speak on their behalf. The union had in fact obtained some but not all of such benefits. The court found unreasonable the Board's conclusion that the union did not claim to have obtained all of such fringe benefits. The court also rejected the Board's finding that even assuming the union had made such a claim, its assertions amounted to a "half-truth" which did not warrant setting the election aside.

The Seventh Circuit's decisions in both cases were reversed by the Supreme Court after the close of the year.[55]

In another case in the Seventh Circuit the employer challenged the procedures followed by the Board in a craft severance election.[56] The employer's objection, which the court rejected, concerned the Board's power to direct self-determination elections, and the propriety of omitting a "no-union" choice from craft severance ballots.

Regarding the Board's longstanding practice to conduct self-determination elections where it finds that an employee group—such as the craft group here—may be appropriately represented in a separate unit or in a larger unit, the court held that this practice was

[53] *N.L.R.B.* v. *Mattison Machine Works,* 274 F. 2d 347, certiorari granted 363 U.S. 826

[54] *Celanese Corp. of America* v. *N.L.R.B.,* 279 F. 2d 204.

[55] *N.L.R.B.* v. *Celanese Corp. of America,* 365 U.S. 297; *N.L.R.B.* v. *Mattison Machine Works,* 365 U.S. 123.

[56] *N.L.R.B.* v. *Weyerhaeuser Co.,* 276 F. 2d 865.

within the broad, judicially recognized powers of the Board to conduct representation elections. The court made clear that its earlier decision in *Marshall Field*[57] was not controlling because there the case was remanded for "failure of the Board to designate the unit *before* holding the election." This "technical flaw" was not present here, the court observed. Approving the procedure followed here, the court noted the long line of self-determination—or "Globe"—elections conducted by the Board since 1937,[58] the judicial recognition of such elections, and the Supreme Court's early holding in *Pittsburgh Plate Glass*[59] that the employees' wishes are one factor which the Board, in its discretion, may consider in determining a bargaining unit. The court further pointed out that under section 9(b)(2) of the act self-determination elections are an integral part of craft severance cases.

The court also approved the challenged omission from the severance ballot of a "no-union" choice, noting specifically that in changing its former policy the Board found nothing in the act that requires "that employees in a craft severance election be afforded an opportunity to return to nonunion status." The court pointed out that such a choice "would be an indirect proceeding for partial decertification."

b. Unit Determinations

Two cases put at issue the appropriateness of a certified craft unit. In one case,[60] the Board had certified a craft unit of electricians at a flat-glass plant notwithstanding the employer's contention that only a production and maintenance unit was appropriate. The Board had rejected this contention on the basis of the principles set forth in *American Potash*.[61] The Fourth Circuit refused to enforce the Board's bargaining order on the ground that the Board's application of the *American Potash* policies in the case before it was "arbitrary and discriminatory" in view of the Board's refusal to apply these policies to the steel, lumber, aluminum, and wet-milling industries because they are thoroughly integrated and have a long history of plantwide bargaining. The same conditions exist in the flat-glass industry, said the court. The court further expressed the view that the criteria enunciated in *American Potash* narrowed the Board's discretion in respect to establishing craft units to such an extent as to impair the purposes of section 9(b)(2) (which precludes the Board from finding any craft unit to be inappropriate "on the ground that a

[57] *Marshall Field & Co* v. *N.L.R.B.*, 135 F. 2d 391 (1943).
[58] See *The Globe Machine and Stamping Co*, 3 NLRB 294.
[59] *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 156 (1941).
[60] *N.L.R.B.* v. *Pittsburgh Plate Glass Co*, 270 F. 2d 167, certiorari denied 361 U.S. 943
[61] *American Potash & Chemical Corp*, 107 NLRB 1418, discussed in the Nineteenth Annual Report, pp. 39–41, 43–44

different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation").

However, in the *Weyerhaeuser* case, when the employer challenged the appropriateness of a craft unit certified by the Board,[62] the Seventh Circuit upheld the Board's certification of a unit of lithographic employees in a paper-box factory. The employees in this unit had previously been included in an overall production and maintenance unit of which an industrial union was the certified representative. However, the Board certified a craft union as the representative of a lithographic unit after the employees therein voted to be represented by the craft unit rather than by the industrial union. The court found that the Board's action in the case before it was not inconsistent with the Fourth Circuit's opinion in *Pittsburgh Plate Glass*, *supra*, because that case involved standards applicable for severing a craft unit within integrated industries. The record supported the Board's finding that there was no such integration of this employer's operations as would preclude separate representation of a craft unit, the court found.

[62] *N.L.R.B.* v. *Weyerhaeuser Co*, *supra*.

VII

Injunction Litigation

Sections 10(j) and (l) authorize temporary relief in the U.S. district courts on petition of the Board, or on its behalf, pending hearing and adjudication of unfair labor practice charges by the Board.[1]

Section 10(j) provides that, after issuance of an unfair labor practice complaint against an employer or labor organization, the Board, in its discretion, may petition "for appropriate temporary relief or restraining order" in aid of the unfair labor practice proceeding before it. The court where the petition is filed has jurisdiction to grant "such temporary relief or restraining order as it deems just and proper." In fiscal 1960, the Board filed five petitions for temporary relief under section 10(j)—one against an employer, three against unions, and one against both the employer and the union. Injunctions were issued in three of the five cases, two of them being consent extensions of previously issued temporary restraining orders.[2] In the remaining two cases, injunctive relief was made unnecessary by agreement of the respondents not to resume the alleged unlawful conduct.[3]

Prior to the amendments of November 13, 1959, contained in Title VII of the Labor-Management Reporting and Disclosure Act of 1959, section 10(l) was limited to imposing a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of section 8(b)(4)(A), (B), or (C) of the act,[4] whenever the General Counsel's investigation revealed "reasonable cause to believe that such charge is true and a complaint should issue." Section 10(l) also provided that its provisions should apply, "where such relief is appropriate," to jurisdictional dispute strikes in violation of section 8(b)(4)(D) of the act.

[1] Table 20 in appendix A lists injunctions petitioned for, or acted upon, during fiscal 1960; table 18 contains a statistical summary of results.

[2] *Kennedy* v. *Los Angeles Meat & Provision Local No. 626 (Washington Rendering Co.)*, July 13, 1959 (No. 698–59 BH, D.C. S. Calif.); *LeBus* v. *General Longshoremen's Assn. (New Orleans Steamship Assn.)*, Oct. 5, 1959 (No. 9413, D C. E. La.); *Alpert* v. *Bethlehem Steel Co. (Shipbuilding Division)*, Apr. 11, 1960 (No. 60–217–S, D C. Mass.).

[3] *Alpert* v. *International Association of Machinists (United Aircraft Corp)*, filed June 14, 1960 (No 8380, D.C. Conn.); *Elliott* v *Dal-Tex Optical Co, Inc.*, June 14, 1960 (No. 8505, D.C N. Tex.).

[4] These subsections prohibited secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor organizations or employer associations, certain sympathy strikes, and strikes against Board certifications of bargaining representatives.

In addition, section 10(l) provided for issuance of a temporary restraining order without notice to the respondent upon a petition alleging that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days.

In addition to the foregoing, by the 1959 amendments the provisions of section 10(l) have been extended to the newly created unfair labor practices set forth in section 8(b)(7) and 8(e).[5] A limitation on the use of section 10(l) in section 8(b)(7) cases is contained in a proviso stating that application shall not be made "for any restraining order under Section 8(b)(7)" if a charge under section 8(a)(2) of the act has been filed alleging that the employer has dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true."

In fiscal 1960, the Board filed 219 petitions for injunctions under section 10(l). This was an increase of 90 over the petitions filed in fiscal 1959, or about 70 percent, due principally to the new amendments. As in past years, most of the petitions were based on charges alleging violations of the secondary-boycott and sympathy-strike provisions contained in section 8(b)(4)(A) and (B) of the old act and section 8(b)(4)(i)(ii)(B) of the amended act. Twenty-eight petitions involved charges alleging jurisdictional strikes in violation of section 8(b)(4)(D), and 4 petitions were based on charges alleging strikes against Board certifications of representatives in violation of section 8(b)(4)(C). Four cases were predicated on charges alleging unlawful agreements under the new section 8(e) of the act, which prohibits agreements between employers and labor organizations whereby the employer agrees not to do business with another employer, and 15 cases involved charges alleging strikes to obtain such agreements, which conduct is proscribed by section 8(b)(4)(A) of the act. Forty-three petitions were predicated on charges alleging violations of the new recognitional and organizational picketing prohibitions of section 8(b)(7). Of these, 1 involved an alleged violation of subparagraph (A) of section 8(b)(7) by picketing for recognition an employer who was lawfully recognizing another union with which he had a contract that was a bar to an election; 11 were based on charges alleging violations of subparagraph (B) by picketing for recognition or organization within 12 months of the conduct of a valid election at the employer's establishment; and 31 alleged violations of subparagraph (C) by recognitional or organizational picket-

[5] Sec. 8(b)(7) makes recognitional and organizational picketing under certain circumstances an unfair labor practice, sec 8(e) prohibits "hot cargo" agreements with certain exceptions for the construction and garment industries

ing for more than a reasonable period without a petition for an election being filed.[6]

A. Injunctions Under Section 10(j)

In 1960, a section 10(j) injunction was sought to protect the integrity of Board hearings by restraining an employer from taking further retaliatory action against employees who testified as witnesses in Board proceedings.[7] After hearing on a complaint alleging unlawful interference by the employer with the conduct of a Board election, the employer discharged or discriminatorily changed the working conditions of six of the nine witnesses subpenaed by the General Counsel at the hearing, allegedly in violation of section 8(a)(4) of the act. To protect the hearing on the 8(a)(4) charges and the witnesses called to testify, the Board petitioned the district court to enjoin the employer from repeating his discriminatory treatment of Board witnesses. Upon the employer's acceptance of the court's admonition against intimidation of or retaliation against employees called to testify at the new hearing, the case was continued without entry of an injunction.[8]

In two cases, unions were charged with violating section 8(b)(3) of the act by engaging in strike action without complying with the provisions of section 8(d) of the act. In *Washington Rendering*,[9] the union, which for some time had been the collective-bargaining representative of the employees, after winning an election held on a petition filed by another union repudiated its existing contract and struck the employer for a new collective-bargaining agreement, contending that its existing contract had been voided by the election. In striking, the union did so without giving the required notices to the employer and the conciliation services under section 8(d). It was charged that both the strike during the term of the contract and the absence of the required notices violated section 8(b)(3). The court, finding reasonable cause to believe that the act was violated, as charged, entered a temporary restraining order enjoining the union from striking without prior compliance with section 8(d). Subsequently, the restraining order was continued in effect by consent of the union pending the Board's final disposition of the case.[10] In the

[6] All of these cases and the actions therein are shown in table 18, appendix A.

[7] *Elliott* v. *Dal-Tex Optical Co, Inc*, June 14, 1960 (No 8505, D.C. N. Tex).

[8] On Dec. 29, 1960, a trial examiner of the Board issued an intermediate report sustaining the 8(a)(4) charges of discrimination against five employees (see *Dal-Tex Optical Co, Inc*, IR–459).

[9] *Kennedy* v. *Los Angeles Meat & Provision Local No 626* (*Washington Rendering Co.*), July 13, 1959 (No. 698–59 BH, D C. S. Calif).

[10] On Feb. 10, 1960, the Board issued its decision sustaining the 8(b)(3) complaint (see *Meat and Provisions Drivers, Local 626*, 126 NLRB 572).

New Orleans Steamship case,[11] the union struck for a new contract without having filed the 30-day notices with the Federal and State mediation agencies required by section 8(d) and closed down all shipping operations in the Port of New Orleans. The court, making preliminary findings that there was reasonable cause to believe the conduct violated section 8(d) and 8(b)(3), entered a temporary restraining order restraining the strike. After a hearing, the order was continued upon consent of the union.[12]

In the *Bethlehem Steel* case,[13] a petition for injunctive relief was filed against both the employer for its alleged refusal to bargain in good faith in violation of section 8(a)(5) of the act, and against the striking unions representing its employees for their alleged illegal picket-line conduct in violation of section 8(b)(1)(A) of the act. The petition alleged that Bethlehem had refused to bargain in good faith over the terms of a new contract by, among other things, conditioning the execution of a new contract upon the unions' acceptance of certain company demands, including a provision which would have precluded the union from raising a grievance unless the grievance had been signed by an employee, and by unilaterally changing the terms and conditions of employment and discontinuing certain employee benefits existing in the prior contract during the negotiations and without prior bargaining with the unions. As to the striking unions, the petition alleged that they had restrained or coerced employees by mass picketing, physically blockading plant entrances, and engaging in acts of violence against nonstriking employees. The court, finding reasonable cause after hearing to believe that the company and the unions were guilty of the violations charged, enjoined Bethlehem from continuing its refusal to bargain in good faith and the unions from repeating their restraint and coercion of employees. The court refused, however, to direct Bethlehem to reinstate the conditions of employment it had unilaterally changed during negotiations.[14]

The fifth case[15] involved a petition for section 10(j) relief predicated on a complaint alleging that during a strike at aircraft plants in Connecticut, the unions had violated section 8(b)(1)(A) of the act

[11] *LeBus* v. *General Longshore Workers, Local 1418 (New Orleans Steamship Assn.)*, Oct. 5, 1959 (No. 9413, D.C. E. La).

[12] Subsequently the case was settled and the charge was withdrawn.

[13] *Alpert* v. *Bethlehem Steel Co. (Shipbuilding Division)*, Apr. 11, 1960 (No. 60-217-S, D C. Mass.).

[14] In the Board proceeding the charges against the unions were sustained (see *Industrial Union of Marine and Shipbuilding Workers*, 130 NLRB No. 39); the charges against the employer are still pending before the Board on exceptions to a trial examiner's intermediate report finding a limited refusal to bargain (see *Bethlehem Steel Co. (Shipbuilding Division)*, 46 LRRM 80).

[15] *Alpert* v. *International Association of Machinists (United Aircraft Corp.)*, filed June 14, 1960 (No. 8380, D C., Conn.).

by mass picketing and violence which seriously impeded important defense work being performed at the plants by nonstriking employees who were not in the bargaining units represented by the unions on strike. After the petition was filed, the unions stipulated in court to discontinue the alleged unlawful conduct and the case was continued without hearing.[16]

B. Injunctions Under Section 10(l)

In fiscal 1960, 92 petitions under section 10(l) went to final order, the courts granting injunctions in 83 cases and denying injunctions in 9 cases.[17] Injunctions were issued in 52 cases involving secondary action proscribed by section 8(b)(4)(A) or (B) and the new section 8(b)(4)(i)(ii)(B); 6 of these cases involved coercive conduct to obtain "hot cargo" agreements violative of the new section 8(e) which conduct is a violation of the new provision of section 8(b)(4)(A). Injunctions were also granted in 2 cases involving strikes against Board certifications in violation of section 8(b)(4)(C); and in 11 cases involving jurisdictional disputes in violation of section 8(b)(4)(D). Three of the eleven cases under 8(b)(4)(D) also involved secondary activities under subsection (A) and/or (B). Injunctions were issued in 18 cases involving recognition or organization picketing in violation of the new section 8(b)(7); 1 involved picketing where another labor organization had been recognized, in violation of subsection (A); 5 concerned picketing where a valid election had been conducted within the preceding 12 months in violation of subsection (B); and 12 involved picketing which had been conducted beyond a reasonable period of time without a petition for an election having been filed as required by subsection (C).

Of the nine injunctions denied, four involved 8(b)(4)(A) or (B), one case alleged a violation of section 8(b)(4)(D), one case was predicated on a "hot cargo" agreement violative of section 8(e), another was based on 8(b)(7)(B), and the remaining two cases concerned 8(b)(7)(C).

During the fiscal year, a case involving a procedural question common to all section 10(l) proceedings was decided by the Seventh Circuit. In *Calumet Contractors*,[18] the union in the 10(l) hearing before the district court subpenaed the Board's case files and the regional director and other members of the regional office staff who had participated in the investigation and processing of the charge in the case. At the hearing, the union sought to examine the case files and the

[16] Subsequently the Board proceeding was settled by consent Board order providing for a court decree.

[17] See tables 18 and 20 in appendix A

[18] *Madden* v. *International Hod Carriers' Building & Common Laborers' Union (Calumet Contractors Assn.)*, June 5, 1959 (No. 2596, D.C. N. Ind.).

Board personnel in respect to the scope of the preliminary investigation which had been conducted and the basis for the decision that reasonable cause existed to believe that the union had committed the unfair labor practice charged. The district court refused to permit the examination and granted the section 8(b)(4)(C) injunction sought. On appeal to the Seventh Circuit,[19] the union contended that under the court's prior decision in *Madden* v. *International Organization of Masters, Mates & Pilots (Texas Co.)*, 259 F. 2d 297 (C.A. 7), inquiry was permissible into the nature and scope of the preliminary investigation and therefore the district court had committed error when it had limited the scope of the union's examination.[20] The Seventh Circuit specifically rejected the union's contention and held "that the scope, conduct or extent of the preliminary investigation are not matters relevant to or material for consideration on the issue to be adjudicated on hearing of a section 10(l) petition, i.e., whether reasonable cause exists to believe a violation has occurred. This issue is to be resolved by the evidence adduced by the Board in open court to sustain its petition" (227 F. 2d 693).

1. Secondary Boycott Situations

a. Individual Employed

In section 8(b)(4) of the Taft-Hartley amendments it was made an unfair labor practice to induce or encourage "the employees of any employer" to engage in a "concerted" refusal to work for any of the objects proscribed by the section. The Board, holding that the term "employees" in the section was limited by the definition in section 2(3) of the act and that the use of the terms "employees" and "concerted" prohibited only inducement of two or more employees, consistently held that section 8(b)(4) did not apply to the inducement of railroad employees,[21] supervisors,[22] agricultural employees,[23] municipal employees,[24] or other employed individuals excluded by the act's definition of "employees," or to the inducement of single em-

[19] *Madden* v *International Hod Carriers' Building & Common Laborers' Union (Calumet Contractors Assn.)*, 277 F. 2d 688, certiorari denied 364 U S. 863

[20] In the court of appeals, the union abandoned its contention that it also was entitled to examine the Board's files and representatives regarding the decision to proceed on the charge.

[21] *International Rice Milling Co.*, 84 NLRB 360, *W T Smith Lumber Co.*, 116 NLRB 1756; *Atlantic-Pacific Mfg. Corp.*, 122 NLRB 1215 The courts of appeals for the Fifth and Ninth Circuits rejected the Board's construction of the term "employees" and held that inducement of railroad employees was proscribed by the section *International Rice Milling Co.* v *N L R B*, 183 F 2d 21 (C A. 5), *W. T Smith Lumber Co* v. *N.L.R B.*, 246 F 2d 129 (C A 5); *Great Northern Railway Co.* v. *N.L R.B*, 272 F. 2d 741 (C.A 9).

[22] *Conway's Express*, 87 NLRB 972; *Arkansas Express, Inc*, 92 NLRB 255

[23] *Di Giorgio Fruit Corp*, 87 NLRB 720, affd 191 F 2d 642 (C A D C.), certiorari denied 342 U.S. 869.

[24] *Paper Makers Importing Co*, 116 NLRB 267.

ployees.[25] To remove these exclusions, Congress in the 1959 amendments substituted the phrase "any individual employed by any person engaged in commerce or in an industry affecting commerce" for the phrase "the employees of any employer" and eliminated the word "concerted."

(1) Inducement of Railroad Employees

In *Carrier Corp.*,[26] which arose after the 1959 amendments, the union, in the course of its strike at a manufacturing plant, picketed a spur line of a railroad which serviced both the struck employer and other industrial plants in the vicinity. The spur track which was on railroad property formed the boundary of the struck employer's plant from which tracks branched off into the plant. The union placed pickets on the railroad right-of-way at a point where the tracks crossed a public highway. Trains with cars destined for other employers were permitted to enter the property but trains with cars for the struck employer were prevented from entering. The court found, from the location of the pickets on railroad property, the absence of signs indicating with whom the union had its dispute, and the inducement of the railroad employees to stop work, that the thrust of the union's picketing was against the railroad. Further finding that the inducement of railroad employees violated the act, the court concluded that there was reasonable cause to believe a violation of the secondary-boycott provisions (section 8(b)(4)(i)(ii)(B) of the act as amended in 1959) had occurred and issued an injunction restraining the picketing of the railroad.

In *Pittsburgh Pacific*,[27] which arose under the provisions of the old act, the union in the course of a dispute with an iron ore mining company placed pickets along the right-of-way of a railroad which as a common carrier hauled iron ore from the struck employer's mines. Holding, contrary to the Board cases and in agreement with the court cases,[28] that the provisions of the section prohibited the inducement of railroad employees in furtherance of a secondary boycott, the court granted an injunction against the union's deliberate inducement of railroad employees not to work in connection with its dispute with the mining company.

