THIRTY-FOURTH ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR ENDED JUNE 30

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UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. • 1970

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $1 (paper cover)

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LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 3, 1970.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Thirty-fourth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1969, 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.

FRANK W. MCCULLOUGH, *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 1969

1. Summary

In fiscal 1969 the National Labor Relations Board received 31,303 cases, a record number for the Agency, as were the totals for almost each year in the prior decade. The year's intake included 18,651 unfair labor practice cases, 59.6 percent of the total, and 12,107 representation petitions, 38.7 percent. The remaining 1.7 percent included union-shop deauthorization petitions (0.5 percent), amendments to certification petitions (0.4 percent), and unit clarification petitions (0.8 percent). (See chart 1.)

Another record was made by the Agency in its 1969 closing of 31,597 cases. Of those, 18,939 were unfair labor practice cases, and 12,658 applied to employee representation. (See tables 7, 8, 9, and 10, which give statistics on stage and method of closing by type of case.)

Regarding administration of the National Labor Relations Act, the caseload submitted to the NLRB is a tremendous task. However, at the 31 NLRB regional offices the great bulk of cases are closed.

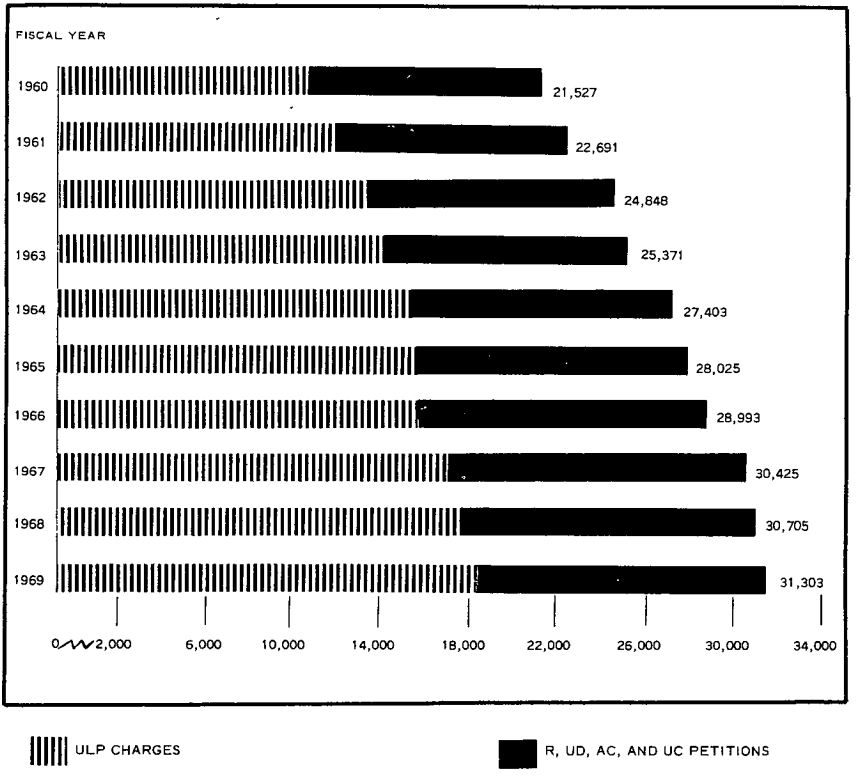
In fiscal 1969 slightly more than 91.9 percent of the 18,939 unfair labor practice cases were closed by the regional offices, without need of formal decisions. Actions at the regional offices included 24.9 percent of the cases settled or adjusted voluntarily by the parties; 36 percent withdrawn voluntarily by the charging parties; and 31 percent dismissed administratively. About 2.4 percent were disposed of by other means prior to Board ajudication. The result was that 5.7 percent went to the Board as contested cases. (See chart 3.)

During the year the Agency conducted 8,083 secret ballot elections of all types. Indicating acceptance by labor and management of the principle of secret ballot elections in deciding representation questions, 79 percent of the elections were arranged by agreement of the parties as to appropriate unit and date and place of election.

Statistical tables on the Agency's activities in fiscal 1969 will be found in appendix A of this report, along with a glossary of terms used in the tables and a subject index. An index of cases discussed in this report precedes appendix A.