(2) Supervisors

In *Consalvo Trucking*,[29] it was contended that the union sought to force a nonunion trucker off construction jobs by inducing "individuals

[25] *Gould & Preisner*, 82 NLRB 1195; *Climax Molybdenum Co.*, 108 NLRB 318.

[26] *Ramsey* v. *Local Union No. 5895, United Steelworkers of America (Carrier Corp.)*, 46 LRRM 2050 (D.C.N.N.Y.).

[27] *Knapp* v. *United Steelworkers of America (Pittsburgh Pacific Co.)*, 179 F. Supp. 90 (D.C. Minn.).

[28] See footnote 18, *supra*.

[29] *Alpert* v. *Excavating & Building Material Chauffeurs (Consalvo Trucking, Inc.)*, 184 F. Supp. 558 (D.C. Mass.).

employed" not to perform services for their employers. At one job, after the union requested the superintendent of a general contractor with authority to handle routine operational problems to cease doing business with the nonunion trucker, the trucker's contract was terminated. At another job, the union went to the project engineer for the general contractor and a checker of a subcontractor and sought to have the nonunion trucker removed from the job. Holding that section 8(b)(4)(i)(B) was not intended to prevent a union from addressing noncoercive pleas to an "individual" with authority on behalf of the employer to make and terminate contracts, such as the superintendent, the court found that the union had not violated section 8(b)(4)(i) in the appeal to the superintendent on the first job. According to the court, section 8(b)(4)(i) was confined to appeals addressed to those who perform manual or clerical services or manually use goods or perform minor supervisory functions. In respect to the second job involving the project engineer and the checker, without discussing the nature of their duties the court concluded that the union's conduct was directed at them as part of management and not as employed individuals and, although it constituted restraint and coercion under section 8(b)(4)(ii) (see *infra*), it did not constitute prohibited inducement under section 8(b)(4)(i).

b. Threats, Coercion, and Restraint of Employers

Prior to the 1959 amendments, section 8(b)(4) only prohibited labor organizations from engaging in a strike or inducing a concerted work stoppage for the objectives set forth in the section. The 1959 amendments, to reach direct pressure on employers, added to section 8(b)(4) a subparagraph (ii) which makes it unlawful for a union "to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce" for any of the proscribed objectives.[30]

(1) Threats

The union, in attempting to get the nonunion trucker off a construction job in the *Consalvo Trucking* case,[31] threatened the project engineer for the general contractor and the president and checker of a subcontractor that union drivers would not work on the project unless the nonunion employer was removed. The nonunion trucker's contract thereupon was canceled. The court held such statements were threats and coercive conduct directed at management with an object of forcing the general contractor and subcontractor to cease

[30] The inducement or encouragement of any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal to work in order to achieve a proscribed object is prohibited by subparagraph (i).

[31] See footnote 29, *supra*.

doing business with the trucker. Finding reasonable cause to believe this conduct violated section 8(b)(4)(ii)(B), the court enjoined the union from further threatening, coercing, or restraining secondary employers to compel them to cease doing business with the nonunion trucker.

(2) Picketing

In *Gilmore Construction Co.*[32] the court found that unlawful picketing of a construction site not only violated subparagraph (i) of section 8(b)(4) but also subparagraph (ii) of that section by coercing and restraining the neutral employers on the site.[33]

(3) Consumer Picketing

In *Spar Builders*,[34] a union which had a dispute with one of the subcontractors picketed a housing development on both weekdays and weekends. The picketing took place in front of the model home but near a road utilized by employees of neutral employers working at the housing development. The court found the picketing, insofar as it appealed to employees, constituted a violation of both subparagraphs (i) and (ii) of section 8(b)(4) but, relying on cases arising under the old act, refused to find that the picketing addressed to customers on weekends violated subparagraph (ii) and permitted the union to continue its picketing on weekends to reach potential homebuyers.[35]

c. Construction Gate Cases

In a number of cases, a union which represented the production employees of a plant in the course of a dispute with their employer picketed all the entrances to the plant, including special construction gates which had been set aside for the exclusive use of workers employed by independent contractors who were engaged in construction projects on the plant property. In the *Virginia-Carolina Chemical* case,[36] the union which represented the production and maintenance employees of the company struck and picketed the plant. The company had engaged an outside construction company to do construction

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[32] *Sperry* v. *International Hod Carriers, Building & Common Laborers Union (Gilmore Construction Co.)*, Dec. 14, 1959 (No. 0919, D.C. Nebr.).

[33] The Board also subsequently found that the union's conduct constituted a violation of sec 8(b)(4)(ii)(B) as well as of sec. 8(b)(4)(i)(B) (127 NLRB 541). The Board's order was enforced by the Eighth Circuit in *N L R B.* v. *International Hod Carriers, Local 1140*, 285 F 2d 297

[34] *McLeod* v. *Hempstead Local No. 1929 (Spar Builders)*, 183 F. Supp 494 (D C. E. N Y.)

[35] Subsequently a trial examiner of the Board found that the weekend picketing violated subparagraph (ii). See also the Board's decision to the same effect in *Perfection Mattress & Spring Co.*, 129 NLRB No. 125

[36] *Boire* v. *Local 86, International Chemical Workers Union (Virginia-Carolina Chemical Co.)* July 10, 1959 (No. 3670–T, D C. S. Fla.)

work in the plant but the work had not started prior to the beginning of the strike. After the commencement of the strike, the company had a fence erected around the plant with four separate entrances. One of the entrances was set aside for the exclusive use of construction employees employed by the outside contractor and notice of such action was transmitted to the contractor and the union. The union, nonetheless, placed pickets at the contractor's gate and the construction workers refused to cross the picket line. The union sought to distinguish this situation from the *General Electric* case [37] where there had been a long-established separate contractor's gate. Refusing to recognize the distinction, the court found the picketing of the contractor's gate to be a violation of the secondary-boycott provisions and enjoined it.[38]

A similar result was reached in a number of other cases in which a union representing a plant's production employees in the course of its dispute with the manufacturer sought to extend the dispute to the neutral construction employees, who were engaged in construction or renovation at the plant, by picketing a gate which had been set aside for the exclusive use of the construction employees.[39]

d. Ambulatory Picketing

In *New Dixie Lines*,[40] the union, in addition to maintaining a picket line at the company's terminals to which the employees regularly reported in connection with their duties, had its pickets follow the trucks to the terminals of connecting carriers and to industrial plants where picket lines were established and where secondary employees were orally induced not to handle cargo from the struck employer. The court enjoined the picketing and oral inducement of neutral employees at the secondary locations, thereby holding that the Board's *Washington Coca-Cola* doctrine [41] was applicable where the union had an adequate opportunity to reach the primary employees by picketing at the primary employer's terminals.

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[37] *Fraker* v *Local No. 761, International Union of Electrical Workers (General Electric Co.*, Oct 1, 1958 (No. 3665. D C. W. Ky.) : Board decision finding a violation, 123 NLRB 1547, enfd. 278 F 2d 282 (C A D.C.).

[38] The finding was subsequently sustained by the Board (126 NLRB 905) and enfd 47 LRRM 2493 (C A D C)

[39] See *McLeod* v *United Steelworkers of America (Phelps Dodge Refining Co.)*, 176 F Supp 813 (D C. N Y), *Knapp* v *St Paul Building & Construction Trades Council (Walter D. Gerstein Co)*, Aug. 10, 1959 (No 142, D C Minn.) : *Cuneo* v. *Local 434, International Chemical Workers Union (Charles Simkin)*, 44 LRRM 2800 (D.C. N J).

[40] *Johnston* v. *International Brotherhood of Teamsters (New Dixie Lines)*, 181 F. Supp. 716 (D C W. N C)

[41] 107 NLRB 299, enfd 220 F 2d 380 (C.A D.C)

2. Picketing After Certification of Another Union

In the *Detroit Newspaper Publishers* case,[42] respondents by their picketing shut down Detroit's major newspapers to force them to recognize and bargain with respondents for mailroom employees even though another union had been certified by the Board as the collective-bargaining representative of the employees involved. The court, entering preliminary findings of reasonable cause to believe that respondents' picketing for recognition in disregard of the outstanding Board certification of another union as the employees' representative violated section 8(b) (4) (C) of the act, issued a temporary restraining order enjoining the picketing which, after hearing, was converted into an injunction restraining the picketing pending the Board's decision in the matter.

In *American Sugar Refining*,[43] respondents, after losing an election which resulted in the certification of an independent union, demanded that the employer assign certain of the jobs in the certified unit to their members rather than to members of the certified union. In support of their demands, respondents picketed company-owned refineries in Brooklyn, New York; Philadelphia, Pennsylvania; and Baltimore, Maryland, causing employees at these plants to cease working. Respondents contended before the district court that under an arbitrator's award which interpreted a contract between one of respondents and American Sugar, they were entitled to the work at issue even though such work fell within the unit for which the independent union had been certified by the Board and the certified union had not participated in the arbitration proceeding. The district court granted an injunction, holding there was reasonable cause to belief that any conflict between the Board's certification of the independent union and the arbitrator's award with respect to the interpretation of the contract in favor of respondents must be decided in favor of the Board's certification, thereby rendering respondent's conduct a violation of section 8(b) (4) (C).

3. Jurisdictional Dispute Situations

Injunctions were granted in 11 cases involving jurisdictional disputes—4 relating to conflicting claims to the assignment of work in the building and construction industry;[44] 3 relating to work disputes

[42] *Roumell* v. *Detroit Mailers Union Local No 40 (Detroit Newspaper Publishers Assn)*, Sept. 30, 1959 (No. 19433, D.C. E. Mich.).

[43] *McLeod* v. *International Longshoremen's Assn. (American Sugar Refining Co.)*, 177 F. Supp. 905 (D C. E. N.Y).

[44] *Boire* v. *Local 59, Wood, Wire & Metal Lathers International Union (Jacksonville Tile)*, Aug. 1, 1959 (No. 4329–J, D C. S. Fla.), *Shore* v. *International Hod Carriers' (Lang Brothers)*, Sept. 10, 1959 (No 952–W, D.C. N. W. Va): *Vincent* v. *Steamfitters*

in the trucking industry;[45] and 1 case each relating to conflicting work claims in the maritime,[46] hotel,[47] theatrical,[48] and building maintenance[49] industries.

In the *Safeway* case, *supra*, the company, while operating runs out of its Delaware terminal, had a contract with Local 107 covering the drivers making such runs. Upon the termination of the contract, Safeway decided to make the runs out of other terminals where it had contracts with other Teamsters locals and terminated Local 107's members at Wilmington. Local 107 picketed the Wilmington terminal causing a complete shutdown there. At the section 10(l) hearing, Local 107 contended this was not a jurisdictional dispute as the locals at the other terminals were not insisting that the runs be transferred to them. In granting the temporary injunction, the court held that there was reasonable cause to believe at least one of the objectives of Local 107's picketing was to compel Safeway to reassign the driving of trucks to its members rather than to the members of the locals operating out of the company's other terminals. Finding such an objective, the court further held that because an employer is interested in having the work assigned to one group rather than to another, does not render section (b) (4) (D) inoperative.

In *Marshall Maintenance*, *supra*, the employer was a specialty welding subcontractor on a dairy construction project. The respondent union picketed the construction site to compel the employer to assign the specialty welding work to its members rather than to the employer's own employees who were not members of any union and caused a shutdown of the construction work. After the injunction petition was filed, the union substituted handbills for its picket signs but the work stoppage, nonetheless, continued. At the injunction hearing, the union contended that section 8(b) (4) (D) applied only to situations where two unions were claiming the work and not to a dispute between a union and a group of unorganized employees. The district court rejected this argument and granted the injunction,

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Local Union 395 (Marshall Maintenance), 181 F. Supp 566 (D C. W. N.Y); *McLeod* v. *Local 3, International Brotherhood of Electrical Workers (Picker X-Ray)*, 45 LRRM 2872 (D.C. S. N.Y.).

[45] *Schauffler* v. *Highway Truck Drivers & Helpers, Local 107 (Food Producers Council)*, 182 F. Supp 556 (D C. E. Pa.); *Dooley* v. *Highway Truck Drivers & Helpers, Local 107 (Safeway Stores)*, 182 F. Supp. 297 (D.C. Del.); *Penello* v. *Freight Drivers & Helpers Local Union 557 (Quinn Freight Lines)*, TRO issued Feb. 8, 1960, and continued pursuant to consent (No. 11957, D.C. Md.).

[46] *Potter* v. *International Longshoremen's Assn. (J. & R. Contractors, Inc.)*, TRO issued Sept. 12, 1959 (No. 1885, D.C. S. Tex.).

[47] *Boire* v *Brotherhood of Painters, Decorators & Paper Hangers Local 365 (Southern Florida Hotel and Motel Assn.)*, Oct. 23, 1959 (No. 9514M, D C. S. Fla.).

[48] *Madden* v *Chicago Theatrical Protective Union, Local 2 (Woods Amusement Corp)*, 46 LRRM 2098 (D.C. N. Ill.).

[49] *McLeod* v. *Building Service Employees International Union, Local 32–J (Hewitt-Robbins)*, Nov. 12, 1959 (No. 150–137, D.C. S. N.Y.).

thereby holding that the terms "trade, craft or class" as contained in section 8(b)(4)(D) apply not only to disputes between unions over work assignments but also to disputes between unions and nonunion groups over such. The court's order enjoined both the picketing and the handbilling, the court finding the latter as well as the former to constitute both prohibited inducement of employees under clause (i) of section 8(b)(4) and proscribed restraint and coercion under clause (ii) of the section.[50]

4. "Hot Cargo" Clause Situations and Strikes To Obtain "Hot Cargo" Clauses

The 1959 amendments, in section 8(e) of the act, made it an unfair labor practice for a labor organization and an employer to enter into a contract or agreement, either express or implied, whereby the employer ceases or agrees to cease handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer or to cease doing business with any other person and declares that any contract containing such provisions shall be void. The section exempts from its coverage certain agreements between employers and labor organizations in the construction and clothing industries. At the same time, section 8(b)(4)(A) of the act was amended to make it an unfair labor practice to strike or exert other pressure on an employer to compel him to enter into such an agreement.

The first case to reach the district courts under these new provisions was *Employing Lithographers*.[51] Shortly after the new provisions became effective [52] the union struck the members of the San Francisco lithographers association for a new contract which contained "Struck Work," "Chain Shop," "Termination," "Trade Shop," and "Refusal to Handle" clauses which the employers resisted on the ground that such clauses were unlawful under the new section 8(e) of the act. The "Struck Work" clause bound the signatory employer not to render assistance to or handle work from any employer on strike.[53] The "Chain Shop" clause required the signatory employer not to request his employees to handle work where at the plant of any affiliated employer there was a strike or lockout.[54] The "Termination" clause

[50] On appeal to the Second Circuit, the district court's findings were affirmed in all respects, see 47 LRRM 2808.

[51] *Brown* v. *Local No. 17, Amalgamated Lithographers of America (Employing Lithographers Division)*, 180 F. Supp 294 (D.C. N. Calif.).

[52] Although the amendments were enacted on Sept. 14, 1959, they did not become effective until Nov. 13, 1959.

[53] The "Struck Work" clause was not limited to the handling of "farmed out" struck work but applied to all work from a struck employer, including work regularly performed for that employer.

[54] The clause was not restricted to affiliated shops which would be regarded as part of the signatory employer's operations for purposes of the secondary-boycott provisions of the act.

provided that if a signatory employer requested his employees to handle work from a struck employer the union could terminate the contract. The "Trade Shop" clause stated that all production would be done under union conditions and that if the signatory employer requested his employees to handle work from a shop not under contract with the union, the union could terminate the contract. The "Refusal to Handle" clause provided that the signatory employer would not discharge or discipline any employee because he refused to work on nonunion or struck goods. After the strike commenced, several employers not in the association agreed to the union's demands and executed contracts containing the aforesaid clauses. At the injunction hearing, the union contended that section 8(e) was unconstitutional because the exemption therein in respect to the construction and clothing industries had not been extended to other industries, such as the lithographic industry, where, the union claimed, production operations also were integrated. The court rejected this argument and held that Congress constitutionally could prohibit agreements of this type in one industry but permit them in another, and found reasonable cause to believe that the execution of the contract containing the above clauses by the union and the independents violated section 8(e) and that the union's strike to secure similar contracts from the members of the association violated section 8(b)(4)(A).

In *Ross Restaurants*,[55] the union demanded that the employer, who leased banquet rooms to individuals and organizations and catered such banquets, sign a contract providing that it would not lease its facilities to parties which did not employ union musicians. To enforce its demand, the union threatened to place the employer on its "unfair list" and later did so. This caused union musicians to refuse to play at the employer's premises. The court found reasonable cause to believe that the union's conduct constituted both prohibited inducement of employees not to work under subparagraph (i) and proscribed restraint and coercion of the employer under subparagraph (ii) for an agreement prohibited by section 8(e) and therefore violated section 8(b)(4)(A). In its injunction order, the court affirmatively ordered the union to rescind its unfair listing of the employer and to publish the rescission in the same manner and to the same extent as it had published the unfair listing.

In *Adolph Coors*,[56] the employer, a brewery company, acted as its own general contractor in the construction of plant additions. The union, which represented ironworkers engaged on the construction

[55] *Schauffler* v. *The Philadelphia Musical Society, Local 77 (Holly House & Ross Restaurants, Inc.)*, 46 LRRM 2806 (D.C. E. Pa.)

[56] *Sperry* v *International Association of Bridge, Structural & Ornamental Iron Workers (Adolph Coors Co.)*, Apr. 21, 1960 (No. 6767, D.C. Col.)

work currently in progress, picketed the employer's premises for a contractual agreement that the employer would in the future subcontract work within the union's jurisdiction only to a subcontractor under agreement with the union. On the view that section 8(e) permits only voluntary agreements limiting on-the-site contracting in the construction industry, a petition for injunctive relief was filed. Before hearing, the union consented to an injunction restraining its picketing.[57]

5. Recognition and Organization Picketing

Section 8(b)(7), added to the Act by the 1959 amendments, declares certain recognitional or organizational picketing by a union which is not currently certified as the representative of the employees involved to be an unfair labor practice. Subparagraph (A) of the section states that such picketing is prohibited when another union has been lawfully recognized by the employer as the representative of the employees involved and the Board is prohibited from conducting an election because of its contract-bar rule. Subparagraph (B) provides that such picketing is unlawful within 12 months following a valid election, during which period the Board is prohibited by virtue of section 9(c)(3) from holding a further election. Subparagraph (C)—which applies to those situations in which the Board is free at the time to conduct an election—states that such picketing is prohibited after a reasonable period of time, not to exceed 30 days, unless a petition has been filed with the Board for a resolution of the representation question by the holding of a Board-conducted election. A proviso, however, exempts from the proscription of the latter subparagraph picketing "for the purpose of truthfully advising the public" that the employer does not employ members of or have a contract with the union, unless an effect of such picketing is to cause employees to refuse to make pickups or deliveries or perform services. Also, a proviso to section 10(l) prohibits the Board from seeking injunctive relief in a section 8(b)(7) case if a meritorious charge has been filed alleging that the employer has dominated or interfered with a labor organization in violation of section 8(a)(2) of the act.

The injunction litigation under section 8(b)(7) for the brief period in fiscal 1960 it has been in effect forecasts some of the issues under

[57] Since the end of fiscal 1960, other courts in litigated cases have granted section 10(l) relief to restrain strikes for on-the-site contracting clauses. See *LeBus* v. *Building & Construction Trades Council of Monroe* (*Ford, Bacon & Davis Construction Co.*), 186 F Supp 109 (D C. W. La.); *Sperry* v *Local 101, International Union of Operating Engineers* (*Sherwood Construction Co.*), 47 LRRM 2481 (D.C. Kans.).

the section which ultimately will reach the Board and the reviewing courts for final resolution.

a. Constitutionality of the Section

At the outset, the restrictions on peaceful picketing set forth in the section were challenged in the district courts as an unconstitutional infringement of the right of free speech guaranteed in the first amendment. The courts, however, relying on Supreme Court decisions upholding the constitutional authority of Congress to regulate picketing which is for the purpose of accomplishing an unfair labor practice under the act,[58] consistently rejected the contention, stating that nothing in the constitution protected "picketing in furtherance of an unlawful objective as described in the Act." [59]

b. Currently Certified Union

As noted above, section 8(b) (7) prohibits picketing for recognition or organization under the conditions specified in the section only if the union is not "currently certified as the representative" of the employees involved. Section 9(c) of the act provides for the certification of representatives following a Board-conducted election. In *Fowler Hotel*,[60] however, the court suggests that the exemption from the provisions of section 8(b) (7) provided for a "currently certified" union should extend to one holding an unrevoked certification from a State board as well as one which has been certified under the procedures set forth in section 9 of the act.

c. An Object of Recognition or Organization

Section 8(b) (7) restricts picketing which has "an object of recognition or organization." In a number of cases the unions have contended that their picketing is for some purpose other than organization or recognition. In those cases where the court found, however, that "an" object of the picketing also was recognition or organization, it enjoined the picketing. The court in *Baronet* [61] stated, "All that is required under Sec. 8(b) (7) . . . of the Act is that '*an* object', and not the initial or original object nor the sole object, of the picketing, shall

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[58] *International Brotherhood of Electrical Workers* v. *N.L.R.B* (*Samuel Langer*), 341 U.S. 694, 704–705; *N.L.R.B.* v. *Denver Building & Construction Trades Council* (*Gould & Preisner*), 341 U.S. 675, 690–691.

[59] *McLeod* v. *Local 239, International Brotherhood of Teamsters* (*Stan-Jay Auto Parts*), 179 F. Supp. 481 (D.C. E. N.Y.); see also, *Greene* v. *International Typographical Union* (*Charlton Press, Inc.*), 182 F. Supp. 788 (D.C. Conn.); *Phillips* v. *International Ladies' Garment Workers* (*Saturn & Sedran, Inc.*), 45 LRRM 2363 (D.C. Tenn.).

[60] *Getreu* v. *Bartenders & Hotel & Restaurant Employees* (*Fowler Hotel*), 181 F. Supp 738 (D C. N. Ind.).

[61] *Compton* v. *Local 346, International Leather Goods Union* (*Baronet of Puerto Rico, Inc.*), 184 F. Supp 210 (D.C. P.R.).

consist of 'forcing or requiring an employer to recognize or bargain with a labor organization . . . *or* forcing or requiring the employees of an employer to accept or select such labor organization as their bargaining representative,'" and enjoined picketing which it found reasonable to believe not only had as a purpose protesting the layoff of employees but also had as an object compelling the employer to recognize or bargain with the union. In *Charlton Press* [62] the court, in finding reasonable cause to believe that the picketing violated section 8(b)(7), stated that the section restricted picketing for recognition, which object was admitted in that case, "even though the same picketing may have other objects as well."

d. Effect of Unfair Labor Practice Charges Filed Against Employer

In *Charlton Press* [63] the respondent union contended that section 8(b)(7) was not intended by Congress to apply to recognitional or organizational picketing if the employer had engaged in unfair labor practices. The court considered the limited restriction in section 10(l) against application for an injunction in a section 8(b)(7) situation if a meritorious charge was filed alleging that the employer had dominated or supported a labor organization in violation of section 8(a)(2) of the act and the rejection by Congress of a proposal that the filing of a section 8(a) charge should be made a defense to a section 8(b)(7) case. In view of the foregoing, the court concluded that Congress intended to restrict recognition and organization picketing even in cases where the employer itself may have engaged in an unfair labor practice. The court stated, "If the Union's claim were correct, the effectiveness of section 8(b)(7) could easily be reduced to nothing by raising a section 8(a) issue every time recognition picketing was sought to be controlled."

e. Restriction of Picketing Where Another Union Is the Contractual Representative

In fiscal 1960, only one case reached the district courts under the ban of section 8(b)(7)(A) against organizational and recognitional picketing where another union, which has been lawfully recognized, has a contract with the employer that bars an election. In that case, *Sitrue, Inc.*,[64] the employer, had recognized a local of the papermakers union for several years. A collective-bargaining contract in effect between the employer and the papermakers union covered all production and maintenance employees, including shipping and receiving room

[62] *Greene* v *International Typographical Union (Charlton Press, Inc.)*, 182 F. Supp. 788 (D.C Conn.).

[63] See fn. 59, *supra*.

[64] *Vincent* v *Local 182, International Brotherhood of Teamsters (Sitrue, Inc.)*, June 1, 1960 (No 8108, D.C. N. N.Y.).

employees. Without challenging the validity of the recognition of the papermakers local or the existence of a contract with that union which covered the employees involved and barred the holding of an election, the respondent union picketed the employer's plant to secure recognition as representative of the employer's shipping and receiving room employees. The court, entering preliminary findings that there was reasonable cause to believe the respondent union's picketing violated section 8(b)(7)(A), entered a temporary restraining order enjoining the picketing. Subsequently, the temporary restraining order was continued upon consent of respondent union.

f. Prohibition Against Picketing Within 12 Months of Election

Only several cases under section 8(b)(7)(B), which bans recognition or organization picketing within 12 months following a validly conducted Board election, reached the district courts in fiscal 1960. In *Alton Myers*,[65] finding that the Board had duly conducted an election some months before the effective date of the new amendments which the union had lost, and concluding that reasonable cause existed to believe that the union's picketing thereafter continued to have an organizational or recognitional objective, the court, after the new section 8(b)(7) became effective, enjoined the picketing for the unexpired portion of the 12-month period succeeding the election. In *Macatee*,[66] also involving picketing which continued after the union had lost an election conducted by the Board prior to the new amendments, the union sought review in the district court of the Board's decision in the representation proceeding that the union's striking members had been permanently replaced and, under the provisions of the act then in effect, therefore were ineligible to vote at the election.[67] The court, concluding that this determination of the Board in the representation proceeding was not reviewable in the section 10(l) proceeding, denied the request and enjoined the picketing, which admittedly was for a recognitional objective, for the remainder of the 12 months following the election. In *Berwyn Motor*,[68] the court also found reasonable cause to believe that picketing after the union lost an election conducted prior to the effective date of the new amendments continued to have a recognitional objective and enjoined it for the remainder of the 12-month period.

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[65] *Cosentino* v. *Local 344, Retail Clerks International Assn* (*Alton Myers Bros., Inc.*), 45 LRRM 2660 (D.C. S. Ill.).

[66] *Elliott* v. *Dallas General Drivers* (*Macatee, Inc.*), 45 LRRM 2428 (D.C. N. Tex.)

[67] At the time of the representation hearing and election, sec. 9(c)(3) of the act barred economic strikers from voting after being replaced. The amendments enacted in September 1959 preserve the right of such replaced strikers to vote in any election conducted within a year of the commencement of the strike.

[68] *Madden* v. *Automobile Mechanics Lodge No. 701* (*Berwyn Motor Sales, Inc.*), 46 LRRM 2572 (D.C. N. Ill.).

In *Adrian*,[69] the union had lost an election at the plant of a garment manufacturer, but was picketing an affiliated department store. The court, entering preliminary findings and conclusions of reasonable cause to believe that the picketing at the department store was to compel the garment manufacturer to recognize and bargain with the union notwithstanding the lost election and that it violated section 8(b)(7)(B), entered a temporary restraining order against the picketing at the store pending the hearing on the petition for injunction. Subsequently, the restraining order was modified by consent of the union to restrain such picketing for the balance of the 12-month period. In *Kinney*,[70] however, the court refused to enjoin picketing after a lost election which advertised that the picketed store did not "Operate Under AFL–CIO Union Conditions." In doing so the court seemed to read the second proviso to subparagraph (C) of section 8(b)(7) as removing picketing of the nature therein specified entirely from the restrictions of the section unless it stopped deliveries (see *infra*, pp. 166–167). In cases since fiscal 1960, other district courts have disagreed with this view and have held that the informational picketing specified in the proviso is permitted only in situations under subparagraph (C) and not in situations arising under subparagraph (B) after an election has been held.[71]

g. Other Organization and Recognition Picketing

Subparagraph (C) of section 8(b)(7) prohibits recognitional or organizational picketing for more than a reasonable period of time, not to exceed 30 days, without the filing of a petition for a Board election. This subparagraph is intended to regulate such picketing where there is no lawfully recognized union holding a contract which would bar an election, or where there has been no election within the preceding 12 months; in either of these situations such picketing is not permitted for any period (see *supra*, pp. 161–163). Where a timely petition is filed, subparagraph (C) provides for an expedited election.[72] A proviso to the subparagraph specifies, however, that picketing "for the purpose" of advising the public that the employer "does not employ members of, or have a contract with," the union is not prohibited unless it stops deliveries

[69] *Phillips* v. *International Ladies Garment Workers (Adrian, Inc.)*, Jan. 11, 1960 (No 960, D C N Ala).

[70] *Brown* v. *Department & Specialty Store Employees (Oakland G. R. Kinney Co)*, 187 F. Supp. 619 (D.C. N. Calif).

[71] See *Penello* v. *Retail Store Employees Local Union No. 692 (Irvins, Inc.)*, 188 F. Supp. 192 (D.C. Md.), affd. 47 LRRM 2698 (C.A. 4); *Kennedy* v. *Los Angeles Joint Executive Board (The Islander)*, Feb 27, 1961 (No. 90–61–Y, D C. S. Calif.).

[72] The election provisions of the subparagraph were considered in *Department & Specialty Store Employees* v. *Brown*, 187 F. Supp. 865 (D C. N. Calif), affd. 284 F. 2d 619 (C A. 9).

or causes a secondary work stoppage.[73] Most of the injunction cases under section 8(b)(7) during the fiscal year have involved the provisions of this subparagraph.

(1) Picketing by a Union Representing a Majority of the Employees

In *Charlton Press*,[74] the union contended that it represented a majority of the employees in the unit in which recognition was being sought, that an election was unnecessary to establish the union's representative status because this could be ascertained by counting the employees who had refused to cross the picket line, and that Congress did not intend section 8(b)(7)(C) to be applicable in such circumstances. The district court, however, stated that "While the main thrust of this new amendment to the . . . Act was to prevent recognition picketing by a union representing a minority of employees or none at all, 8(b)(7)(C) simply sets up a procedure whereby the factual qualifications of a union to act as the representative of a group of employees is to be determined by the N.L.R.B. . . . at an early stage. . . . The burden of going through the proceedings falls upon those who are in fact right as well as those who are in fact wrong."

(2) Necessity for Filing of Petition for Election

In the same case (*supra*), the union also contended that the requirement that a picketing union file a petition for an election within a reasonable period should not be applicable to a situation where the employer has refused to discharge his duty under the act to recognize and bargain with a majority union.[75] To this the district court replied that the section provides that "the union must have qualified for certification as the representative of the employees or to have petitioned for such certification if the picketing is to continue for more than thirty days. If the facts of the present case are as the Union says they are, and within the thirty days it had filed a petition under 9(c), its picketing would not have been interrupted at all. It now faces a temporary injunction, not because the law sets up a bar to picketing against an employer's unfair labor practices, but because the Union, after it embarked

[73] The proviso in full, states:

"Provided further, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services"

[74] *Greene* v. *International Typographical Union* (*Charlton Press, Inc.*), 182 F. Supp. 788 (D C. Conn).

[75] A charge alleging a refusal to bargain under sec. 8(a)(5) of the act, however, was not filed with the Board.

upon recognition picketing, disregarded or refused to follow the procedure under 8(b) (7) (C)."

(3) Reasonable Period of Time Within Which Election Petition Must Be Filed

The subparagraph specifies that the petition for an election to qualify as a bar to an unfair labor practice finding must be "filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing." In several cases in fiscal 1960, the district courts were required to interpret what less than 30 days, on the facts, constituted a "reasonable period of time." In *Saturn & Sedran*[76] the recognition picketing had been in progress for a number of months when the provisions of section 8(b) (7) went into effect on November 13, 1959. A charge under section 8(b) (7) (C) was filed with the Board on November 23, 1959, and a petition for injunctive relief alleging that the picketing had continued for more than a reasonable period of time without the filing of an election petition was filed with the court on December 2, 1959. Concluding that while "no act or conduct on the part of respondent occurring prior to [November 13. 1959] can be held or deemed to be an unfair labor practice" such conduct could be considered for other purposes, the court found reasonable cause to believe that, in view of the long period of picketing prior to November 13, 1959, the picketing after November 13, 1959, "had been conducted for more than a reasonable period of time prior to the filing of the petition for injunctive relief" without the filing of an election petition. In *Sapulpa*,[77] the court, which did not issue its injunction until December 9, 1959, found reasonable cause to believe that recognition picketing, which commenced on October 5, 1959, "has been conducted for more than fifteen (15) days since November 13, 1959, an unreasonable period of time without the filing of a petition . . . for a Board election." In *Q. T. Shoe*,[78] the district court found reasonable cause to believe that "ten days of violence, coercion and intimidation in organizational picketing before filing of a petition" for an election served to "shorten the period for which the Union may reasonably be allowed to picket before seeking the impartial intervention of the Board." Finding that by the union's conduct on the picket line prior to the filing of the election petition on the 11th day a "free choice has been improperly inhibited," and noting that "Under established Board policy the representation election will not be held until the effects on the employees of unlawful conduct on the part of the respondents have been dissipated," the

[76] *Phillips* v. *International Ladies' Garment Workers* (*Saturn & Sedran, Inc*), 45 LRRM 2363 (D.C. Tenn).

[77] *Elliott* v. *Sapulpa Typographical Union* (*Sapulpa Daily Herald*), 45 LRRM 2400 (D.C. N. Okla.).

[78] *Cuneo* v. *United Shoe Workers* (*Q. T. Shoe Mfg Co*), 181 F. Supp. 324 (D.C N.J.).

court stated that it "would be anomalous to hold that respondents may picket until such time as a free election may be held, where respondents' unlawful conduct" has delayed the holding of a free election. Similarly, the court in *Baronet*[79] stated that "No doubt Congress, in employing the term 'reasonable' [in section 8(b)(7)(C)], had in mind a peaceful picketing accompanied by an actual intention to file the Sec. 9(c) petition and diligent efforts to file it as promptly as possible."

In *Stan-Jay*[80] the argument was made that the commencement of the "reasonable period of time" should be counted from the date of the filing of the section 8(b)(7) charge in view of the Board's rules and regulations which provide that an expedited election will not be held on a petition unless a charge under section 8(b)(7) has been filed. The district court rejected the argument, pointing out that while the "filing of such a charge is a prerequisite to an *expedited* election," it "is not a prerequisite to the filing of a petition under § 9(c)."

(4) Publicity Proviso

In some of the injunction cases during the fiscal year unions have claimed that their picketing was exempted from the proscription of section 8(b)(7)(C) by the second proviso (*supra*, p. 163), which permits picketing for the purpose of advising the public that the employer does not employ members of or have a contract with the union as long as the picketing does not cause a secondary stoppage. In *Saturn & Sedran*[81] the union, after passage of the 1959 amendments but prior to their effective date, changed its picket signs, which initially had read "On strike for a contract," to proclaim that the employer did not "Employ Members" of the union and "Is Unfair to Organized Labor." No attempt, however, was made to withdraw prior demands for a contract. Finding that the picketing after the change in sign continued to be for a contract and "not for informational purposes," the court concluded that the proviso was inapplicable. Similarly, in *Sapulpa*,[82] where the union, after the filing of the section 8(b)(7)(C) charge, changed its picket sign to conform to the proviso but did not withdraw its demand for recognition, the court concluded that there was reasonable cause to believe that the publicity proviso did "not permit a labor organization to picket beyond the reasonable period"

[79] *Compton* v *Local 346, International Leather Goods Union (Baronet of Puerto Rico, Inc.)*, 184 F Supp. 210 (D C. P.R.).

[80] *McLeod* v. *Local 239, International Brotherhood of Teamsters (Stan-Jay Auto Parts)*, 179 F. Supp 481 (D C E N Y).

[81] *Phillips* v *International Ladies' Garment Workers (Saturn & Sedran, Inc)*, 45 LRRM 2363 (D.C Tenn.).

[82] *Elliott* v. *Sapulpa Typographical Union (Sapulpa Daily Herald)*, 45 LRRM 2400 (D.C. N. Okla.).

if "such picketing is to secure recognition," whether or not it stops deliveries. And in *Stan-Jay*,[83] where the union changed its picket sign to conform to the proviso but thereafter continued its demand for recognition, the court found "independent supporting evidence" that the union's demand for recognition "survived" the change in the picket sign and that "Congress did not intend by the general language in the proviso in § 8(b) (7) (C) to sanction that which it so expressly outlawed in the specific language immediately preceding the proviso."

In *Stork*,[84] the unions, after the section 8(b) (7) (C) charge had been filed, wrote the employer withdrawing their requests for recognition and changed their picket signs to assert that the employer "Does Not Have a Contract With" the unions and the employees "Do Not Enjoy Union Wages, Hours & Working Conditions." The district court, commenting on the unions' letter, noted that while it withdrew the demand for recognition there was "no indication that the unions have withdrawn their demand to bargain with the employer." Coupling this with the language on the picket sign asserting that the employer did not have a contract with the unions, the district court concluded that the unions' objective could not be "construed other than that the picketing will continue until there is such a contract." Holding that "a contract presupposes bargaining" and that the section proscribes "picketing not merely for 'recognitional' purposes but also where an objective is to 'require an employer to bargain' with the union as a representative of its employees," [85] the district court concluded that there was reasonable cause to believe that, apart from the stoppage of deliveries, the changed picketing was not protected by the proviso and enjoined it in its entirety.[86] In *Fowler*,[87] where injunctive relief was denied for several reasons, the court construed the proviso to permit picketing for an object of bargaining "if 'the purpose' of such picketing is also truthfully to inform the public that the employer does not have a contract with the union" and the picketing does not curtail delivery services to the employer. No stoppages occurred in that case.

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[83] *McLeod* v. *Local 239, International Brotherhood of Teamsters (Stan-Jay Auto Parts)*, 179 F. Supp. 481 (D C. E. N.Y).

[84] *McLeod* v *Chefs, Cooks, Pastry Cooks & Assistants (Stork Restaurant)*, 181 F Supp. 742 (D C. S. N.Y.)

[85] The exact language is "forcing or requiring an employer to recognize or bargain with a labor organization."

[86] After the fiscal year, the Second Circuit on appeal reversed the district court's conclusion that the disclaimer letter was insufficient to clear the way for proviso picketing and, because the changed picketing continued to stop deliveries, remanded the case to the district court for the entry of an order restraining the picketing only insofar as it affected the deliveries See *McLeod* v. *Chefs, Cooks, Pastry Cooks & Assistants,* 280 F. 2d 760. On a subsequent appeal from the remand, one of the judges on another panel of the Second Circuit noted his disagreement with the conclusion of the first panel. *See McLeod* v. *Chefs, Cooks, Pastry Cooks & Assistants,* 47 LRRM 2541, 2543 (C.A. 2).

[87] *Getreu v. Bartenders & Hotel & Restaurant Employees (Fowler Hotel, Inc.)*, 181 F. Supp. 738 (D C N. Ind.).

VIII

Contempt Litigation

During fiscal 1960 petitions for adjudication in civil contempt of parties for noncompliance with decrees enforcing Board orders were acted upon by the respective courts in two cases. The Board's petition was granted by the Ninth Circuit in *Carpinteria Lemon Association*[1] and denied by the Fourth Circuit in *Spartanburg Sportswear Company*.[2]

In *Carpinteria*, the Ninth Circuit agreed with the Board that the employer associations had failed to bargain in good faith with the union as required by the court's decrees.[3] The court found that after the entry of these decrees, the associations adopted a consistent pattern of delay and impediment to negotiation. The court noted that the associations commenced negotiations only after announcing that their decision to petition for certiorari would depend on the outcome of the negotiations and that the court order required them to bargain—not to come to terms. Furthermore, the court found, although all the associations were located in the same area and were represented by common counsel, they insisted that the union bargain with each association separately. Moreover, the court pointed out, although the union pressed for frequent bargaining sessions, the associations' representatives found frequent sessions to be inconvenient, and comparatively few were held. Finally, the court said, the associations broke off negotiations as soon as decertification petitions were filed, and refused to resume negotiations after the petitions were dismissed. The court concluded that these facts, when considered in the context of the long history of antagonism and the strained bargaining relationship existing between the parties, clearly showed that the associations had failed to bargain in good faith with the union as required by the decree. Moreover, the court found the case to be a proper one for imposition of costs incurred by the Board in the preparation and prosecution of the petition for contempt.

In *Spartanburg Sportswear*, the Board contended that the employer committed contempt in not reinstating in good faith two employees whose reinstatement the Fourth Circuit had previously or-

[1] *Carpinteria Lemon Association, Inc., et al.* v. *N.L.R.B.*, 274 F. 2d 492.

[2] *N.L.R.B.* v. *Spartanburg Sportswear Co.*, 278 F. 2d 312.

[3] These decrees were issued in accordance with the opinion in *Carpinteria Lemon Association, et al.* v. *N.L.R.B.*, 240 F. 2d 554, certiorari denied 354 U.S. 909.

dered on the ground that their discharge was an unfair labor practice.[4] The court referred the matter to a Special Master, who concluded that the Board had failed to meet the burden resting upon it to show by clear and convincing proof that the employer had violated the court's decree. The court stated that while the evidence was in conflict and there was room for opposing inferences, it was for the Master to resolve the factual question. The court therefore affirmed the Master's report and dismissed the Board's petition.