Chart 1

CASE INTAKE BY UNFAIR LABOR PRACTICE CHARGES AND REPRESENTATION PETITIONS

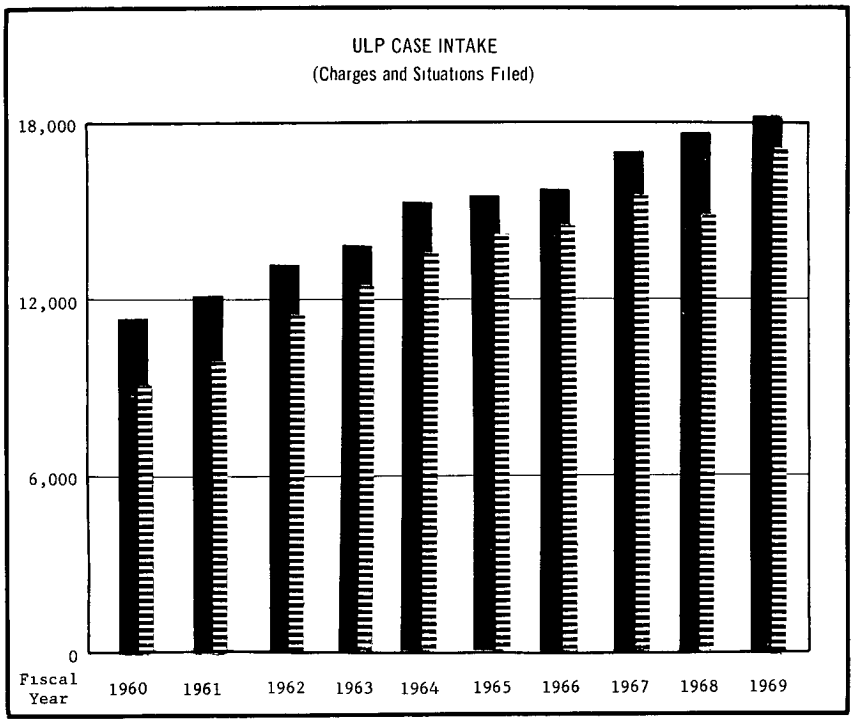


a. NLRB Administration

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

Board Members in fiscal 1969 were Chairman Frank McCulloch of Illinois, John H. Fanning of Rhode Island, Gerald A. Brown of California, Howard Jenkins, Jr., of Colorado, and Sam Zagoria of New Jersey. Arnold Ordman of Maryland is General Counsel.

Chart 2



	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969
CHARGES	11,357	12,132	13,479	14,166	15,620	15,800	15,933	17,040	17,816	18,651
SITUATIONS	9,114	10,592	11,877	12,719	13,978	14,423	14,539	15,499	15,287	17,045

On August 1, 1968, Howard Jenkins, Jr., began his second 5-year term as a Board Member. His term in office will extend through August 27, 1973.

Although the Act administered by the NLRB has become complex, a basic national policy remains the same. Section 1 of the Act concludes, as it has since 1935, that: "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Under the statute the NLRB has two primary functions—(1) to determine by Agency-conducted secret ballot elections whether

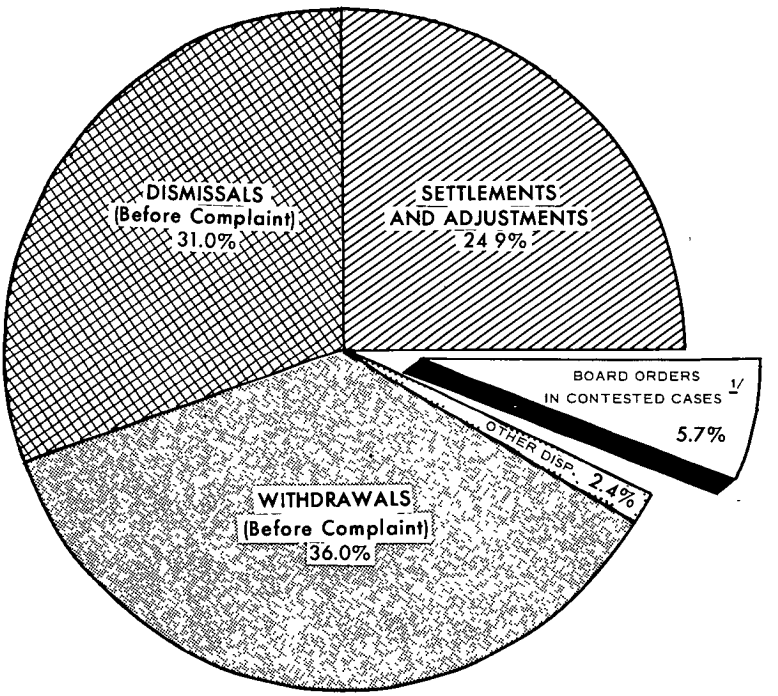
employees wish to have unions represent them in collective bargaining, and (2) to prevent and remedy unfair labor practices whether by labor organizations or employers.

Chart 3

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)