[4] *N.L.R.B.* v. *Spartanburg Sportswear Co.*, 246 F. 2d 366.

IX

Miscellaneous Litigation

Litigation for the purpose of aiding or protecting the Board's processes during fiscal 1960 was concerned with the defense of suits by parties seeking prehearing inspection of affidavits on file with the Board's regional director, review or nullification of orders in representation proceedings, and review of the refusal of the Board's General Counsel to issue an unfair labor practice complaint.

1. Prehearing Inspection of Affidavits

In the *Vapor Blast* case, an employer which had been named as respondent in an unfair labor practice complaint sought a declaratory judgment stating that it had a right to inspect, prior to the hearing, certain affidavits on file with the regional director which had been obtained in the course of investigating the charges. The employer contended that the suppression of the documents deprived it of its due process rights to a full and fair proceeding because it needed to inspect these affidavits in order fully to prepare for the unfair labor practice proceedings. The Seventh Circuit affirmed [1] the district court's action [2] in dismissing the complaint for lack of jurisdiction over the subject matter, on the ground that section 10 (e) and (f) of the act provides an adequate and exclusive procedure for seeking judicial determination of the validity of the contentions presented in the complaint.[3]

2. Petition for Judicial Intervention in Representation Proceedings

Applications for district court relief from Board action at varying stages of representation proceedings during the past year were opposed by the Board primarily on the ground that the court was without jurisidiction to grant relief.

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[1] *Vapor Blast Mfg. Co* v. *Madden,* 46 LRRM 2559, June 30, 1960 (C A 7), certiorari denied, 81 S. Ct. 273.

[2] *Vapor Blast Mfg. Co* v. *Madden,* 45 LRRM 2900, Oct. 14, 1959 (D C. N D. Ill).

[3] While the appeal was pending, the unfair labor practice hearing was held as scheduled, and the Board issued its decision sustaining the complaint in part *Vapor Blast Mfg. Co ,* 126 NLRB 74. The case is now pending before the Seventh Circuit under sec. 10(e) of the act.

In several of these cases the petitioners asserted that the challenged Board action exceeded statutory authority and, therefore, could be nullified by the district court in the exercise of its equity powers. Two cases involved the "expedited-election" procedure set forth in section 8(b) (7) (C), which the 1958 amendments [4] added to the act.[5] One of these cases [6] arose out of a representation petition which an employer had filed concurrently with a charge alleging that a union's picketing violated section 8(b) (7). Pursuant to the procedure prescribed in the Board's rules and regulations,[7] the defendant regional director, having determined, following an investigation, that the picketing was for an object proscribed by section 8(b) (7) and that an expedited election under subsection (C) was warranted, dismissed the charge and directed an election. Thereupon the union petitioned the district court for an injunction restraining the regional director from proceeding with the scheduled election on the ground that the regional director's refusal to conduct a preelection hearing on the object of the picketing violated constitutional and statutory safeguards. In denying the injunction, the court held that the union had failed to establish a violation of the act, a deprivation of due process, or a derogation of the union's constitutional right to free speech.

In the *Peterson Spring* case,[8] a union and two of its individual members unsuccessfully sought to compel the Board's regional director to use the expedited-election procedure in processing the union's representation petition, which involved the individual plaintiffs' employer. The union had also prepared, and the individual plaintiffs signed,

[4] 73 Stat. 519

[5] Sec 8(b)(7) provides, in part, "It shall be an unfair labor practice for a labor organization or its agents . . . to picket . . . any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, . . (C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: Provided, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof . "

Sec. 9(c)(1) provides, in part, "Whenever a petition shall have been filed . (A) by an employee or group of employees or any . labor organization acting on their behalf alleging that a substantial number of employees (1) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), . . . or (B) by an employer, alleging that one or more . . . labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a); the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

[6] *Department & Specialty Store Employees Union, Local 1265* v. *Brown* (*G R Kinney Co.*), 45 LRRM 3101, Mar 29, 1960 (D C. N Calif)

[7] Series 8, secs. 102.73 to 102.80

[8] *Reed, et al.* v *Roumell* (*Peterson Spring Co*), 185 F Supp 4 (D C. E Mich.)

charges alleging that the union had set up a picket line which violated section 8(b)(7)(C). The court agreed with the regional director that a valid unfair labor practice charge is a prerequisite to the invocation of an expedited election, and that the charges in this case did not meet this requirement because the union had in effect filed them against itself.

The District of Columbia Circuit decided several cases in which petitioners sought to invoke the equity jurisdiction of the District Court for the District of Columbia in connection with representation proceedings. Thus, in the *Norwich* case the plaintiff local contended that the Board violated section 9(b)(2) of the act [9] by rejecting its request for a separate election among certain employees who allegedly constituted an appropriate craft unit and, therefore, that the district court had jurisdiction to act on plaintiffs' petition to enjoin the Board from conducting an election in a production and maintenance group which included such alleged craftsmen. Setting aside the injunction granted by the district court on this theory,[10] the District of Columbia Circuit held [11] that the Board's action did not violate section 9(b)(2) because the denial of severance [12] was not based "on the ground that a different unit [had] been established by a prior Board determination," but was based on the Board's finding that the local did not meet the "traditional representative" test promulgated in *American Potash*.[13] Thereupon, the court further concluded that since the *American Potash* doctrine "lies within the discretionary area of Board unit determination, the case did not present a situation where the Board had "failed to give effect to a clear statutory command," and therefore the district court lacked jurisdiction to entertain the suit.

In the *General Motors* case,[14] the plaintiff unions contended that the Board had violated section 9(c)(5)[15] by dismissing their respective petitions for single-plant units of certain employees, who allegedly were craftsmen, on the ground that requests for severance elections must be coextensive with the existing bargaining unit. This unit, the Board found, was employerwide as shown by the long history of

[9] Sec. 9(b)(2) precludes the Board from deciding that any craft unit is inappropriate "on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation. . . ."

[10] *Norwich, Connecticut, Printing Specialties and Paper Products Union, Local 494, et al.* v. *Leedom, et al*, 45 LRRM 2589, Sept 22, 1959 (D.C. D.C.).

[11] *Leedom, et al* v. *Norwich, Connecticut, Printing Specialties and Paper Products Union, Local 494, et al*, 275 F. 2d 628, certiorari denied 362 U.S. 969.

[12] *Robertson Paper Box Co, Inc*, 124 NLRB 348.

[13] *American Potash & Chemical Corp.*, 107 NLRB 1418. See Nineteenth Annual Report, pp 39–41, 43–44 See also *supra*, p. 38

[14] *International Association of Tool Craftsmen* v. *Leedom (General Motors Corp)*, 276 F. 2d 514, certiorari denied 364 U.S. 815.

[15] Sec. 9(c)(5) provides, in pertinent part, "In determining whether a unit is appropriate . . . the extent to which the employees have organized shall not be controlling."

collective bargaining on such a basis.[16] The court of appeals, affirming the district's denial of the union's request for equitable relief, held that there was no showing that the Board violated "clear and mandatory" statutory language.[17] The language and legislative history of section 9(c)(5), according to the court, support the Board's position that "extent of organization"—which may not be given controlling weight in determining bargaining units—is not identical with bargaining history. This, the Board had urged, was apparent from the purpose of section 9(c)(5), which is to preclude the Board from certifying smaller-than-normal units solely because the union had organized less than a majority of the employees in what otherwise would be an appropriate unit, rather than to preclude the Board from considering a successful history of bargaining in determining what constitutes an appropriate unit.

In the *General Cable* case, both parties to a collective-bargaining agreement sought to enjoin the Board from conducting a representation election in the contract unit during the third year of the contract, pursuant to the Board's current contract-bar policy.[18] Under the Board's policy in effect when the contract was signed, the contract would have been regarded as a bar to a rival petition for its full 3-year term.

The district court dismissed [19] the employer's suit on the ground that the employer had an adequate statutory remedy for obtaining review of the Board's action under section 10(e) or 10(f) of the act. However, it granted the union's request for a preliminary injunction, being of the view that the retroactive application of the Board's new contract-bar policy deprived the union of due process. The Court of Appeals for the District of Columbia Circuit held that the district court correctly dismissed the employer's suit, but that it had no jurisdiction to grant injunctive relief to the union.[20] According to the court of appeals, the retroactive application of the new contract-bar rules and consequent direction of a new election did not amount to a departure from constitutional due-process requirements, although the union may have been inconvenienced thereby and may lose its representation rights. The Board could properly determine, the court held, that the disadvantages to the union were outweighed by the requirements of "orderly procedure and administrative flexibility."

The court of appeals also rejected the union's contention—not con-

[16] *General Motors Corp., Cadillac Motor Car Division,* 120 NLRB 1215.

[17] The court cited *Leedom* v. *Kyne,* 358 U.S. 184, 188.

[18] See *supra,* p. 29.

[19] *International Brotherhood of Electrical Workers, Local Union No. 108, AFL–CIO* v. *Leedom (General Cable Corp.),* 44 LRRM 2754, Sept. 1, 1959 (D.C. D.C.).

[20] *Leedom et al.* v. *International Brotherhood of Electrical Workers Local Union No. 108, AFL–CIO,* 278 F. 2d 237.

sidered by the district court—that it was improper for the Board to permit a union other than the incumbent to participate in the decertification proceeding and to place its name on the ballot. The court found no "clear and mandatory" direction in the act requiring exclusion of rival unions from a decertification election or requiring that the employees be limited to a single choice between the incumbent union or no union.[21]

In another case involving a similar issue,[22] a union which was a party to a collective-bargaining agreement sought to enjoin the Board's regional director from conducting an election in the contract unit during the effective period of the contract, on the ground that in directing the election the Board deprived the union of due process by giving retroactive effect to its new contract-bar rule that an amendment purporting to cure an otherwise invalid union-security provision is insufficient to sustain the contract as a bar to an election.[23] This rule was enunciated after the execution of the original contract, which contained an unlawful union-security provision. In reliance on the *General Cable* case, *supra*, the district court held that the direction of election did not deprive the union of due process even though the contract had been corrected before a rival union filed the petition pursuant to which the election was directed.

However, in a case in which the Board had directed an election based on the prospective application of the same contract-bar rule to a situation where the parties had corrected the unlawful union-security provision shortly after execution, the same district court[24] enjoined the regional director from conducting further proceedings in accordance with the direction of election, and set aside the election itself, on the ground that the Board's action in directing an election in the contract unit was, in the circumstances presented, improper. The court also held that since the parties had amended the unlawful clause more than 6 months prior to the filing of the representation petition by the rival union, the Board's direction of election violated section 10(b) of the act. The Board has appealed the case to the Second Circuit.

In the *Sheridan Silver* case,[25] the district court granted the motion of the Board's regional director to dismiss, for lack of jurisdiction, an

[21] The court of appeals declined to remand the case to the district court for a determination of this issue, noting that "with the possibility for further appeal to this court, the 3-year contract will have expired and the union will have obtained the relief it requested even though it loses on the merits."

[22] *Local 719, International Production Service and Sales Employees Union* v *McLeod (S & S Sheet Metal Co)*, 183 F. Supp. 790 (D C E. N.Y.).

[23] See *Keystone Coat, Apron & Towel Supply Co.*, 121 NLRB 880, see also *supra*, P. 173

[24] *Local 476, United Brotherhood of Industrial Workers* v. *McLeod (Anton Electronic Laboratories)*, 46 LRRM 2454, May 23, 1960 (D C. N.Y.).

[25] *Sheridan Silver Co., Inc* v *Alpert*, 45 LRRM 2308, Dec. 15, 1959 (D.C. Mass.).

employer's petition for an injunction prohibiting him from conducting an election among the employer's employees.[26] The court stated that it could not exercise its general equity jurisdiction because the employer, although contending that the regional director's selection of the time and place of the election was improper, did not allege that he had denied it any constitutional rights or overstepped the bounds of his statutory authority. Nor could the employer rely on section 10 of the Administrative Procedure Act,[27] the court held, since this statute does not confer jurisdiction on the district courts to review representation proceedings.

In a case involving the effect on the Board's processes of the AFL–CIO "no-raiding" pact,[28] an international union and one of its locals, which had lost a Board representation election conducted by defendant regional director, instituted a suit, under section 301 of the Labor Management Relations Act,[29] to compel the winning local to withdraw the representation petition pursuant to which the election had been held. Plaintiffs by the action sought to enforce an arbitration award, issued pursuant to the "no-raiding" agreement, which found that defendant local breached the agreement by seeking to obtain a Board certification as the bargaining representative of a unit previously represented by plaintiff local. In granting defendants' motion to dismiss the complaint for lack of jurisdiction over the subject matter, the district court held that effectuation of the policies of the National Labor Relations Act impels the conclusion that a "no-raiding" agreement cannot be permitted to circumvent the policy of that act by ousting or limiting the jurisdiction of the Board over representation disputes.

3. Petition for District Court Relief in Unfair Labor Practice Proceeding

In one case decided during the year,[30] two individuals asked the District Court for the District of Columbia to require the General Counsel to issue an unfair labor practice complaint based upon charges filed by them. Plaintiffs also sought to compel the Board to set aside the General Counsel's refusal to issue such a complaint. The District

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[26] Some of the events which led up to the injunction proceeding are set forth in *Sheridan Silver Co., Inc.*, 126 NLRB 877.

[27] 60 Stat. 242, 5 U.S.C., Sec. 1009.

[28] *International Union of Doll & Toy Workers of the United States and Canada et al.* v. *Metal Polishers, Buffers, Platers & Helpers International Union AFL–CIO, et al.* (*Cadmium & Nickel Plating Co.*), 180 F. Supp. 280 (D.C. So. Calif.).

[29] 61 Stat. 136, 29 U.S.C. Sec. 185(a). This statute provides, in part, "Suits for violation of contracts . . . between any . . . labor organizations [representing employees in an industry affecting commerce as defined in this Act] may be brought in any district court of the United States having jurisdiction of the parties . . ."

[30] *Bandlow et al.* v. *Rothman, et al.*, 278 F. 2d 866, certiorari denied 364 U.S. 909.

of Columbia Circuit affirmed the district court's action in dismissing the complaint on the grounds that it had no jurisdiction of the subject matter and that the complaint failed to state a claim on which relief could be granted. The court of appeals stated that the district court has no power to order the General Counsel to issue a complaint and no power to require the Board to issue an order in a matter which is not before the Board.

APPENDIX A

Statistical Tables for Fiscal Year 1960

Table 1.—Total Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1960

	Number of cases				
	Total	Identification of complainant or petitioner			
		AFL–CIO affiliates	Unaffiliated unions	Individuals	Employers
	All cases [1]				
Pending July 1, 1959	7,663	2,487	1,199	3,045	932
Received fiscal 1960	21,527	8,669	4,672	5,987	2,199
On docket fiscal 1960	29,190	11,156	5,871	9,032	3,131
Closed fiscal 1960	22,183	8,603	4,599	6,747	2,234
Pending June 30, 1960	7,007	2,553	1,272	2,285	897
	Unfair labor practice cases				
Pending July 1, 1959	5,425	1,228	479	2,938	780
Received fiscal 1960	11,357	3,207	1,356	5,325	1,469
On docket fiscal 1960	16,782	4,435	1,835	8,263	2,249
Closed fiscal 1960	11,924	3,057	1,308	6,090	1,469
Pending June 30, 1960	4,858	1,378	527	2,173	780
	Representation cases				
Pending July 1, 1959	2,230	1,259	720	99	152
Received fiscal 1960	10,130	5,460	3,315	625	730
On docket fiscal 1960	12,360	6,719	4,035	724	882
Closed fiscal 1960	10,218	5,544	3,290	619	765
Pending June 30, 1960	2,142	1,175	745	105	117
	Union-shop deauthorization cases				
Pending July 1, 1959	8	0	0	8	----
Received fiscal 1960	40	2	1	37	----
On docket fiscal 1960	48	2	1	45	----
Closed fiscal 1960	41	2	1	38	----
Pending June 30, 1960	7	0	0	7	----

[1] **Definitions of Types of Cases Used in Tables.**—The following designations, used by the Board in numbering cases, are used in the tables in this appendix to designate the various types of cases.

CA A charge of unfair labor practices against an employer under sec 8(a).

CB A charge of unfair labor practices against a labor organization under sec. 8(b) (1), (2), (3), (5), (6).

CC A charge of unfair labor practices against a labor organization under sec. 8(b)(4) (A), (B), (C).

CD A charge of unfair labor practices against a labor organization under sec 8(b)(4)(i)(D)

CE A charge of unfair labor practices against a labor organization and employer under sec 8(e).

CP A charge of unfair labor practices against a labor organization under sec 8(b)(7) (A), (B), (C).

RC A petition by a labor organization or employees for certification of a representative for purposes of collective bargaining under sec 9(c)(1)(A)(i)

RM. A petition by employer for certification of a representative for purposes of collective bargaining under sec. 9(c)(1)(B).

RD: A petition by employees under sec. 9(c)(1)(A)(ii) asserting that the union previously certified or currently recognized by their employer as the bargaining representative no longer represents a majority of the employees in the appropriate unit.

UD. A petition by employees under sec. 9(e)(1) asking for a referendum to rescind a bargaining agent's authority to make a union-shop contract under sec. 8(a)(3)

Table 1A.—Unfair Labor Practice and Representation Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1960

	Number of unfair labor practice cases					Number of representation cases				
	Total	Identification of complainant				Total	Identification of petitioner			
		AFL–CIO affiliates	Unaffiliated unions	Individuals	Employers		AFL–CIO affiliates	Unaffiliated unions	Individuals	Employers
	CA cases [1]					RC cases [1]				
Pending July 1, 1959	3,393	1,170	448	1,760	20	1,979	1,259	719	1	
Received fiscal 1960	7,723	3,127	1,260	3,323	13	8,795	5,458	3,314	23	
On docket fiscal 1960	11,121	4,297	1,708	5,083	33	10,774	6,717	4,033	24	
Closed fiscal 1960	7,924	2,962	1,211	3,720	31	8,853	5,542	3,288	23	
Pending June 30, 1960	3,197	1,335	497	1,363	2	1,921	1,175	745	1	
	CB cases [1]					RM cases [1]				
Pending July 1, 1959	1,560	49	30	1,169	312	152				152
Received fiscal 1960	2,505	65	74	1,937	429	728				728
On docket fiscal 1960	4,065	114	104	3,106	741	880				880
Closed fiscal 1960	2,957	82	81	2,309	485	763				763
Pending June 30, 1960	1,108	32	23	797	256	117				117
	CC cases [1]					RD cases [1]				
Pending July 1, 1959	395	8	1	8	378	99	0	1	98	0
Received fiscal 1960	644	6	13	34	591	607	2	1	602	2
On docket fiscal 1960	1,039	14	14	42	969	706	2	2	700	2
Closed fiscal 1960	651	7	8	34	602	602	2	2	596	2
Pending June 30, 1960	388	7	6	8	367	104	0	0	104	0

CD cases [1]					
Pending July 1, 1959	72	1	0	1	70
Received fiscal 1960	186	8	4	17	157
On docket fiscal 1960	258	9	4	18	227
Closed fiscal 1960	193	5	4	16	168
Pending June 30, 1960	65	4	0	2	59
CE cases [1]					
Pending July 1, 1959					
Received fiscal 1960	26	1	1	1	23
On docket fiscal 1960	26	1	1	1	23
Closed fiscal 1960	15	1	0	1	13
Pending June 30, 1960	11	0	1	0	10
CP cases [1]					
Pending July 1, 1959					
Received fiscal 1960	273	0	4	13	256
On docket fiscal 1960	273	0	4	13	256
Closed fiscal 1960	184	0	4	10	170
Pending June 30, 1960	89	0	0	3	86

[1] See table 1, footnote 1, for definitions of types of cases.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1960

A. CHARGES FILED AGAINST EMPLOYERS UNDER SEC. 8(a)

	Number of cases showing specific allegations	Percent of total cases		Number of cases showing specific allegations	Percent of total cases
Total cases	[1] 7,723	[1] 100 0	8(a)(3)	6,044	78 3
			8(a)(4)	184	2 4
8(a)(1)	[2] 7,723	[2] 100 0	8(a)(5)	1,753	22 7
8(a)(2)	820	10 6			

B CHARGES FILED AGAINST UNIONS UNDER SEC. 8(b)

Total cases	[1] 3,608	[1] 100 0	8(b)(3)	282	7 8
			8(b)(4)	830	23 0
8(b)(1)	2,196	60 9	8(b)(5)	16	.4
8(b)(2)	1,953	54 1	8(b)(6)	20	.6
			8(b)(7)	273	7 6

C. ANALYSIS OF 8(b)(4) AND 8(b)(7)

Total cases 8(b)(4)	[1] 830	[1] 100 0	Total cases 8(b)(7)	[1] 273	[1] 100 0
8(b)(4)(A)	327	39 4	8(b)(7)(A)	20	7 3
8(b)(4)(B)	417	50 2	8(b)(7)(B)	26	9 5
8(b)(4)(C)	29	3 5	8(b)(7)(C)	229	83 9
8(b)(4)(D)	186	22 4			

D. CHARGES FILED AGAINST UNIONS AND EMPLOYERS UNDER SEC 8(e)

Total cases 8(e)	26	100 0			

[1] A single case may include allegations of violations of more than one section of the act. Therefore, the total of the various allegations is more than the figures for total cases

[2] An 8(a)(1) is a general provision forbidding any type of employer interference with the rights of the employees guaranteed by the act, and therefore is included in all charges of employer unfair labor practices.

Table 3.—Formal Action Taken, by Number of Cases, Fiscal Year 1960

Formal action taken	Unfair labor practice cases				Representation cases
	All cases	All C cases [1]	CA cases [1]	Other C cases [1]	
Complaints issued	2,141	2,141	1,480	661	----------
Notices of hearing issued	5,337	49	----------	49	5,288
Cases heard	4,420	1,474	1,046	428	2,946
Intermediate reports issued	1,226	1,226	882	344	----------
Decisions issued, total	4,122	1,456	857	599	2,666
Decisions and orders	934	934	[2] 643	[3] 291	----------
Decisions and consent orders	522	522	214	308	----------
Elections directed	2,167	----------	----------	----------	2,167
Rulings on objections and/or challenges in stipulated election cases	208	----------	----------	----------	208
Dismissals on record	291	----------	----------	----------	291

[1] See table 1, footnote 1, for definitions of types of cases

[2] Includes 99 cases decided by adoption of intermediate report in absence of exceptions.

[3] Includes 54 cases decided by adoption of intermediate report in absence of exceptions.

Table 4.—Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1960

A BY EMPLOYERS [1]

	Total	By agreement of all parties	By Board or court order
	Cases		
Notice posted	1,482	1,220	262
Recognition or other assistance withheld from employer-assisted union	248	206	42
Employer-dominated union disestablished	33	24	9
Workers placed on preferential hiring list	90	82	8
Collective bargaining begun	269	219	50
	Workers		
Workers offered reinstatement to job	1,885	1,560	325
Workers receiving backpay	3,110	[2] 2,136	[3] 974
Backpay awards	$1,041,080	$610,070	$431,010

B. BY UNIONS [4]

	Total	By agreement of all parties	By Board or court order
	Cases		
Notice posted	817	622	195
Union to cease requiring employer to give it assistance	226	181	45
Notice of no objection to reinstatement of discharged employees	184	165	19
Collective bargaining begun	46	37	9
	Workers		
Workers receiving backpay	307	[2] 261	[3] 46
Backpay awards	$98,730	$72,960	$25,770

[1] In addition to the remedial action shown, other forms of remedy were taken in 140 cases.
[2] Includes 162 workers who received backpay from both employer and union
[3] Includes 25 workers who received backpay from both employer and union.
[4] In addition to the remedial action shown, other forms of remedy were taken in 146 cases.

Table 5.—Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1960

Industrial group [1]	Unfair labor practice cases								Representation cases			
	All cases	All C cases	CA [2]	CB [2]	CC [2]	CD [2]	CE [2]	CP [2]	All R cases	RC [2]	RM [2]	RD [2]
Total	21,847	11,357	7,723	2,505	644	186	26	273	10,139	8,795	728	607
Manufacturing	11,014	5,199	4,009	878	183	32	10	87	5,815	5,067	367	381
Ordnance and accessories	35	19	11	6	2	0	0	0	16	15	1	0
Food and kindred products	1,650	738	529	156	36	6	2	9	912	807	57	48
Tobacco manufacturers	24	10	8	2	0	0	0	0	14	13	1	0
Textile mill products	262	144	116	22	4	0	0	2	118	97	14	7
Apparel and other finished products made from fabric and similar materials	421	267	180	45	18	2	3	19	154	102	36	16
Lumber and wood products (except furniture)	404	162	146	13	2	0	0	1	242	209	19	14
Furniture and fixtures	474	219	194	16	2	2	1	4	255	220	14	21
Paper and allied products	403	145	113	24	4	0	1	3	258	237	10	11
Printing, publishing, and allied industries	644	293	201	53	14	7	1	17	351	308	23	20
Chemicals and allied products	589	199	155	23	16	2	0	3	390	337	21	32
Products of petroleum and coal	141	70	55	12	2	1	0	0	71	66	2	3
Rubber products	347	159	132	18	6	0	0	3	188	167	10	11
Leather and leather products	181	116	90	19	3	0	0	4	65	60	2	3
Stone, clay, and glass products	739	389	289	63	25	6	0	6	350	292	36	22
Primary metal industries	668	313	226	74	9	1	1	2	355	305	14	36
Fabricated metal products (except machinery and transportation equipment)	1,243	576	450	100	13	3	0	10	667	587	32	48
Machinery (except electrical)	828	317	256	48	8	2	1	2	511	445	37	29
Electrical machinery, equipment, and supplies	768	387	317	66	4	0	0	0	381	333	14	34
Aircraft and parts	219	134	94	34	6	0	0	0	85	77	1	7
Ship and boat building and repairing	126	77	58	18	1	0	0	0	49	42	1	6
Automotive and other transportation equipment	375	224	196	25	3	0	0	0	151	134	10	7
Professional, scientific, and controlling instruments	140	84	70	13	1	0	0	0	56	52	3	1
Miscellaneous manufacturing	333	157	123	28	4	0	0	2	176	162	9	5
Agriculture, forestry, and fisheries	23	8	8	0	0	0	0	0	15	13	1	1
Mining	357	256	150	90	9	2	0	5	101	87	9	5
Metal mining	75	45	25	13	5	2	0	0	30	29	0	1
Coal mining	193	164	93	68	1	0	0	2	29	27	1	1
Crude petroleum and natural gas production	9	4	2	2	0	0	0	0	5	4	1	0
Nonmetallic mining and quarrying	80	43	30	7	3	0	0	3	37	27	7	3

Construction	2,305	2,013	876	732	256	109	2	38	292	272	19	1
Wholesale trade	1,558	525	394	69	38	7	1	16	1,033	907	71	55
Retail trade	2,375	1,025	756	118	49	6	4	92	1,350	1,089	162	99
Finance, insurance, and real estate	123	58	51	3	3	0	0	1	65	62	0	3
Transportation, communication, and other public utilities	2,359	1,459	935	413	73	21	2	15	900	801	60	39
Local passenger transportation	153	91	68	23	0	0	0	0	62	53	5	4
Motor freight, warehousing, and transportation services	1,232	741	538	147	35	11	2	8	491	442	30	19
Water transportation	427	343	148	167	24	2	0	2	84	78	5	1
Other transportation	79	39	22	8	4	2	0	3	40	38	0	2
Communications	226	94	78	8	2	4	0	2	132	111	12	9
Heat, light, power, water, and sanitary services	242	151	81	60	8	2	0	0	91	79	8	4
Services	1,373	814	544	202	33	9	7	19	559	497	39	23

[1] Source Standard Industrial Classification, Division of Statistical Standards, U.S. Bureau of the Budget, Washington 1957.
[2] See table 1, footnote 1, for definitions of types of cases.

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1960

Division and State [1]	All cases	Unfair labor practice cases							Representative cases			
		All C cases	CA [2]	CB [2]	CC [2]	CD [2]	CE [2]	CP [2]	All R cases	RC [2]	RM [2]	RD [2]
Total	21,487	11,357	7,723	2,505	644	186	26	273	10,130	8,795	728	607
New England	975	474	364	67	30	3	0	10	501	440	36	25
Maine	50	21	15	5	1	0	0	0	29	28	0	1
New Hampshire	40	21	16	4	0	0	0	1	19	13	5	1
Vermont	22	6	6	0	0	0	0	0	16	14	2	0
Massachusetts	553	274	224	36	6	2	0	6	279	244	20	15
Rhode Island	87	44	33	4	5	1	0	1	43	35	7	1
Connecticut	223	108	70	18	18	0	0	2	115	106	2	7
Middle Atlantic	4,893	2,710	1,722	690	158	49	8	83	2,183	1,893	163	127
New York	2,620	1,538	957	419	88	17	4	53	1,082	928	96	58
New Jersey	944	489	324	108	33	12	2	10	455	391	31	33
Pennsylvania	1,329	683	441	163	37	20	2	20	646	574	36	36
East North Central	4,648	2,439	1,758	502	88	33	3	55	2,209	1,926	149	134
Ohio	1,331	614	437	124	24	3	1	25	717	626	60	31
Indiana	678	393	277	92	12	3	1	8	285	244	20	21
Illinois	1,415	846	591	184	32	21	1	17	569	508	32	29
Michigan	956	506	385	94	17	6	0	4	450	385	28	37
Wisconsin	268	80	68	8	3	0	0	1	188	163	9	16
West North Central	1,437	655	421	142	57	17	2	16	782	675	59	48
Iowa	129	36	24	6	3	2	0	1	93	85	4	4
Minnesota	251	70	48	7	10	4	0	1	181	153	22	6
Missouri	616	325	220	67	26	3	2	7	291	253	17	21
North Dakota	43	12	11	0	0	0	0	1	31	25	3	3
South Dakota	33	6	6	0	0	0	0	0	27	22	2	3
Nebraska	194	113	61	45	6	0	0	1	81	74	5	2
Kansas	171	93	51	17	12	8	0	5	78	63	6	9
South Atlantic	2,596	1,486	1,111	231	94	27	1	22	1,110	1,011	48	51
Delaware	35	15	10	2	2	1	0	0	20	19	1	0
Maryland	278	120	79	26	8	5	0	2	158	138	7	13

District of Columbia	101	46	24	11	5	4	0	2	55	50	4	1
Virginia	215	64	55	5	3	0	0	1	151	134	10	7
West Virginia	212	124	75	38	7	3	0	1	88	83	3	2
North Carolina	204	122	119	3	0	0	0	0	82	73	3	6
South Carolina	81	57	40	8	7	0	1	1	24	20	3	1
Georgia	363	201	143	47	4	2	0	5	162	145	8	9
Florida	1,107	737	566	91	58	12	0	10	370	349	9	12
East South Central	1,017	578	397	124	37	7	2	11	439	395	27	17
Kentucky	217	111	76	24	7	2	2	0	106	101	1	4
Tennessee	407	211	160	34	10	1	0	6	196	167	18	11
Alabama	319	211	122	62	18	4	0	5	108	99	7	2
Mississippi	74	45	39	4	2	0	0	0	29	28	1	0
West South Central	1,393	738	492	177	46	9	1	13	655	564	32	59
Arkansas	135	57	46	9	2	0	0	0	78	69	4	5
Louisiana	421	273	156	93	17	3	0	4	148	136	8	4
Oklahoma	136	60	38	5	8	3	0	6	76	62	5	9
Texas	701	348	252	70	19	3	1	3	353	297	15	41
Mountain	887	422	284	80	37	9	0	12	465	399	40	26
Montana	64	28	15	5	2	1	0	5	36	18	16	2
Idaho	82	34	30	1	2	0	0	1	48	39	4	5
Wyoming	73	40	21	11	5	3	0	0	33	29	4	0
Colorado	261	111	77	21	8	4	0	1	150	145	4	1
New Mexico	115	81	48	23	8	0	0	2	34	27	4	3
Arizona	179	87	65	14	5	0	0	3	92	80	7	5
Utah	75	18	14	1	3	0	0	0	57	49	1	7
Nevada	38	23	14	4	4	1	0	0	15	12	0	3
Pacific	2,803	1,427	879	377	87	32	9	43	1,376	1,097	164	115
Washington	383	209	133	57	8	4	0	7	174	134	21	19
Oregon	223	96	68	21	6	1	0	0	127	109	10	8
California	2,197	1,122	678	299	73	27	9	36	1,075	854	133	88
Outlying areas	838	428	295	115	10	0	0	8	410	395	10	5
Alaska	130	102	53	43	6	0	0	0	28	24	2	2
Hawaii	235	54	35	13	2	0	0	4	181	176	4	1
Puerto Rico	465	270	205	59	2	0	0	4	195	189	4	2
Virgin Islands	8	2	2	0	0	0	0	0	6	6	0	0

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.
[2] See table 1, footnote 1, for definitions of types of cases

Table 7.—Analysis of Stages of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1960

Stage and method of disposition	All C cases		CA cases[1]		CB cases[1]		CC cases[1]		CD cases[1]		CE cases[1]		CP cases[1]	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	11,924	100 0	7,924	100.0	2,957	100.0	651	100 0	193	100 0	15	100.0	184	100.0
Before issuance of complaint	10,309	86.5	6,909	87.2	2,514	85 0	509	78.1	185	95.9	15	100 0	177	96 2
Adjusted	1,480	12 4	912	11.5	338	11.4	159	24 4	[2] 45	23.3	2	13 3	24	13 1
Withdrawn	4,866	40 8	3,306	41 7	1,130	38.2	246	37.8	[3] 101	52.4	7	46.7	76	41.3
Dismissed	3,963	33.3	2,691	34 0	1,046	35.4	104	15.9	[4] 39	20.2	6	40 0	77	41.8
After issuance of complaint, before opening of hearing	767	6 4	492	6.2	204	6.9	62	9.5	2	1 0	0	.0	7	3 8
Adjusted	386	3 2	278	3 5	93	3 1	14	2 1	0	0	0	.0	1	.5
Compliance with stipulated decision	16	.2	16	.2	0	.0	0	.0	0	0	0	.0	0	.0
Compliance with consent decree	191	1 6	98	1 2	67	2 3	26	4.0	0	0	0	.0	0	.0
Withdrawn	150	1.2	83	1 1	40	1.4	19	2 9	2	1 0	0	.0	6	3.3
Dismissed	24	2	17	.2	4	.1	3	.5	0	0	0	.0	0	.0
After hearing opened, before issuance of intermediate report	185	1.6	118	1 5	41	1 4	22	3.4	4	2 1	0	0	0	.0
Adjusted	49	.4	41	.6	7	.2	1	.2	0	.0	0	0	0	.0
Compliance with stipulated decision	8	.1	3	(5)	5	.2	0	.0	0	.0	0	0	0	.0
Compliance with consent decree	98	8	55	7	21	.7	18	2 7	4	2 1	0	0	0	.0
Withdrawn	16	.2	9	.1	5	.2	2	3	0	.0	0	0	0	.0
Dismissed	14	.1	10	1	3	.1	1	.2	0	.0	0	0	0	.0
After intermediate report, before issuance of Board decision	116	1.0	81	1 0	32	1.1	3	5	0	.0	0	0	0	.0
Compliance	114	1.0	80	1.0	31	1.1	3	.5	0	.0	0	.0	0	.0
Withdrawn	1	(5)	1	(5)	0	.0	0	.0	0	.0	0	.0	0	.0
Dismissed	1	(5)	0	.0	1	(5)	0	.0	0	.0	0	0	0	.0

After Board order adopting intermediate report in absence of exceptions	117	1 0	69	9	47	1.6	1	.2	0	0	0	.0	0	0
Compliance	40	.3	11	1	28	.9	1	.2	0	.0	0	.0	0	.0
Dismissed	77	.7	58	.8	19	7	0	0	0	.0	0	.0	0	.0
After Board decision, before court decree	275	2 3	165	2.1	76	2 5	32	4 9	2	1 0	0	.0	0	.0
Compliance	185	1 6	109	1.4	49	1 6	26	4 0	1	.5	0	.0	0	.0
Dismissed	86	7	53	7	27	.9	6	.9	0	.0	0	.0	0	.0
Otherwise	4	(5)	3	(5)	0	.0	0	0	1	.5	0	.0	0	.0
After circuit court decree, before Supreme Court action	135	1 1	76	1 0	39	1 3	20	3 1	0	.0	0	.0	0	.0
Compliance	107	.9	55	.7	33	1 1	19	2 9	0	.0	0	.0	0	0
Dismissed	28	2	21	3	6	2	1	.2	0	.0	0	.0	0	.0
After Supreme Court denied writ of certiorari	15	1	11	.1	2	.1	2	.3	0	0	0	.0	0	.0
Compliance	11	.1	7	.1	2	1	2	3	0	.0	0	0	0	.0
Dismissed	4	(5)	4	(5)	0	0	0	0	0	.0	0	.0	0	.0
After Supreme Court opinion	5	(5)	3	(5)	2	.1	0	.0	0	0	0	.0	0	.0
Compliance	3	(5)	3	(5)	0	.0	0	0	0	0	0	0	0	0
Withdrawn	2	(5)	0	.0	2	.1	0	0	0	.0	0	0	0	.0

[1] See table 1, footnote 1, for definitions of types of cases
[2] Includes 33 cases adjusted before 10(k) notice, 4 cases adjusted after 10(k) notice; and 8 cases adjusted after 10(k) Board decision
[3] Includes 84 cases withdrawn before 10(k) notice, 12 cases withdrawn after 10(k) notice, and 5 cases withdrawn after 10(k) Board decision.
[4] Includes 29 cases dismissed before 10(k) notice, 1 case dismissed after 10(k) notice, and 9 cases dismissed by 10(k) Board decision
[5] Less than one-tenth of 1 percent.

Table 8.—Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1960

Stage of disposition	All C cases		CA cases [1]		CB cases [1]		CC cases [1]		CD cases [1]		CE cases [1]		CP cases [1]	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	11,924	100 0	7,924	100 0	2,957	100 0	651	100 0	193	100 0	15	100 0	184	100 0
Before issuance of complaint	10,309	86 5	6,909	87 2	2,514	85 0	509	78 1	[3] 185	95 9	15	100 0	177	96 2
After issuance of complaint, before opening of hearing [2]	767	6 4	492	6 2	204	6 9	62	9 5	2	1 0	0	.0	7	3 8
After hearing opened, before issuance of intermediate report [2]	185	1 6	118	1 5	41	1 4	22	3 4	4	2 1	0	.0	0	.0
After intermediate report, before issuance of Board decision	116	1 0	81	1 0	32	1 1	3	5	0	.0	0	0	0	.0
After Board order adopting intermediate report in absence of exceptions	117	1 0	69	9	47	1 6	1	2	0	.0	0	0	0	0
After Board decision, before court decree	275	2 3	165	2 1	76	2 5	32	4 9	2	1 0	0	0	0	.0
After circuit court decree, before Supreme Court action	135	1 1	76	1 0	39	1 3	20	3 1	0	.0	0	0	0	0
After Supreme Court action [4]	20	.1	14	.1	4	.2	2	.3	0	.0	0	.0	0	.0

[1] See table 1, footnote 1, for definitions of types of cases.
[2] Includes cases in which the parties entered into a stipulation providing for Board order and consent decree in the circuit court.
[3] Includes 39 cases in which a notice of hearing issued pursuant to sec. 10(k) of the act. Of these 39 cases, 17 were closed after notice, and 22 were closed after Board decision.
[4] Includes either denial of writ of certiorari or granting of writ and issuance of opinion.

Table 9.—Disposition of Representation Cases Closed, Fiscal Year 1960

Stage of disposition	All R cases		RC cases [1]		RM cases [1]		RD cases [1]	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	10,218	100.0	8,853	100.0	763	100 0	602	100.0
Before issuance of notice of hearing	5,099	49 9	4,299	48.5	462	60 6	338	56 1
After issuance of notice of hearing, before opening of hearing	2,256	22.1	2,026	22.9	129	16 9	101	16.8
After hearing opened, before issuance of Board decision	448	4 4	395	4 5	29	3 8	24	4.0
After issuance of Board decision	2,415	23 6	2,133	24 1	143	18.7	139	23.1

[1] See table 1, footnote 1, for definitions of types of cases.