FISCAL YEAR 1969



1/ CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

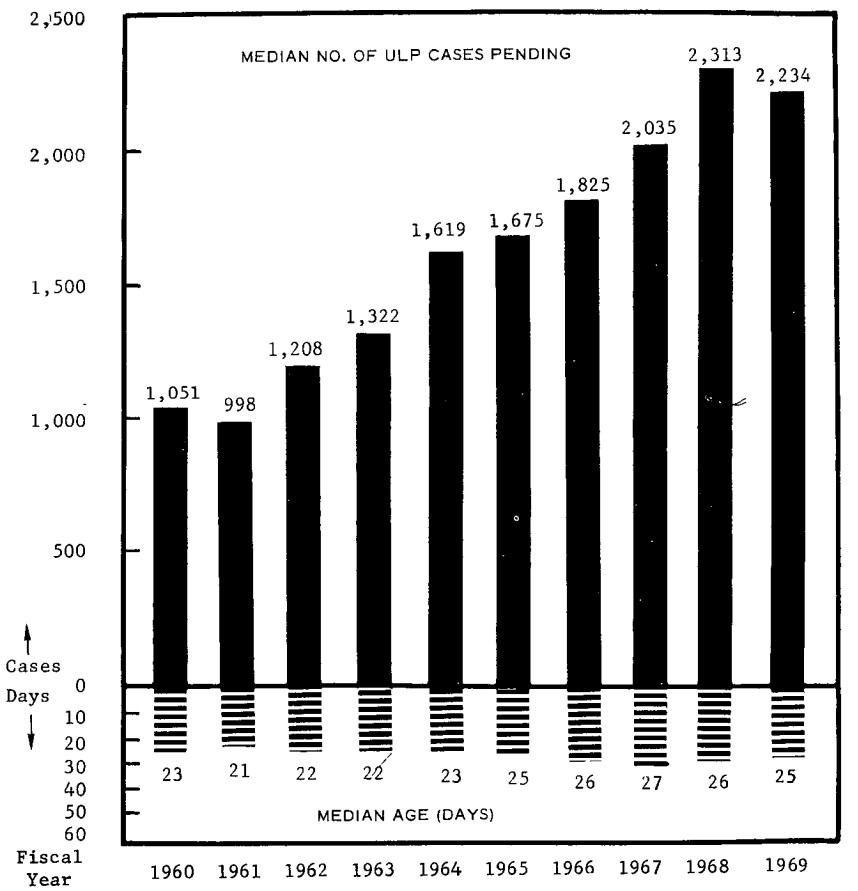
The Act's unfair labor practice provisions place certain restrictions on actions of both employers and unions in their relations with employees, as well as with each other, and its election provisions provide mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees, including balloting on petitions to

decertify unions as bargaining agents as well as voting to determine whether a union shall continue to have the right to make a union-shop contract with an employer.

In handling unfair labor practice cases and elections, the Agency is concerned with the adjustment of labor disputes either by way of investigation and informal settlements or through its quasi-judicial proceedings. Congress created the Agency in 1935 because labor disputes could and did threaten the health of the economy. In the 1947 and 1959 amendments to the Act, Congress

Chart 4

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



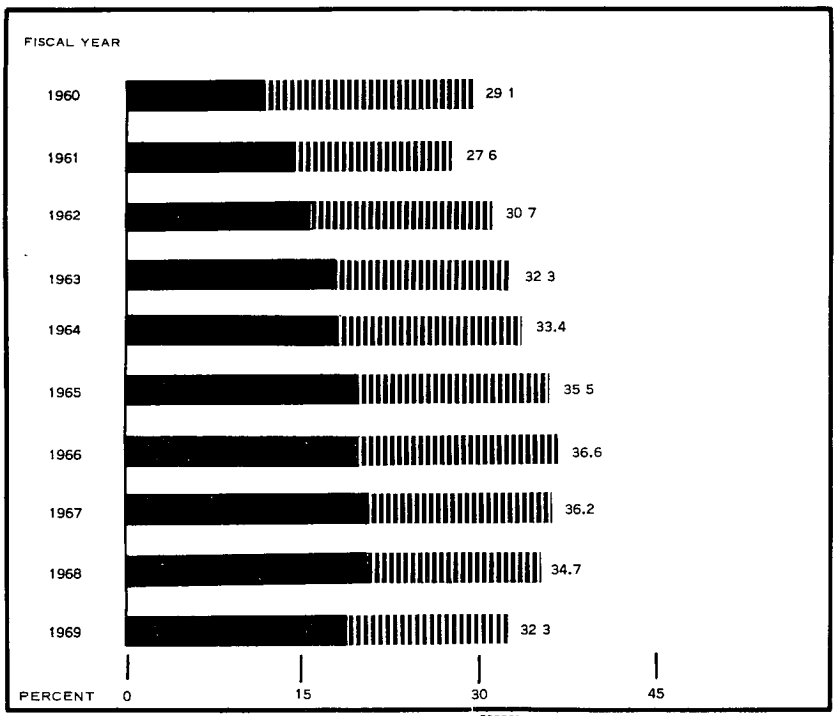
reaffirmed need for the Agency and increased the scope of its regulatory powers.

NLRB has no statutory independent power of enforcement of its orders but may seek enforcement in the U.S. Courts of Appeals. Similarly parties aggrieved by the orders may seek judicial review.

Agency authority is divided by law and by delegation. The Board Members primarily act as a quasi-judicial body in deciding cases upon formal records. The General Counsel is responsible for the issuance and prosecution of formal complaints and for prosecution of cases before the courts and has general supervision of the NLRB's regional offices.

Chart 5

UNFAIR LABOR PRACTICE MERIT FACTOR



	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969
PRECOMPLAINT SETTLEMENTS AND ADJUSTMENTS (%)	11.9	14.1	15.3	17.5	17.8	19.4	19.4	20.5	20.2	18.4
CASES IN WHICH COMPLAINTS ISSUED (%)	17.2	13.5	15.4	14.8	15.6	16.1	17.2	15.7	14.5	13.9
TOTAL MERIT FACTOR (%)	29.1	27.6	30.7	32.3	33.4	35.5	36.6	36.2	34.7	32.3

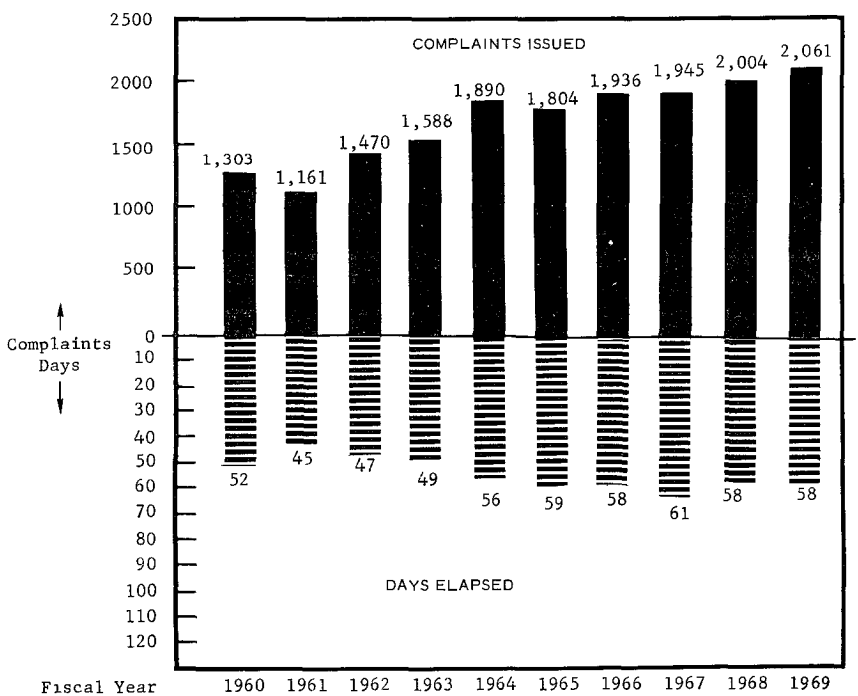
For the conduct of its formal hearings in unfair labor practice cases, the NLRB employs trial examiners who hear and decide cases. Trial examiners' decisions may be appealed to the Board in the form of exceptions taken, but, if no exceptions are taken, under the statute the trial examiners' recommended orders become orders of the Board. Trial examiners are independent of NLRB supervision and are appointed from a roster compiled by the Civil Service Commission.

All cases coming to the Agency begin their processing in NLRB regional offices, either through filing of unfair labor practice charges or employee representation petitions. Since the NLRB may not act on its own motion in either type of case, charges and petitions must be initiated at regional offices by employers, individuals, or unions.

In addition to their processing of unfair labor practice cases in the initial stages, regional directors also have the authority to investigate employee representation petitions, determine

Chart 6

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

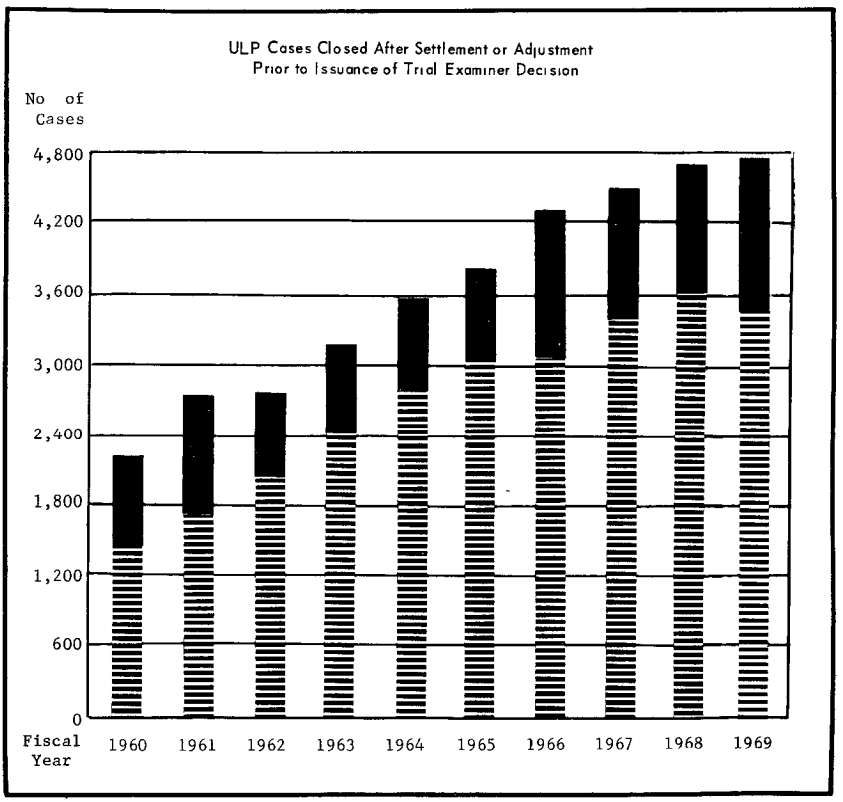


384-517 O - 70 - 2

appropriate employee units for collective-bargaining purposes, conduct elections, and pass on objections to conduct of elections. There are provisions for appeal of representation and election questions to the Board.