Table 10.—Analysis of Methods of Disposition of Representation Cases Closed, Fiscal Year 1960

Method and stage of disposition	All R cases		RC cases [1]		RM cases [1]		RD cases [1]	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	10,218	100 0	8,853	100 0	763	100 0	602	100 0
Consent election	2,834	27 7	2,584	29 2	158	20 7	92	15 3
Before notice of hearing	1,965	19 2	1,789	20 2	121	15 8	55	9 1
After notice of hearing, before hearing opened	750	7 3	685	7 7	31	4 1	34	5.7
After hearing opened, before Board decision	119	1 2	110	1 3	6	8	3	5
Stipulated election	1,898	18 6	1,764	19 9	95	12 5	39	6 5
Before notice of hearing	890	8 7	821	9 3	55	7 2	14	2 3
After notice of hearing, before hearing opened	712	7 0	671	7 5	27	3.6	14	2.3
After hearing opened, before Board decision	122	1 2	114	1 3	5	7	3	5
After postelection decision	174	1 7	158	1 8	8	1 0	8	1 4
Regional director-directed election	35	3	15	1	20	2 6	-------	-------
Before notice of hearing	32	3	13	1	19	2 5	-------	-------
After notice of hearing, before hearing opened	3	(3)	2	(3)	1	1	-------	-------
Withdrawn	2,478	24 3	2,024	22 9	261	34 2	193	32 0
Before notice of hearing	1,506	14 7	1,178	13 3	184	24 1	144	23 9
After notice of hearing, before hearing opened	660	6 5	567	6 4	58	7 6	35	5 8
After hearing opened, before Board decision	160	1 6	139	1 6	10	1 3	11	1.8
After Board decision and direction of election	152	1 5	140	1 6	9	1 2	3	.5
Dismissed	1,063	10 4	750	8 5	143	18 7	170	28 2
Before notice of hearing	616	6 0	413	4 7	80	10 5	123	20 4
After notice of hearing, before hearing opened	67	.7	47	.6	8	1 0	12	2 0
After hearing opened, before Board decision	30	3	15	1	8	1 0	7	1 2
By Board decision	[2] 350	3 4	275	3 1	47	6 2	28	4 6
Board-ordered election	1,910	18 7	1,716	19 4	86	11 3	108	18 0

[1] See table 1, footnote 1, for definitions of types of cases
[2] Includes 24 RC, 20 RM, and 14 RD cases dismissed by Board order after a direction of election issued but before an election was held.
[3] Less than one-tenth of 1 percent.

Table 11.—Types of Elections Conducted, Fiscal Year 1960

Type of case	Total elections	Type of election				
		Consent [1]	Stipulated [2]	Board ordered [3]	Regional director directed [4]	Expedited elections under 8(b)(7) [5]
All elections, total	6,633	2,798	1,867	1,919	14	35
Eligible voters, total	503,907	135,122	189,063	177,004	1,114	1,604
Valid votes, total	453,295	121,402	173,099	156,914	522	1,358
RC cases,[6] total	6,021	2,558	1,742	1,705	----	16
Eligible voters	461,985	121,047	178,938	161,562	----	438
Valid votes	416,980	108,832	164,438	143,333	----	377
RM cases,[6] total	359	147	85	108	----	19
Eligible voters	21,979	6,348	5,753	8,712	----	1,166
Valid votes	19,743	5,637	5,250	7,875	----	981
RD cases,[6] total	237	92	39	106	----	----
Eligible voters	17,421	7,721	2,970	6,730	----	----
Valid votes	15,340	6,927	2,707	5,706	----	----
UD cases,[6] total	16	1	1	----	14	----
Eligible voters	2,522	6	1,402	----	1,114	----
Valid votes	1,232	6	704	----	522	----

[1] Consent elections are held by an agreement of all parties concerned. Postelection ruling and certification are made by the regional director.

[2] Stipulated elections are held by an agreement of all parties concerned, but the agreement provides for the Board to determine any objections and/or challenges.

[3] Board-ordered elections are held pursuant to a decision and direction of election by the Board. Postelection rulings on objections and/or challenges are made by the Board

[4] These elections are held pursuant to direction by the regional director. Postelection rulings on objections and/or challenges are made by the Board.

[5] Regional director directed under sec 8(b)(7)(C).

[6] See table 1, footnote 1, for definitions of types of cases.

Table 12.—Results of Union-Shop Deauthorization Polls, Fiscal Year 1960

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	Resulting in deauthorization		Resulting in continued authorization		Total	Percent of total eligible	Cast for deauthorization	
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible [1]
Total	16	10	62 5	6	37 5	2, 522	320	12 7	2, 202	87 3	1, 232	48 9	891	35 3
AFL–CIO	9	7	77 8	2	22 2	921	299	32. 5	622	67 5	366	39 7	304	33 0
Unaffiliated	7	3	42 9	4	57 1	1, 601	21	1. 3	1, 580	98 7	866	54 1	587	36 7

[1] Sec. 8(a)(3) of the act requires that, to revoke a union-shop provision, a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Collective-Bargaining Elections [1] by Affiliation of Participating Unions, Fiscal Year 1960

Union affiliation	Elections participated in			Employees involved (number eligible to vote)			Valid votes cast			
	Total	Won	Percent won	Total eligible	Employees in units selecting bargaining agent		Total	Percent of total eligible	Cast for the union	
					Number	Percent of total eligible			Number	Percent of total cast
Total	[2] 6, 380	3, 740	58 6	[2] 483, 964	286, 048	59 1	[2] 436, 723	90 2	280, 140	64 1
AFL–CIO	4, 504	2, 400	53 3	412, 188	178, 427	43 3	371, 734	90 2	183 528	49 4
Unaffiliated	2, 522	1, 340	53 1	215, 481	107, 621	49 9	191, 841	89 0	96, 612	50 4

[1] The term "collective-bargaining election" is used to cover representation elections requested by a union or other candidate for employee representative or by the employer. This term is used to distinguish this type of election from a decertification election, which is one requested by employees seeking to revoke the representation rights of a union which is already certified or which is recognized by the employer without a Board certification

[2] Elections involving 2 unions of different affiliations are counted under each affiliation, but only once in the total Therefore, the total is less than the sum of the figures of the 2 groupings by affiliation.

Table 13A.—Outcome of Collective-Bargaining Elections [1] by Affiliation of Participating Unions, and Number of Employees in Units, Fiscal Year 1960

Affiliation of participating unions	Number of elections				Number of employees involved (number eligible to vote)				
	Total	In which representation rights were won by—		In which no representative was chosen	Total	In units in which representation rights were won by—		In units where no representative was chosen	Total valid votes cast
		AFL-CIO affiliates	Unaffiliated unions			AFL-CIO affiliates	Unaffiliated unions		
Total	6,380	2,400	1,340	2,640	483,964	178,427	107,621	197,916	436,723
1-union elections:									
AFL-CIO	3,631	1,939		1,692	242,171	101,077		141,094	220,739
Unaffiliated	1,774		963	811	62,361		25,110	37,251	56,493
2-union elections									
AFL-CIO v. AFL-CIO	215	157		58	24,294	17,257		7,037	22,228
AFL-CIO v Unaffiliated	601	276	264	61	110,189	52,872	46,867	10,450	97,003
Unaffiliated v. Unaffiliated	100		92	8	9,161		8,923	238	8,295
3-union elections									
AFL-CIO v AFL-CIO v AFL-CIO	9	4		5	1,711	487		1,224	1,615
AFL-CIO v AFL-CIO v. Unaffiliated	27	17	7	3	26,198	4,544	21,197	457	23,293
AFL-CIO v Unaffiliated v. Unaffiliated	13	2	10	1	2,566	934	1,539	93	2,368
Unaffiliated v. Unaffiliated v. Unaffiliated	2		2	0	254		254	0	201
4-union elections									
AFL-CIO v. AFL-CIO v AFL-CIO v AFL-CIO	3	3		0	307	307		0	300
AFL-CIO v. AFL-CIO v. AFL-CIO v Unaffiliated	2	1	0	1	641	569	0	72	515
AFL-CIO v. AFL-CIO v Unaffiliated v Unaffiliated	1	0	1	0	3,630	0	3,630	0	3,275
AFL-CIO v. Unaffiliated v. Unaffiliated v Unaffiliated	1	0	1	0	101	0	101	0	99
5-union election: AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO v Unaffiliated	1	1	0	0	380	380	0	0	299

[1] For definition of this term, see table 13, footnote 1

Table 14.—Decertification Elections by Affiliation of Participating Unions, Fiscal Year 1960

Union affiliation	Elections participated in					Employees involved in elections (number eligible to vote)					Valid votes cast			
	Total	Resulting in certification		Resulting in decertification		Total eligible	Resulting in certification		Resulting in decertification		Total	Percent of total eligible	Cast for the union	
		Number	Percent of total	Number	Percent of total		Number	Percent of total eligible	Number	Percent of total eligible			Number	Percent of total cast
Total	237	74	31 2	163	68 8	17,421	8,726	50 1	8,695	49. 9	15,340	88 1	8,523	55 6
AFL-CIO	162	51	31 5	111	68 5	13,448	6,197	46 1	7,251	53 9	11,931	88 7	6,249	52 4
Unaffiliated	75	23	30 7	52	69 3	3,973	2. 529	63 7	1,444	36 3	3,409	85 8	2,274	66 7

Table 14A.—Voting in Decertification Elections, Fiscal Year 1960

Union affiliation	Elections in which a representative was redesignated					Elections resulting in decertification				
	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for winning union	Votes cast for no union	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for losing union	Votes cast for no union
Total	8,726	7,757	88 9	6,138	1,619	8,695	7,583	87 2	2,385	5,198
AFL-CIO	6,197	5,522	89 1	4,125	1,397	7,251	6,409	88 4	2,124	4,285
Unaffiliated	2. 529	2,235	88 4	2,013	222	1 444	1,174	81 3	261	913

Table 15.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1960

Division and State[1]	Total	Number of elections in which representation rights were won by—		In which no representative was chosen	Employees eligible to vote	Total valid votes cast	Valid votes cast for—			Employees in units choosing representation
		AFL-CIO affiliates	Unaffiliated unions				AFL-CIO affiliates	Unaffiliated unions	No union	
Total	6,380	2,400	1,340	2,640	483,964	436,723	183,528	96,612	156,583	286,048
New England	356	108	82	166	36,537	33,609	14,794	7,487	11,328	21,708
Maine	26	7	7	12	4,361	3,964	1,593	1,323	1,048	2,956
New Hampshire	17	5	1	11	1,364	1,213	560	9	644	340
Vermont	12	4	3	5	1,391	1,260	475	470	315	1,062
Massachusetts	196	55	56	85	17,872	16,568	7,100	5,088	4,380	12,003
Rhode Island	28	10	7	11	2,589	2,205	596	216	1,393	483
Connecticut	77	27	8	42	8,960	8,399	4,470	381	3,548	4,864
Middle Atlantic	1,197	475	254	468	112,551	101,035	41,868	29,471	29,696	70,536
New York	500	193	102	205	62,512	55,527	21,410	18,769	15,348	38,982
New Jersey	239	89	62	88	17,371	15,651	7,027	4,951	3,673	12,671
Pennsylvania	458	193	90	175	32,668	29,857	13,431	5,751	10,675	18,883
East North Central	1,490	575	311	604	109,469	99,743	42,121	20,266	37,356	65,378
Ohio	518	228	91	199	40,248	36,943	16,975	6,937	13,031	25,219
Indiana	182	64	33	85	17,017	15,755	5,684	3,144	6,927	10,010
Illinois	341	114	73	154	27,563	24,868	9,694	5,692	9,482	14,685
Michigan	306	108	76	122	16,451	14,792	6,597	2,512	5,683	9,075
Wisconsin	143	61	38	44	8,190	7,385	3,171	1,981	2,233	6,389
West North Central	569	218	132	219	27,573	24,879	10,718	5,615	8,516	17,525
Iowa	80	36	11	33	3,732	3,390	1,602	718	1,070	2,890
Minnesota	120	38	30	52	4,613	4,125	1,622	1,151	1,352	2,749
Missouri	209	88	53	68	13,348	12,097	5,441	2,310	4,346	7,980
North Dakota	18	3	9	6	682	575	68	271	236	454
South Dakota	28	11	5	12	634	562	218	129	215	334
Nebraska	63	21	14	28	2,075	1,870	822	221	827	1,109
Kansas	51	21	10	20	2,489	2,260	945	845	470	2,009

South Atlantic	709	224	140	345	53,404	49,164	17,785	8,205	23,174	22,563
Delaware	14	8	1	5	821	749	271	176	302	670
Maryland	98	25	18	55	7,937	7,369	2,664	923	3,782	2,807
District of Columbia	33	13	10	10	930	859	454	121	284	631
Virginia	98	33	27	38	8,499	7,811	2,118	3,265	2,428	5,622
West Virginia	59	9	21	29	4,065	3,832	1,000	582	2,250	894
North Carolina	63	14	7	42	7,262	6,686	2,524	255	3,907	1,889
South Carolina	18	5	0	13	4,081	3,949	1,397	47	2,505	406
Georgia	110	41	17	52	6,799	6,238	2,297	900	3,041	2,134
Florida	216	76	39	101	13,010	11,671	5,060	1,936	4,675	7,510
East South Central	328	94	72	162	26,367	24,123	9,017	2,906	12,200	10,075
Kentucky	98	25	23	50	6,437	6,096	1,871	1,210	3,015	2,509
Tennessee	142	35	34	73	12,387	11,264	4,416	970	5,878	3,823
Alabama	63	24	12	27	4,711	4,193	1,777	435	1,981	2,399
Mississippi	25	10	3	12	2,782	2,570	953	291	1,326	1,344
West South Central	458	176	85	197	45,553	41,230	20,028	9,648	11,554	34,347
Arkansas	77	39	4	34	4,109	3,706	1,920	203	1,583	2,239
Louisiana	119	36	27	56	10,754	9,557	2,800	4,044	2,713	7,832
Oklahoma	52	18	11	23	2,637	2,508	1,012	285	1,211	1,542
Texas	210	83	43	84	28,053	25,459	14,296	5,116	6,047	22,734
Mountain	306	117	56	133	16,986	15,335	6,716	3,262	5,357	9,940
Montana	16	7	2	7	1,148	969	423	350	196	837
Idaho	32	14	5	13	1,554	1,438	632	39	767	709
Wyoming	18	7	3	8	941	826	392	154	280	580
Colorado	111	41	23	47	4,643	4,246	1,741	1,083	1,422	2,636
New Mexico	20	9	1	10	2,346	2,067	1,163	429	475	1,841
Arizona	70	29	16	25	3,562	3,297	1,695	743	859	2,482
Utah	32	6	5	21	2,621	2,344	610	442	1,292	741
Nevada	7	4	1	2	171	148	60	22	66	114

See footnote at end of table.

Table 15.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1960—Continued

Division and State[1]	Total	Number of elections in which representation rights were won by—		In which no representative was chosen	Employees eligible to vote	Total valid votes cast	Valid votes cast for—			Employees in units choosing representation
		AFL-CIO affiliates	Unaffiliated unions				AFL-CIO affiliates	Unaffiliated unions	No union	
Pacific	750	315	149	286	42,590	36,523	15,113	7,344	14,066	24,194
Washington	102	60	21	21	4,309	3,698	1,495	736	1,467	2,384
Oregon	91	44	12	35	5,170	4,406	2,481	361	1,564	2,977
California	557	211	116	230	33,111	28,419	11,137	6,247	11,035	18,833
Outlying areas	217	98	59	60	12,934	11,082	5,368	2,378	3,336	9,782
Alaska	11	7	0	4	304	223	164	22	37	261
Hawaii	107	41	42	24	4,626	4,031	1,760	1,367	904	4,038
Puerto Rico	96	47	17	32	7,904	6,746	3,374	989	2,383	5,383
Virgin Islands	3	3	0	0	100	82	70	0	12	100

[1] The States are grouped according to the method used by the Bureau of the Census, U S. Department of Commerce

Table 16.—Industrial Distribution of Collective-Bargaining Elections, Fiscal Year 1960

Industrial group [1]	Number of elections				Eligible voters	Valid votes cast
	Total	In which representation rights were won by—		In which no representative was chosen		
		AFL–CIO affiliates	Unaffiliated unions			
Total	6,380	2,400	1,340	2,640	483,964	436,723
Manufacturing	3,944	1,604	705	1,635	372,900	339,388
Ordnance and accessories	12	8	1	3	2,791	2,426
Food and kindred products	620	178	176	266	45,696	40,699
Tobacco manufacturers	9	3	0	6	1,929	1,791
Textile mill products	61	21	7	33	6,519	6,028
Apparel and other finished products made from fabrics and similar materials	104	63	10	31	7,940	7,212
Lumber and wood products (except furniture)	179	85	19	75	9,190	8,360
Furniture and fixtures	159	68	23	68	12,587	11,706
Paper and allied products	179	69	31	79	19,568	18,099
Printing, publishing, and allied industries	228	90	58	80	7,080	6,378
Chemicals and allied products	251	98	56	97	28,489	26,432
Products of petroleum and coal	52	13	25	14	10,827	9,775
Rubber products	124	48	15	61	10,262	9,363
Leather and leather products	54	19	4	31	10,679	9,749
Stone, clay, and glass products	180	67	42	71	12,040	10,805
Primary metal industries	249	108	44	97	24,552	22,893
Fabricated metal products (except machinery and transportation equipment)	454	214	64	176	30,879	27,856
Machinery (except electrical)	401	184	41	176	38,814	35,660
Electrical machinery, equipment, and supplies	269	115	37	117	53,366	47,920
Transportation equipment	199	87	28	84	25,789	23,609
Professional, scientific, and controlling instruments	41	14	7	20	5,599	5,116
Miscellaneous manufacturing	119	52	17	50	8,304	7,511
Agriculture, forestry, and fisheries	6	2	1	3	180	161
Mining	60	23	20	17	4,691	4,230
Metal mining	21	12	2	7	2,416	2,128
Coal mining	17	1	13	3	856	797
Crude petroleum and natural gas production	1	0	1	0	15	12
Nonmetallic mining and quarrying	21	10	4	7	1,404	1,293
Construction	122	70	18	34	5,749	4,665
Wholesale trade	589	118	211	260	13,174	12,004
Retail trade	813	310	132	371	31,098	27,424
Finance, insurance, and real estate	25	10	0	15	1,606	1,477
Transportation, communication, and other public utilities	565	159	198	208	18,978	16,980
Local passenger transportation	29	14	5	10	2,099	1,744
Motor freight, warehousing, and transportation services	307	41	140	126	7,483	6,664
Water transportation	49	17	24	8	2,331	2,211
Other transportation	23	7	6	10	1,177	1,104
Communication	86	47	7	32	2,761	2,395
Heat, light, power, water, and sanitary services	71	33	16	22	3,127	2,862
Services	256	104	55	97	35,588	30,394

[1] Source. Standard Industrial Classification, Division of Statistical Standards, U.S. Bureau of the Budget, Washington 1957.

Table 17.—Size of Units in Collective-Bargaining and Decertification Elections, Fiscal Year 1960

A. COLLECTIVE-BARGAINING ELECTIONS

Size of unit (number of employees)		Number of elections	Percent of total	Elections in which representation rights were won by—				Elections in which no representative was chosen	
				AFL-CIO affiliates		Unaffiliated unions			
Size	Number eligible to vote			Number	Percent	Number	Percent	Number	Percent
Total	483,964	6,380	100 0	2,400	100.0	1,340	100 0	2,640	100 0
1–9	8,149	1,429	22 4	487	20 3	460	34 3	482	18 3
10–19	18,248	1,298	20 4	494	20 6	305	22 8	499	18 9
20–29	18,590	770	12 1	304	12 7	127	9 5	339	12 8
30–39	18,129	531	8 3	203	8 5	78	5 8	250	9 5
40–49	16,095	366	5 7	159	6 6	54	4 0	153	5 8
50–59	15,684	290	4 5	101	4 2	52	3 9	137	5 2
60–69	14,366	224	3 5	80	3 3	36	2 7	108	4 1
70–79	13,496	183	2 9	76	3 2	20	1 5	87	3 3
80–89	10,771	128	2 0	46	1 9	19	1 4	63	2 4
90–99	11,102	118	1 8	39	1 6	18	1 4	61	2.3
100–149	47,896	395	6 2	171	7 1	54	4 0	170	6 4
150–199	32,874	192	3 0	71	3 0	34	2 5	87	3 3
200–299	48,124	198	3 1	73	3 0	33	2 5	92	3 5
300–399	31,068	92	1 4	39	1 6	14	1 0	39	1.5
400–499	22,546	49	.8	17	.7	8	6	24	.9
500–599	14,576	26	.4	7	.3	3	2	16	.6
600–799	19,820	29	.5	12	.5	5	.4	12	.5
800–999	14,741	17	.3	6	.3	5	.4	6	.2
1,000–1,999	42,515	31	.5	9	.4	11	.8	11	.4
2,000–2,999	11,709	5	.1	1	(1)	2	.1	2	.1
3,000–3,999	20,463	6	.1	4	.2	1	.1	1	(1)
4,000–4,999	0	0	.0	0	.0	0	.0	0	.0
5,000–9,999	13,897	2	(1)	0	.0	1	.1	1	(1)
10,000 and over	19,105	1	(1)	1	(1)	0	.0	0	.0

B. DECERTIFICATION ELECTIONS

Total	17,421	237	100.0	51	100 0	23	100 0	163	100 0
1–9	197	34	14 3	1	2 0	2	8 7	31	19 0
10–19	757	53	22 4	4	7 8	4	17 4	45	27.6
20–29	658	28	11.8	4	7 8	0	0	24	14 7
30–39	718	21	8 9	5	9 8	2	8 7	14	8 6
40–49	887	20	8 4	7	13 7	3	13 1	10	6 1
50–59	445	8	3 4	1	2.0	1	4 3	6	3 7
60–69	816	13	5 5	6	11.7	2	8 7	5	3 1
70–79	296	4	1.7	3	5 9	0	.0	1	.6
80–89	426	5	2 1	1	2 0	0	.0	4	2.5
90–99	750	8	3 4	3	5 9	0	.0	5	3 1
100–149	2,001	16	6 8	5	9 8	5	21 8	6	3 7
150–199	1,042	6	2 5	3	5 9	2	8 7	1	.6
200–299	2,598	11	4 6	4	7.8	0	.0	7	4.3
300–399	1,044	3	1.3	1	2.0	1	4 3	1	.6
400 and over	4,786	7	2 9	3	5 9	1	4 3	3	1 8

[1] Less than one-tenth of 1 percent.

Table 18.—Injunction Litigation Under Sec. 10 (j) and (l), Fiscal Year 1960

Proceedings	Number of cases instituted	Number of applications granted	Number of applications denied	Cases settled, withdrawn, inactive, pending, etc.
Under sec. 10(j)				
(a) Against unions	4	3	0	1 settled
(b) Against employers	1	0	0	1 settled
Under sec. 10(l)	219	[1] 83	[2] 9	73 settled [3] 48 alleged illegal activity suspended [4] 6 withdrawn 9 pending
Total	224	86	9	138

[1] Injunctions were granted in fiscal 1960 on 5 petitions instituted in the prior fiscal year.
[2] One injunction was denied in fiscal 1960 on a petition filed in the prior fiscal year.
[3] Three cases pending at end of prior fiscal year were settled
[4] Illegal activity suspended prior to filing of petition, no order to show cause issued.

Table 19.—Litigation for Enforcement or Review of Board Orders, July 1, 1959–June 30, 1960; and July 5, 1935–June 30, 1960

	July 1, 1959–June 30, 1960		July 5, 1935–June 30, 1960	
	Number	Percent	Number	Percent
Cases decided by U.S. courts of appeals	125	100 0	1,981	100 0
Board orders enforced in full	54	43 2	1,163	58.7
Board orders enforced with modification	38	30.4	401	20.2
Remanded to Board	12	9 6	60	3.0
Board orders partially enforced and partially remanded	1	.8	15	.8
Board orders set aside	20	16 0	342	17 3
Cases decided by U.S. Supreme Court	6	100.0	124	100.0
Board orders enforced in full	0	0	80	61 9
Board orders enforced with modification	1	16 7	12	9 9
Board orders set aside	4	66 7	20	16 9
Remanded to Board	0	0	2	1.7
Remanded to court of appeals	0	.0	7	5 8
Board's request for remand or modification of enforcement order denied	0	.0	1	.0
Contempt case remanded to court of appeals	1	16.6	1	.8
Contempt case enforced	0	.0	1	.0

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1960

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
18-CC-51	*Teamsters, Local 446 & Wausau Building & Construction Trades Council (Heiser Ready Mix Co)	Aug 26, 1958	(1)			(1)		Aug 13, 1959	June 3, 1959
19-CC-112	Carpenters, Local 1281 (G & J Flooring Contractors)	Oct 22, 1958	(1)			(1)			May 4, 1960
22-CC-56	Carpenters, Local 853 (Green Brook Land Corp & Laurie Construction Co)	May 15, 1959	(1)			(1)		Jan 6, 1960	Settled
13-CD-64	Electrical Workers, Local 9 et al (G A. Rafel & Co, Inc)	June 3, 1959	(1)				July 2, 1959		
22-CC-61	*Teamsters, Local 522 (Mach Lumber Co)	June 12, 1959	(1)			July 9, 1959			Jan 26, 1960
7-CC-102	Carpenters, Local 1102 District Council of Detroit, Wayne & Oakland Counties (Associated General Contractors)	June 19, 1959	(1)			July 2, 1959			
11-CC-16	*Teamsters & Locals 728, 71, 55, 509 (Overnite Transportation Co).	June 22, 1959	(1)	July 9, 1959	Aug 3, 1959	Aug. 3, 1959			
10-CC-426	*Teamsters & Locals 728 et al (Overnite Transportation Co).	June 26, 1959	(1)			July 23, 1959			Nov. 6, 1959 I R.
24-CC-62	Hermandad de Trabajadores de la Construction (P R Dist. Council) & Carpenters Local 3251 et al (Levitt Corp)	June 30, 1959	(1)			July 14, 1959			
14-CC-130	Carpenters, Dist Council of St Louis and Local 2298 (Bonnot Construction Co)	Apr. 15, 1959	(1)			(1)			Settled
17-CC-91	Hod Carriers, Local 1140 (Economy Forms Corp).	June 19, 1959	(1)			(1)		Mar 4, 1960	Feb 5, 1960
9-CC-254	*Teamsters, Local 413 (J & B Cartage Co).	July 1, 1959	(1)			(1)		Jan 21, 1960	Settled
12-CC-54	Chemical Workers, Local 36 (Virginia-Carolina Chemical Corp)	July 6, 1959	(1)			July 10, 1959			
36-CC-66	*Teamsters, Locals 305, 206, 596 and Joint Council of Teamsters #37 (Tilla Mook County Creamery Assn)	July 6, 1959	(1)			(1)		Sept 18, 1959	Withdrawn
12-CC-50	*Teamsters, Local 320 (Pershing Auto Rentals Inc)	July 7, 1959	(1)			(1)		Apr 29, 1960	Nov 13, 1959
17-CC-96	*Teamsters, Local 955 (Macy's Kansas City)	July 10, 1959	(1)			(1)		Aug 15, 1959	Settled
18-CC 66	Retail Clerks, Local 1086 (Minneapolis House Furnishing Co)	July 10, 1959	(1)			(1)		Oct. 30, 1959	Settled
21-CB-1351	*Teamsters, Local 626 (Washington Rendering Co)	July 13, 1959	(1)	July 13, 1959	Indef.			May 31, 1960	Feb 10, 1960

36-CC-77	Salem Building & Construction Trades Council and *Teamsters, Local 324 (Cascade Employers Association Inc)	July 17, 1959	(1)			(1)		Dec. 14, 1959	Nov. 19, 1959
35-CC-62	Bridge, Structural Iron Wkrs., Local 103 (Associated Building Contractors of Evansville, Inc)	July 22, 1959	(1)			(1)		Jan. 15, 1960	Settled
4-CD-40	*Teamsters, Locals 107 & 929 (Food Producers Council)	July 22, 1959	(1)			Aug 10, 1959		May 6, 1960	Mar. 3, 1960
11-CC-17	*Teamsters, Locals 71 & 509 (New Dixie Lines, Inc).	July 23, 1959	(1)			Aug. 4, 1959			Feb 3, 1960
12-CD-6	Lathers, Local 59 and Jacksonville Building & Construction Trades Council et al (Jacksonville Tile Co)	July 28, 1959	(1)			Aug 1, 1959		Mar 17, 1960	Nov. 13, 1959
21-CC-329	Los Angeles Dist Council of Carpenters et al (R S Franke, Mfg Co)	July 31, 1959	(1)			(1)		Mar 29, 1960	Feb 12, 1960
18-CC-69	St Paul Building & Construction Council and Roofers Local 96 (Walter D. Giertsen, Co)	July 31, 1959	(1)			Aug. 10, 1959		Jan 12, 1960	Dec 22, 1959
1-CC-233	*Teamsters, Local 677 (Sega Sand & Gravel, Inc).	Aug 4, 1959	(1)			(1)		Jan. 15, 1960	Settled
5-CC-114	Wilmington Building & Construction Trades Council (James H. Wood)	Aug. 4, 1959	(1)			Sept. 11, 1959			Feb 15, 1960
10-CC-428	*Teamsters, Locals 728 & 509 (Jocie Motor Lines, Inc).	Aug 4, 1959	(1)			Aug. 14, 1959			
22-CC-69	Chemical Workers, Local 434 (Charles Simkin & Sons)	Aug 6, 1959	(1)			Aug. 13, 1959		Feb 23 1960	Dec 11, 1959
2-CC-517	*Longshoremen, Intl. Assn. & Local 1814 (American Sugar Refining Co).	Aug. 7, 1959	(1)	Aug. 7, 1959	Oct. 27, 1959	Oct 27, 1959			May 26, 1960
2-CC-518	Steel Workers and Local 4355 (Phelps Dodge Refining Co).	Aug 10, 1959	(1)	Aug 10, 1959	Sept. 29, 1959	Sept. 29, 1959			Mar. 13, 1960
35-CC-64	Hod Carriers, Local 510 et al. (Irmscher & Sons, Inc)	Aug. 12, 1959	(1)			(1)		Nov 6, 1959	Settled
2-CC-515	Engineers, Operating, Local 138 & *Teamsters, Local 282 & Hod Carriers Local 1298 (Welch Asphalt Co.)	Aug. 21, 1959	(1)			Oct. 1, 1959			Withdrawn
24-CC-64	*Union de Trabajadores de la Gonzalez (Gonzalez Chemical Industries Inc)	Aug. 25, 1959	(1)			(1)			Dec 11, 1959
19-CC-127	Electrical Workers, Local 77 (J. A. Jones Construction Co)	Aug. 27, 1959	(1)			(1)		Feb. 18, 1960	Dec. 11, 1959
6-CD-106	Hod Carriers, Local 1149 & Operating Engineers, Locals 132A, 132B, 132C (Lang Brothers)	Aug. 28, 1959	(1)			Sept 10, 1959		Mar 24, 1960	Dec 15, 1959
23-CD-39, 23-CC-63	*Longshoremen, Intl. Assn , Local 1692 et al (J & R Contractors, Inc).	Sept 1, 1959	(1)	Sept. 12, 1959					June 29, 1960
2-CC-523	Building Service Employees Local 32-j (Hewitt-Robbins Inc)	Sept. 4, 1959	(1)			Dec. 12, 1959			Apr. 5, 1960
18-CC-72	Steel Workers of America, United (Pittsburgh Pacific Co , & Johnson & Muru).	Sept. 4, 1959	(1)			Sept 16, 1959		Dec. 15, 1959	Withdrawn

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1960—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
22-CC-71	Boilermakers, Local Lodge #28 (Public Service Electric & Gas Co)	Sept 17, 1959	(1)	Sept 18, 1959	Sept 24, 1959	(1)		Oct 5, 1959	Withdrawn
2-CC-524	Electrical Workers, Local 3 & *Teamsters Local 282 (Thomas Crimmins Co).	Sept. 18, 1959	(1)	Sept 24, 1959	Sept 29, 1959	(1)			Settled
2-CC-525	*Teamsters, Local 816 (Montgomery Ward & Co , Inc)	Sept 18, 1959	(1)	Sept 18, 1959	Nov 5, 1959	Nov 5, 1959			June 7, 1960
10-CC-432	Sheetmetal Workers, Local 85 (Metal Fabricators).	Sept. 18, 1959	(1)			(1)		Feb. 10, 1960	Settled
7-CC-106	Typographical Union, Local 18 (Highland Parker Printers Inc , & American Mailer & Binders)	Sept 21, 1959	(1)			(1)			Apr 4, 1960
33-CC-63	Carpenters, Local 1319 (U & C Construction Co)	Sept. 22, 1959	(1)			(1)		Jan. 22, 1960	Feb. 23, 1960
3-CC-98	*Teamsters, Local 263 (A Cappione Inc)	Sept. 23, 1959	(1)			Sept 29, 1959		Apr 6, 1960	Settled
9-CD-45	Huntington Building & Construction Trades Council (Paul Price & M. F. Picket)	Sept. 23, 1959	(1)			(1)		Mar. , 1960	Settled
19-CC-129	Idaho Falls Building & Construction Trades Council (New Construction Corp)	Sept 23, 1959	(1)			(1)		Jan. 29, 1960	Jan 12, 1960
7-CC-112	Typographical Union & Local 40 (Detroit Newspaper Publishers Assn.)	Sept 25, 1959	(1)	Sept 25, 1959	Sept 30, 1959	Sept 30, 1959			Apr. 4, 1960
15-CB-415	*Longshoremen, Intl Assn , Locals 1418 & 1419 (New Orleans Steamship Assn et al)	Oct 5, 1959	(j)	Oct 5, 1959	Indef			Apr. 8, 1960	Settled
1-CC-236	Rhode Island Building & Trades Council & James Daley, Sec. (C. G. Brunnckow Co)	Oct. 13, 1959	(1)			(1)		Mar. 11, 1960	Settled
2-CC-526	*Teamsters, Local 239 (Stan-Jay Auto Parts & Accessories Corp)	Oct 14, 1959	(1)			Nov. 17, 1959			Feb 23, 1960
12-CC-61	Painters, Local 365 (Southern Florida Hotel & Motel Assn.).	Oct. 15, 1959	(1)			Oct 23, 1959			Apr. 22, 1960
17-CC-107	Plumbers, Local 8 (Bishop Plumbing & Electric Co. & United Contractors Council).	Oct 15, 1959	(1)			Dec. 9, 1959			Mar 16, 1960
20-CC-186	*Teamsters, Local 94 (Jack Young's Supermarket).	Oct 19, 1959	(1)			(1)		Mar. 17, 1960	Withdrawn
2-CC-527	Carpenters & Locals 1397, 2765 & Nassau County District Council of Carpenters (Rusco Window Co. Div. of F. C. Russell Co.).	Oct. 23, 1959	(1)			(1)		May 13, 1960	Settled

2-CC-530	Sheet Metal Workers, Local 28 (Anemostat Corp of America).	Oct 27, 1959	(1)			(1)		Dec 4, 1959	Withdrawn
10-CC-435	*Laundry Workers, Local 218 (Apex Linen Service of Chattanooga)	Oct. 27, 1959	(1)			Nov. 4, 1959 (consent)			Apr 5, 1960
13-CC-216	*Teamsters, Local 705 & Louis Peick, Sec. Treas. (Cartage & Terminal Management)	Oct. 27, 1959	(1)	Oct 27, 1959	Oct 30, 1959		Oct 31, 1959		
21-CC-342	*Mine, Mill & Smelter Workers & Hayden Local 939 et al. (Kennecott Copper Corp.)	Oct 27, 1959	(1)			(1)		Mar. 22, 1960	Settled
21-CC-343	Carpenters, Local 1100 & Hod Carriers Local 556 et al. (Howard Johnson)	Oct 27, 1959	(1)			Dec. 7, 1959			
35-CC-73	*Teamsters, Local 716 (Cinder Block & Material Co.).	Oct. 29, 1959	(1)			(1)		Dec 3, 1959	Settled
14-CC-142	Engineers, Operating, Local 318 (Porter-De Witte Construction Co , Inc).	Nov. 10, 1959	(1)			(1)			
20-CC-198	*Longshoremen's & Warehousemen Union, Local 6 (Pacific Plastic Products & Cutter Lab)	Nov 12, 1959	(1)			(1)		May 2, 1960	Settled
7-CC-113	Typographical Union, Locals 18 & 40 (Detroit Mailers Union #4).	Nov 13. 1959	(1)			(1)			Apr. 4, 1960
2-CC-536	*Teamsters, Local 868 (Metallurgical Processing Corp).	Nov 17, 1959	(1)				Jan. 11, 1960		May 27, 1960
14-CP-1	Retail Clerks, & Local 344 (Alton Myers Bros , Inc).	Nov. 19, 1959	(1)			Nov. 28, 1959			
16-CP-1	*Teamsters, Local 745 (Macatee, Inc)	Nov. 20, 1959	(1)			Nov. 30, 1959			May 11, 1960
17-CC-110	Packinghouse Workers, Local 20 (Wilson & Co)	Nov 27, 1959	(1)			Dec. 11, 1959			
13-CP-1	Retail Clerks, Local 98 et al. (Piggly Wiggly Midwest Co , Inc)	Nov 30, 1959	(1)			(1)			Settled
2-CP-7	*Teamsters, Local 239 (Stan-Jay Auto Parts & Accessories Corp)	Dec. 2, 1959	(1)			Jan. 7, 1960			June 1, 1960
2-CC-538	Electrical Workers, Local 459 et al (Royal McBee Corp).	Dec. 2, 1959	(1)			(1)			Settled
10-CP-2	Garment Workers, Ladies (Saturn & Sedran, Inc)	Dec. 2, 1959	(1)			Dec. 18, 1959			
16-CP-2	Sapulpa Typographical Union, Local 619 (Sapulpa Daily Herald)	Dec. 2, 1959	(1)			Dec. 9, 1959			
17-CC-111	Hod Carriers, Local 1140 (Gilmore Construction Co)	Dec. 3, 1959	(1)	Dec. 4, 1959	Dec. 14, 1959	Dec. 14, 1959			May 4, 1960
20-CC-203	*Lithographers & Local 17 (Employing Lithographers Div. of Graphic Arts Employers Assoc)	Dec 7, 1959	(1)			Jan. 13, 1960			
2-CC-541	Electrical Workers, Local 3 (Picker-X-Ray Corp. & Lenox Hill Hospital)	Dec. 8, 1959	(1)			Jan. 28, 1960			
18-CC-75	Packinghouse Workers, Local 3 (Wilson & Co)	Dec. 8, 1959	(1)			Dec. 21, 1959		Apr. 29, 1960	Dismissed
35-CP-2	Hotel Restaurant Employees, Local 58 (Fowler Hotel, Inc)	Dec. 8, 1959	(1)				Jan. 19, 1960		
22-CC-73	Plumbers, Local 380 (Boro Plumbing & Heating Co).	Dec. 11, 1959	(1)			(1)			Apr. 4, 1960

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1960—Continued

Case No	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
19-CC-130	*Longshoremen's & Warehousemen's, Local 60 (Marine Food Inc).	Dec 14, 1959	(1)			(1)		Apr. 25, 1959	Settled
23-CC-68	*Teamsters, Local 968 (Schepps Grocery Co).	Dec. 16, 1959	(1)			Mar. 9, 1960			
1-CP-3	Typographical Union, Local 285 (Charlton Press).	Dec. 17, 1959	(1)			Jan. 21, 1960			
17-CC-113	Packinghouse Workers, Local 62 (Wilson & Company).	Dec. 17, 1959	(1)			Dec. 30, 1959			
10-CP-3	Garment Workers, Ladies (Coed Collar Co).	Dec 18, 1959	(1)			Jan 11, 1960			
14-CP-2	Retail Clerks, Local 602 (Goodyear Tire & Rubber Co.).	Dec 24, 1959	(1)			(1)			Mar. 18, 1960
13-CP-2	Machinists, Auto Mechanics Lodge #701 (Berwyn Motor Sales, Inc.).	Dec. 29, 1959	(1)			Jan 21, 1960			
12-CC-65	Broward County Building & Construction Trades Council & its members (Italian Terrazzo & Mosaic Co).	Dec. 30, 1959	(1)			(1)			Settled
1-CP-4	Rhode Island Allied Building Trades Council (Irving W. Ray).	Jan. 4, 1960	(1)			(1)			Withdrawn
16-CP-4	Printing Pressmen, Local 149 (Oklahoma Publishing Co).	Jan. 4, 1960	(1)			(1)			Settled
16-CP-5	*Lithographers & its Local 61 (Southwestern Stationery & Bank Supply).	Jan. 4, 1960	(1)			(1)			Settled
18-CC-76-2	Upholsterers, Local 61 (Minneapolis House Furnishing Co. et al.).	Jan. 4, 1960	(1)			(1)			
2-CP-10	Meat Cutters, Local 1 (Saveway Food Markets, Inc. et al).	Jan. 5, 1960	(1)	Jan. 5, 1960	Jan. 29, 1960	Jan. 29, 1960		Feb. 12, 1960	Withdrawn
35-CC-75	Sheetmetal Workers, Local 96 (Universal Services, Inc.).	Jan. 5, 1960	(1)			(1)			Settled
17-CC-112	Packinghouse Workers (Wilson & Co.)	Jan. 8, 1960	(1)			(1)			
4-CD-46	*Teamsters, Local 107 (Safeway Stores, Inc)	Jan. 9, 1960	(1)	Jan. 9, 1960	Feb. 26, 1960	Feb. 26, 1960			
20-CC-204	Electrical Workers, Local 202 (Packard Bell Electronics Corp)	Jan. 11, 1960	(1)			(1)			
4-CP-4	Retail Wholesale Employees, Local 1034 (E. J Korvette).	Jan. 13, 1960	(1)			(1)			Settled
2-CP-12	Hotel Restaurant Employees, Locals 89 and #1 (Stork Restaurant, Inc).	Jan. 14, 1960	(1)			Feb. 15, 1960			
5-CP-2	Retail Clerks, Local 400 and Meatcutters Local 555 (Jumbo-Adelphi Foods, Inc.).	Jan. 15, 1960	(1)			Feb. 5, 1960			
13-CP-3	*Teamsters, Local 705 et al. (Cartage & Terminal Management Corp.).	Jan 18, 9160	(1)				Feb. 16, 1960		