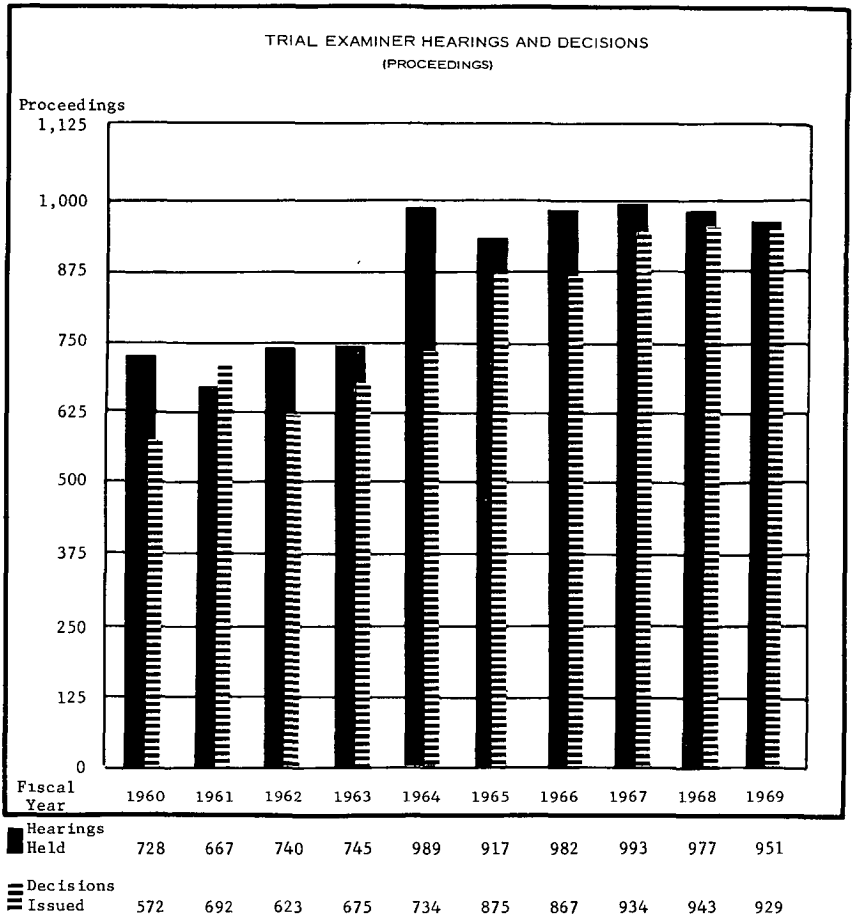
Chart 7

UNFAIR LABOR PRACTICE CASES SETTLED



Fiscal Year	Precomplaint	Postcomplaint	Total
1960	1,480	748	2,228
1961	1,693	1,038	2,731
1962	2,008	744	2,752
1963	2,401	796	3,197
1964	2,750	846	3,596
1965	3,003	821	3,824
1966	3,085	1,176	4,261
1967	3,390	1,072	4,462
1968	3,608	1,089	4,697
1969	3,451	1,266	4,717

Chart 8



b. Case Activity Highlights

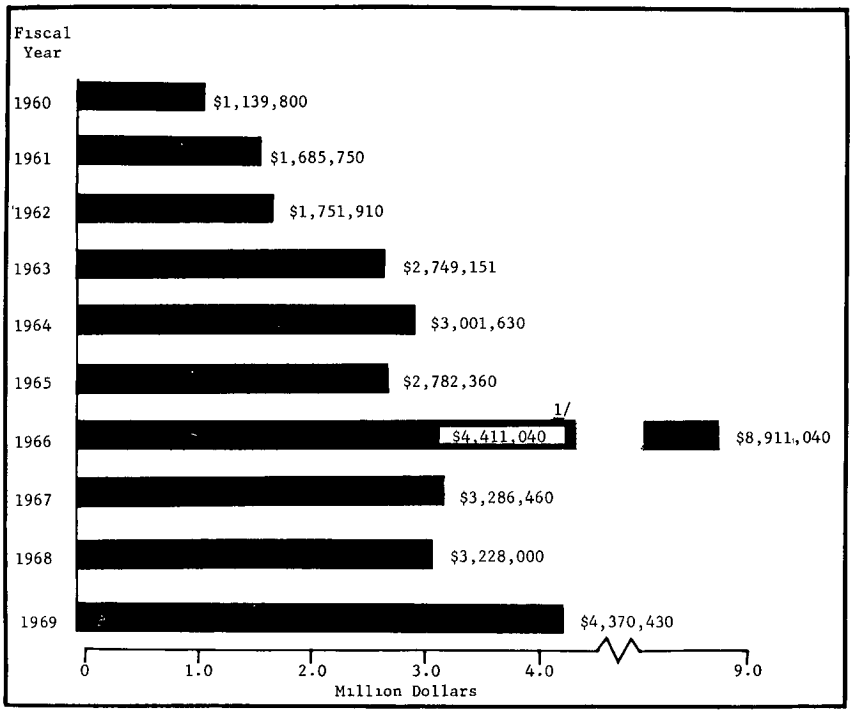
NLRB's caseload, for the ninth consecutive year, reached a record high in fiscal 1969. Agency activity during the year, coming from employers, employees, and labor organizations requesting adjustment of labor disputes and answers to questions concerning employee representation, included:

- Intake—a total of 31,303 cases, of which 18,651 were unfair labor practice charges and 12,652 were representation petitions and related cases.
- Closed—a total of 31,597, with a record number, 18,939, involving unfair labor practice charges.

- Board decisions issued—1,063 unfair labor practice decisions and 3,108 representation decisions and rulings, the latter by Board and regional directors.
- General Counsel's office (and regional office personnel)
  —issued 2,061 formal complaints
  —closed 998 initial unfair labor practice hearings, including 47 hearings under section 10(k) of the Act.
- Regional directors issued 1,872 initial decisions in representation cases.
- Trial Examiners issued 929 initial decisions plus 38 on supplemental matters.
- There were 4,717 unfair labor practice cases settled or adjusted before issuance of trial examiners' decisions.
- Regional offices distributed $4,370,430 in backpay to 6,225 employees. There were 3,748 employees offered reinstatement; 2,726 accepted.

Chart 9

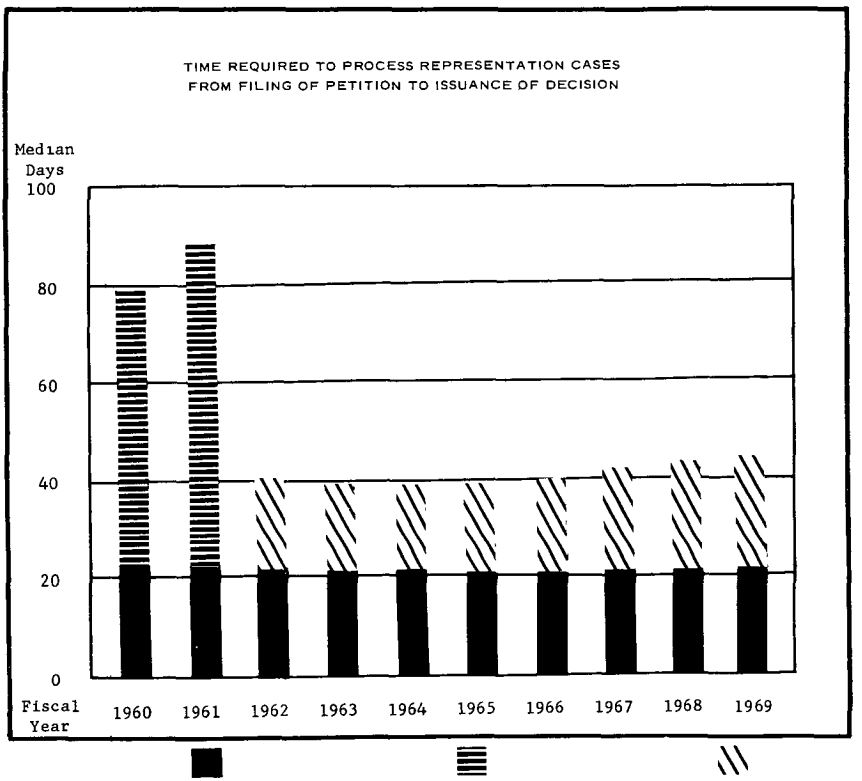
AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES



1/ 1966 - less the Kohler Case

- Regional office personnel sat as hearing officers at 2,287 representation hearings—2,036 initial hearings and 251 on objections and/or challenges.
- There were 529,970 employees who cast ballots in NLRB-conducted representation elections.
- Appeals courts handed down 363 decisions related to enforcement and/or review of Board orders—81 percent affirmed the Board in whole or in part.

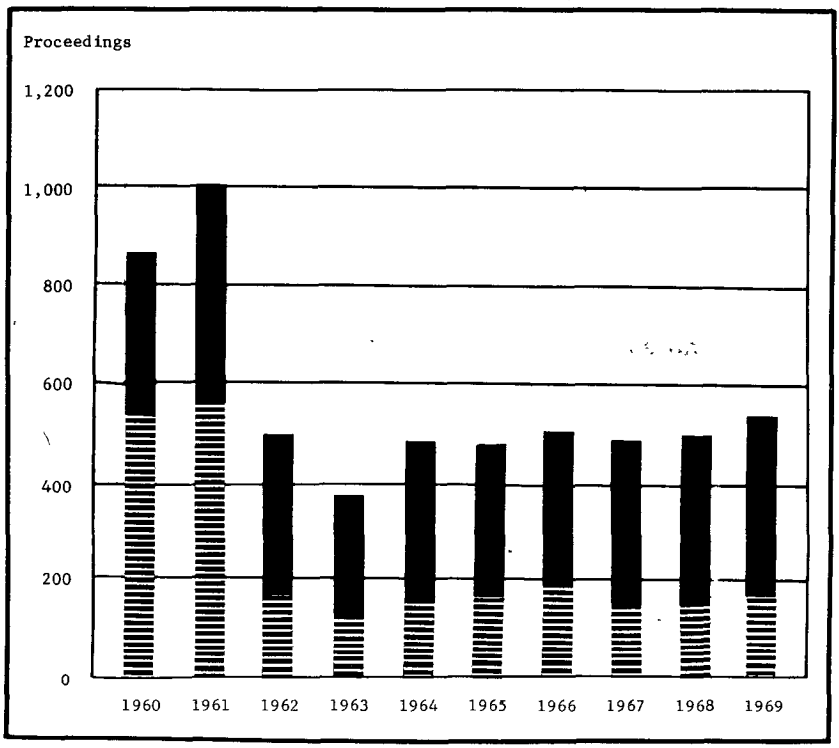
Chart 10



FISCAL YEAR	FILING TO CLOSE OF HEARING	CLOSE OF HEARING TO BOARD DECISION	CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION
1960	24	54	-
1961	24	65	-
1962	23	-	18
1963	22	-	17
1964	22	-	17
1965	21	-	18
1966	21	-	19
1967	22	-	20
1968	22	-	22
1969	23	-	22