21-CP-4	Hotel & Restaurant Employees Local Joint Exec. Board & Local 681 (Crown Cafeteria).	Jan. 18, 1960	(1)			(1)			
4-CC-123	*Teamsters, Local 107 (Riss & Co.)	Jan 22, 1960	(1)				Feb. 1, 1960		
1-CC-240	Engineers. Operating, Local 57 et al (Rhode Island Chapter, Associated General Contractors of America)	Jan. 26, 1950	(1)			(1)			Settled
2-CC-545	*Teamsters, Local 802 (H & L Baking Co., Inc & Kipbea Baking Co.)	Feb. 1, 1960	(1)			(1)			Apr. 4, 1960
4-CC-124	*Teamsters, Highway Truck Drivers Local 107 (E A Gallagher & Sons)	Feb. 1, 1960	(1)	Feb. 1, 1960	Feb. 6, 1960	Feb 6, 1960		Feb 23, 1960	
2-CC-544	*Teamsters, Local 553 (Fiveboro Fuel Corp.)	Feb. 2, 1960	(1)			(1)			May 23, 1960
4-CC-126	Marine Engineers, Local 101 (Gellenthin Barge Line, Inc.)	Feb. 2, 1960	(1)			Feb 17, 1960			Settled
30-CC-47	*Teamsters, Dairy Employees Local 537 (Lohman Sales Co.)	Feb 3, 1960	(1)			(1)			
12-CC-81	Engineers, Operating, Local 675 (Acme Concrete Corp.)	Feb 5, 1960	(1)			(1)			Settled
5-CD-40	*Teamsters, Local 557 et al. (Quinn Freight Lines, Inc.).	Feb. 8, 1960	(1)	Feb 8, 1960	Feb. 13, 1960	(1)			
22-CP-3	Shoe Workers & Joint Council #13 (Q T Shoe Mfg. Co., Inc.)	Feb. 8, 1960	(1)			Mar. 1, 1960			Settled
21-CD-69	Broadcast Technicians Local 54 (Gordon Broadcasting Co., d/b/a Radio Station KSDO).	Feb 12, 1960	(1)			(1)		June 17, 1960	June 10, 1960
2-CC-546	Plumbers, Plumbers & Gas Fitters Local #1 (Bomat Plumbing & Heating Co.).	Feb 15, 1960	(1)			(1)			Settled
3-CD-41	Plumbers, Steamfitters Local 395 (Marshall Maintenance).	Feb 16, 1960	(1)			Mar. 4, 1960			June 22, 1960
14-CD-98	*Teamsters, Local 525 (E. A. Weinel)	Feb 23, 1960	(1)			(1)			June 20, 1960
9-CC-264	*Teamsters, Local 89 et al (Riss & Co.)	Feb 24, 1960	(1)			Mar. 2, 1960			Settled
12-CC-82	Sheetmetal Workers, Local 223 (Commercial Roof Deck Co.)	Feb 24, 1960	(1)			(1)			Settled
13-CC-223	Painters, Local 288 (J. L Simmons, Inc.)	Feb 29, 1960	(1)			(1)		May 26, 1960	Settled
22-CC-78	*Teamsters, Local 641 (Riss & Company).	Mar 1, 1960	(1)			(1)			Settled
4-CC-129	Longshoremens Assoc & its Locals 1291 & 1332 et al (Pennsylvania Sugar Co.)	Mar 4, 1960	(1)	Mar 4, 1960	Mar 8, 1960	Mar. 9, 1960			
16-CC-92	Plumbers, Local 100 & W. D. Zea, Agent (Gower & Folsom Construction Co.)	Mar 7, 1960	(1)			(1)			
21-CP-7	Plumbers, Local 741 (Keith Riggs Plumbing & Heating Contr.)	Mar. 7, 1960	(1)						
21-CP-8-1	Hotel & Restaurant Employees, San Pedro Joint Exec. Board, etc (El Taco)	Mar 7, 1960	(1)			(1)		June 16, 1960	Settled

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1960—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
21-CC-353	Plumbers, Local 741 & Painters, Local 596 (Keith Riggs Plumbing & Heating Contr)	Mar. 7, 1960	(1)						
18-CC-78	*Teamsters, Local 662 (Melvin Ready-Mix Co)	Mar. 8, 1960	(1)			(1)		May 9, 1960	Settled
22-CP-5	Intl Assoc of Machinists, Dist. 15 (Delux Sales & Service)	Mar. 8, 1960	(1)			(1)			Settled
33-CC-66	Meat Cutters & Local 391 (Peyton Packing Co).	Mar. 9, 1960	(1)			(1)		June 15, 1960	
2-CC-547	*Teamsters, Local 810 (Fein's Tin Can Co , Inc).	Mar. 11, 1960	(1)			Apr. 14, 1960			
7-CP-1	Carpenters, Awning Display Decorators & Metal Fabricators Union, Local 877 (Star Awning Co).	Mar. 14, 1960	(1)			(1)			Settled
12-CC-86	Longshoremen Intl Assoc & its Locals 1868 & 1526 (Port Everglades Terminal Co)	Mar. 14, 1960	(1)			(1)			Settled
3-CD-42	Sheet Metal Workers, Local 71 (Construction Industry Employers Assoc).	Mar. 15, 1960	(1)			(1)			Withdrawn
1-CD-60	Engineers, Operating, Local 853 et al. (Schiavone & Sons Inc & Schiavone Terminals, Inc)	Mar. 17, 1960	(1)			(1)			
2-CC-549	Plumbers, Enterprise Local 638 (Bomat Plumbing & Heating Co).	Mar. 17, 1960	(1)			(1)			
17-CP-2	Hod Carriers, Local 840 (C. A. Blinne Construction Co).	Mar. 21, 1960	(1)			Apr. 4, 1960			
19-CP-3	Meat Cutters, Local 368 (Ash Market & Gasoline)	Mar. 21, 1960	(1)			(1)			Settled
2-CC-551	*Teamsters & its Local 294 (Van Transport Lines, Inc)	Mar. 22, 1960	(1)			(1)			
3-CC-106	Steelworkers, Local 5895 (Carrier Corp)	Mar. 26, 1960	(1)			Mar 16, 1960			
2-CC-552	Sheet Metal Workers, Local 28 et al. (Triangle Sheet Metal Works, Inc).	Mar. 28, 1960	(1)	Mar 28, 1960	Apr. 18, 1960	(1)		Apr 22, 1960	Withdrawn
21-CC-355, 21-CE-1.	Plumbers So Calif. Pipe Trades District Council #16 & Local 230 et al. (Acorn Engineering Co).	Mar. 29, 1960	(1)			(1)			Settled
1-CB-635	Industrial Union of Marine & Shipbuilding of A , Locals 5 & 90 et al (Bethlehem Steel Co).	Mar. 30, 1960	(1)			Apr 11, 1960			
10-CC-448	Retail Wholesale & Dept. Stores U , Local 261 (Perfection Mattress & Spring Co).	Mar. 31, 1960	(1)			(1)			

12-CD-15	Plumbers, Local 725 (Foremost Dairies, Inc)	Mar. 31, 1960	(1)			(1)		Settled
12-CD-16	Carpenters Dist Council & Local 1966 et al (Foremost Dairies, Inc.).	Mar. 31, 1960	(1)			(1)		Settled
2-CC-553	Hatters Intl Union, Joint Board of Millinery Wkrs, Locals 2, 24, 42, 57, 90 (Lloyd-Nolan, Inc)	Apr. 5, 1960	(1)			(1)		Withdrawn
12-CC-87	*Lithographers of America & its Local 78 (Employing Lithographers of Greater Miami)	Apr. 5, 1960	(1)			(1)		
15-CC-110	Engineers, Operating, Local 406 and Plumbers, Local 141 et al (Weatherby Engineering Co)	Apr 5, 1960	(1)			Apr. 18, 1960		
2-CC-556	Carpenters, Suffolk District Council (Vern & Ben Warner, Inc.).	Apr. 6, 1960	(1)			(1)		Withdrawn
2-CC-557	Plumbers, Plumbers Union of Nassau Co Local 457 (Bomat Plumbing & Heating)	Apr. 6, 1960	(1)			Apr 25, 1960		
12-CC-88	Roofers, Local Union #316 (Anning-Johnson Co)	Apr. 6, 1960	(1)			(1)		Settled
14-CC-149	*Teamsters, Local 688 (Cupples Co, Mfrs).	Apr 6, 1960	(1)			(1)		Settled
21-CC-362	Seafarers Intl Union, et al (Carl Hanken et al)	Apr 6, 1960	(1)	Apr. 6, 1960	Apr. 11, 1960	(1)	May 20, 1960	Withdrawn
4-CP-11	Wholesale & Department Store Union, Dist 76 (Morgan Shoe Co).	Apr. 7, 1960	(1)	Apr. 7, 1960	Apr. 14, 1960	Apr 14, 1960		
21-CP-13	Hotel & Restaurant Employees Union, Locals 500 & 402 (Mission Valley Inn)	Apr. 7, 1960	(1)			(1)		
2-CP-24	Hatters Intl Joint Board of Millinery Workers, Locals 2, 24, 42, 57, 90 (Lloyd-Nolan, Inc)	Apr 8, 1960	(1)			(1)		Settled
2-CC-558	Hotel & Restaurant Employees, Local 302 (Home Life Insurance Co.)	Apr 8, 1960	(1)			Apr. 25, 1960		Settled
13-CD-80	Stage Employees, Intl Union, Local 2 (Woods Amusement Corp).	Apr. 8, 1960	(1)	Apr. 8, 1960	Apr. 22, 1960	Apr. 22, 1960		
2-CE-1	*Teamsters, Local 294 (Van Transport Lines, Inc)	Apr. 12, 1960	(1)				June 2, 1960	
2-CC-559	Carpenters, Hempstead Local 1921 (Spar Builders, Inc, et al)	Apr 14, 1960	(1)			May 17, 1960		
9-CC-267	Plumbers, Local 168 et al (Schenerlems' Inc).	Apr. 14, 1960	(1)			(1)		Settled
12-CC-89	*Lithographers of America & its Local 78 (Miami Post Co)	Apr. 15, 1960	(1)			(1)		
15-CP-1	Engineers, Operating, Shreveport Central Trades & Labor Council, Local 406 (Weatherby Engineering Co)	Apr. 18, 1960	(1)			(1)		
21-CD-73	Los Angeles Building & Construction Trades Council (Harvey Aluminum)	Apr 18, 1960	(1)			(1)		Settled
12-CC-90	Hod Carriers, Local 517 et al. (R. F. Ball Construction Co).	Apr. 19, 1960	(1)			(1)		

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Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1960—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
30-CC-50	Bridge, Structural Iron Workers, Local 24 (Adolph Coors Co).	Apr. 19, 1960	(1)			Apr 21, 1960			
36-CC-81	Salem Building & Construction Trades Council et al. (Ballard Sign Co , Inc)	Apr. 21, 1960	(1)			(1)			June 28, 1960
10-CP-7	Electrical Workers, Intl Bro of, Local 429 (Sam M Melson)	Apr. 22, 1960	(1)			(1)			
13-CC-225	*Teamsters, Local 695 (Brandt Automatic Cashier Co).	Apr 26, 1960	(1)			(1)		May 5, 1960	Withdrawn
21-CC-363	Bridge, Structural Iron Wkrs , Local 433 (Philco Corp)	Apr 26, 1960	(1)			(1)			Settled
12-CC-93	Orlando Building Trades Council & Painters Local 1010 (R F Ball Construction Co).	Apr 27, 1960	(1)			(1)			Settled
16-CC-93	*Teamsters, Local 886 (Ada Transit Mix)	Apr. 27, 1960	(1)			May 16, 1960			
33-CC-67	Meat Cutters & Butcher Workmen of N. A , Local 391 (Karler Packing Co.)	Apr 28, 1960	(1)			(1)		June 15, 1960	Settled
33-CC-68	*Teamsters, Local 492 (Colony Materials, Inc)	Apr 28, 1960	(1)			(1)			Settled
1-CC-245	*Teamsters, Local 379 et al. (Consalvo Trucking, Inc)	Apr. 29, 1960	(1)			May 26, 1960			
9-CC-270	Louisville Building & Construction Trades Council (Jack Durrett Builder Inc.)	May 3, 1960	(1)			May 16, 1960			Settled
4-CC-132	Plumbers, Local 420 (Jacobson & Co)	May 4, 1960	(1)			(1)			
9-CP-2-3	Typographical Union, Local 57 et al (Greenfield Printing & Publishing Co).	May 4, 1960	(1)			May 23, 1960			
22-CC-86, 22-CD-36	Sheet Metal Workers, Local 10 (Metal Polishers Buffers & Platers & Helpers, Local 194).	May 4, 1960	(1)			(1)			Withdrawn
22-CC-87, 22-CP-7	*Teamsters, Local 522 (Republic Wire Corp)	May 4, 1960	(1)			June 1, 1960			
12-CC-96	Engineers, Operating, Local 675 (Richardson Construction Co)	May 5, 1960	(1)			May 10, 1960			Settled
24-CP-1	Leather Goods Workers & its Local 346 & Seafarers Intl Union (Baronet of Puerto Rico Inc & Esso Corp)	May 6, 1960	(1)			May 31, 1960			
14-CC-153	Plumbers, Local 318 (Ralph E Boyer Contractor, Inc)	May 10, 1960	(1)			(1)			Settled
20-CP-12	Department & Specialty Store Employees Union, Local 1265 (Oakland G. R Kinney Co).	May 10, 1960	(1)				June 8, 1960		

15-CC-115	Lafayette Building & Construction Trades Council et al (Southern Construction Co).	May 11, 1960	(1)			(1)		
23-CC-74	National Maritime Union, Local 333 (D. M. Picton & Co)	May 11, 1960	(1)			May 20, 1960		
1-CC-246	*Longshoremens Intl Union, Local 2 (Boston Fish Market Corp).	May 12, 1960	(1)			(1)		Settled
2-CC-565	Office Employees, Local 153 (United States Lines Co. et al)	May 12, 1960	(1)			(1)		
7-CC-118	Engineers, Operating, Local 324 (Brewer's City Coal Dock).	May 12, 1960	(1)			(1)		
21-CE-5	Engineers, Operating, Local 12 (Tri-Counties Assoc of Civil Engineering).	May 13, 1960	(1)			(1)		
2-CD-187	*Models & Showroom Employees Union Local 1 (Coliseum Exhibition Corp)	May 16, 1960	(1)			(1)		Settled
4-CC-134	Carpenters, Metropolitan Dist Council of Phila (Hardwood Floor Contractors' Assoc)	May 16, 1960	(1)			(1)		Withdrawn
16-CP-9	Fort Worth Typographical Union 198 (All-Church Press, Inc)	May 16, 1960	(1)			(1)	June 9, 1960	Withdrawn
19-CC-136	Plumbers & Steamfitters, Locals 598 & 44 (McDonald Scott & Associates)	May 16, 1960	(1)			(1)		
2-CC-569	Federal Labor Union #24910 (S. Klein Department Stores, Inc. et al.).	May 16, 1960	(1)			(1)		
23-CC-75	National Maritime Union Local 333 (Dixie Carrier, Inc.)	May 16, 1960	(1)			May 23, 1960		
19-CC-135	Bridge Structural Iron Workers, Local 14 (McDonald Scott & Associates).	May 17, 1960	(1)			(1)		Settled
23-CC-72	Plumbers Local 142 (Piggly Wiggly)	May 17, 1960	(1)					
14-CC-156	*Teamsters, Local 600 (Cupples Co. Mfrs)	May 19, 1960	(1)			(1)		Settled
30-CC-54, 30-CC-55.	Electrical Workers, Local 415 et al. (Associated General Contractors of Wyo)	May 19, 1960	(1)			(1)		
2-CP-34	Ladies Garment Workers, Dressmakers Joint Council (Escapade Sportswear, Inc).	May 26, 1960	(1)			(1)		Settled
6-CC-218, 6-CD-113.	Electrical Workers, Local 712 et al. (Industrial Electric Co.)	May 26, 1960	(1)			(1)		Withdrawn
15-CC-117	Painters, Local 985 (Allen Wall Paper & Glass)	May 26, 1960	(1)			(1)		Settled
12-CC-102	Carpenters, Carpenters Dist. Council of Miami (George Construction Corp.).	May 27, 1960	(1)			June 17, 1960		
3-CP-6	*Teamsters, Local 182 et al (Sitrue, Inc. & Superfine Paper Mills)	June 1, 1960	(1)	June 1, 1960	June 20, 1960	June 20, 1960		
30-CC-56	Electrical Workers, Local 68 (The Martin Co)	June 1, 1960	(1)			(1)		Settled
2-CP-37	*Teamsters, Local 295 (Hot Shoppes, Inc. et al).	June 3, 1960	(1)			(1)		
2-CC-98	Roofers, Local 57 (Atlas Roofing Co., Inc.).	June 6, 1960	(1)			(1)		

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Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1960—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
16-CA-1358	Dal-Tex Optical Co. (Willie B. Green)	June 6, 1960	(1)			(1)			
19-CC-140	Painters, Local 269 (Johnson-Busboom-Rauh).	June 7, 1960	(1)			(1)			Settled
6-CC-217	*Teamsters, Local 261 (Franklin Bottling Co., Inc)	June 8, 1960	(1)			(1)			Settled
12-CC-104	Engineers, Operating, Locals 925, 925B, 925A, 925C (Florida Prestressed Concrete).	June 8, 1960	(1)			(1)			
19-CC-137	Electrical Workers Local 73 & Northeastern Washington-Northern Idaho Building & Construction Trades Council (Northwestern Construction of Washington, Inc)	June 8, 1960	(1)				June 23, 1960		
21-CP-16	Operating Engineers, Local 428 (Gardner Construction Co.).	June 8, 1960	(1)			(1)			
2-CC-571	Orange County Joint Council of the Building & Construction Trades Council (Lenstyle Construction Corp).	June 9, 1960	(1)			(1)			Settled
5-CC-124	Plumbers, Local 5 (Arthur Venneri Co.)	June 10, 1960	(1)						
12-CC-107	Machinists, Dist 50, Lodge 610 (Convair Astronautics).	June 13, 1960	(1)	June 13, 1960	June 17, 1960	June 17, 1960			Withdrawn
30-CC-57	Bridge, Structural Iron Workers, Local 24 (Great Western Sugar Co).	June 13, 1960	(1)			(1)			
1-CB-652-7	Machinists, Lodge 1746, 743 et al (United Aircraft Corp).	June 14, 1960	(1)			(1)			
10-CC-452	Electrical Workers, Local 662 (Middle South Broadcasting Co)	June 17, 1960	(1)						
12-CC-106	Operating Engineers, Local 925 (Cone Bros Contracting Co)	June 17, 1960	(1)			(1)			
20-CC-210	Meat Cutters, Local 457 (O. K. Processors, Inc)	June 17, 1960	(1)			(1)			
3-CC-113	Carpenters, Dist Council of Mohawk Valley (Green Manor Construction Co., Inc).	June 20, 1960	(1)			(1)		June 30, 1960	Settled
13-CP-14	Printing Pressmen's U. Locals 3 & 4 (Moore Laminating, Inc et al)	June 20, 1960	(1)			June 24, 1960			
17-CC-118	Hod Carriers, Local 1140 (Townsco Contracting Co).	June 20, 1960	(1)			(1)			
19-CP-10	Retail Clerks, Local 1207 (Sears Roebuck & Co).	June 20, 1960	(1)						

2-CC-573	Electrical Workers, Local 3 & Building & Construction Trades Council of Greater N Y. (Digangi Electrical Services).	June 21, 1960	(1)					
4-CC-137	Musicians, Philadelphia Musical Society, Local 77 (Holly House & Ross Restaurant).	June 21, 1960	(1)			June 30, 1960		
21-CP-18	Operating Engineers, Local 428 (Kroecker, Contracting Co., Inc)	June 22, 1960	(1)			(1)		
1-CC-254	Machinists, Dist. Lodge 91 & Lodge 1746, et al (United Aircraft Corp).	June 27, 1960	(1)					
21-CC-359	*Teamsters, Local 848 et al (Servette, Inc.).	June 28, 1960	(1)			(1)		
9-CC-273	*Teamsters, Local 505 et al. (Carolina Lumber Co.).	June 29, 1960	(1)					

*All unions are affiliated with AFL-CIO except those indicated by an asterisk.
[1] Because of suspension of unfair labor practice, case retained on court docket for further proceedings if appropriate.