Chart 11

BOARD CASE BACKLOG



Proceedings	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969
C	330	460	323	256	344	336	323	343	352	356
R	522	549	165	122	142	148	190	146	144	171
Totals	852	1,009	488	378	486	484	513	489	496	527

2. Operational Highlights

a. Unfair Labor Practices

Fiscal 1969's 18,651 unfair labor practice cases exceeded by 833 the 17,816 filed in fiscal 1968 (a 5-percent boost) and were more than a 50-percent increase over those filed 10 years ago. In situations, in which related charges are counted as a single unit of work, there was a 4.3 percent increase over fiscal 1968. (See chart 2.)

In fiscal 1969, alleged violations of the Act by employers increased to 12,022 cases, a more than 2-percent rise, from the

11,892 of 1968. Charges against unions rose more than 12 percent, to 6,577 in 1969 from the 5,846 of 1968.

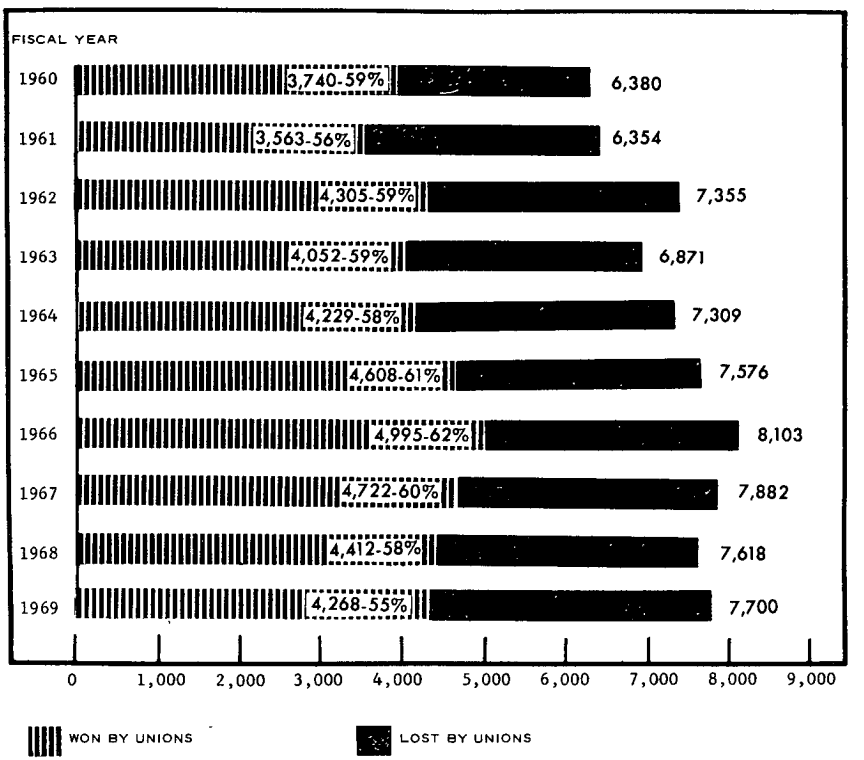
There were 52 charges of violations of section 8(e) of the Act, which bans hot cargo agreements: 35 against unions and 17 against both unions and employers. (See tables 1 and 1A.)

On charges against employers, 8,122, or 67.6 percent, alleged discrimination or illegal discharge of employees. There were 3,967 refusal-to-bargain allegations contained in about one-third of the charges. (See table 2.)

On charges against unions in fiscal 1969, there were 3,488 (330 above those of 1968) alleging illegal restraint and coercion of employees, about 53 percent as against the 54 percent of similar filings in 1968. There were 2,115 charges against unions for illegal secondary boycotts and jurisdictional disputes, nearly 13 percent more than the 1,873 of 1968.

Chart 12

COLLECTIVE-BARGAINING ELECTIONS CLOSED



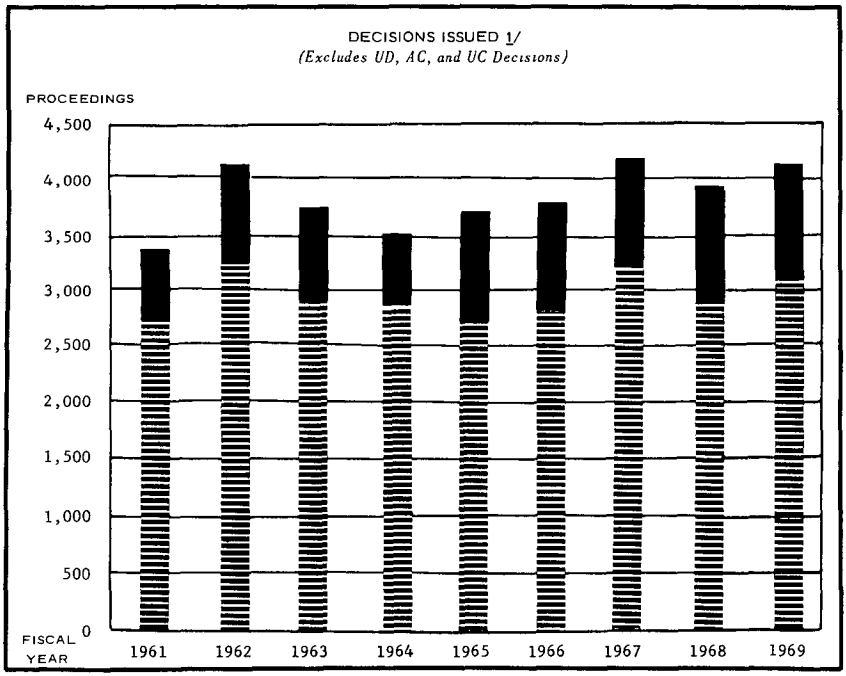
Charges of illegal union discrimination against employees dropped slightly. There were 1,590 such charges, 2 percent below 1968. There were 489 charges of unions picketing illegally for recognition or for organizational purposes, an increase over the 416 such charges in 1968. (See table 2.)

In charges against employers, unions led by filing 64 percent. Unions filed 7,637 charges; individuals filed 4,375 charges, or 36 percent; and employers filed 10 charges against other employers.

Of the 7,637 union charges against employers, AFL–CIO submitted 5,234; Teamsters, 1,557; other national unions, 529; and local unaffiliated unions, 317.

Almost half the charges against unions were filed by individuals—3,129 or nearly 48 percent of fiscal 1969's total of 6,577. Employers filed 3,152 or 48 percent. Other unions filed the 296

Chart 13



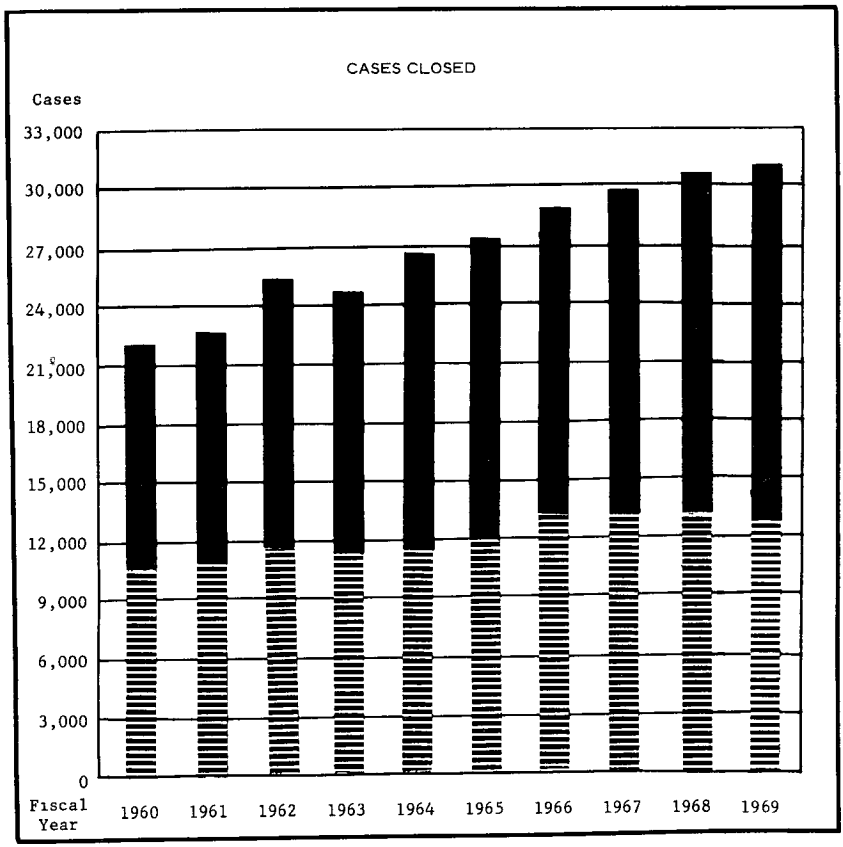
	1961	1962	1963	1964	1965	1966	1967	1968	1969
C	655	903	854	776	1,000	991	1,023	1,033	1,063
R	2,718	3,211	2,857	2,812	2,707	2,769	3,155	2,869	3,108
TOTALS	3,373	4,114	3,711	3,588	3,707	3,760	4,178	3,902	4,171

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

remaining charges. Of the 52 hot cargo charges against unions and/or employers under section 8(e) of the Act, 35 were filed by employers, 4 by individuals, and 13 by unions.

Regarding the record 18,939 cases closed in 1969, 91.9 percent were closed by NLRB regional offices, exactly the same percentage as that of 1968. In 1969, 24.9 percent of cases were settled or adjusted before issuance of trial examiner decisions. Withdrawal of cases by charging parties amounted to 36.0 percent and administrative decisions to 31.0 percent in 1969, while in 1968 the percentages were 35.1 and 30.4, respectively.

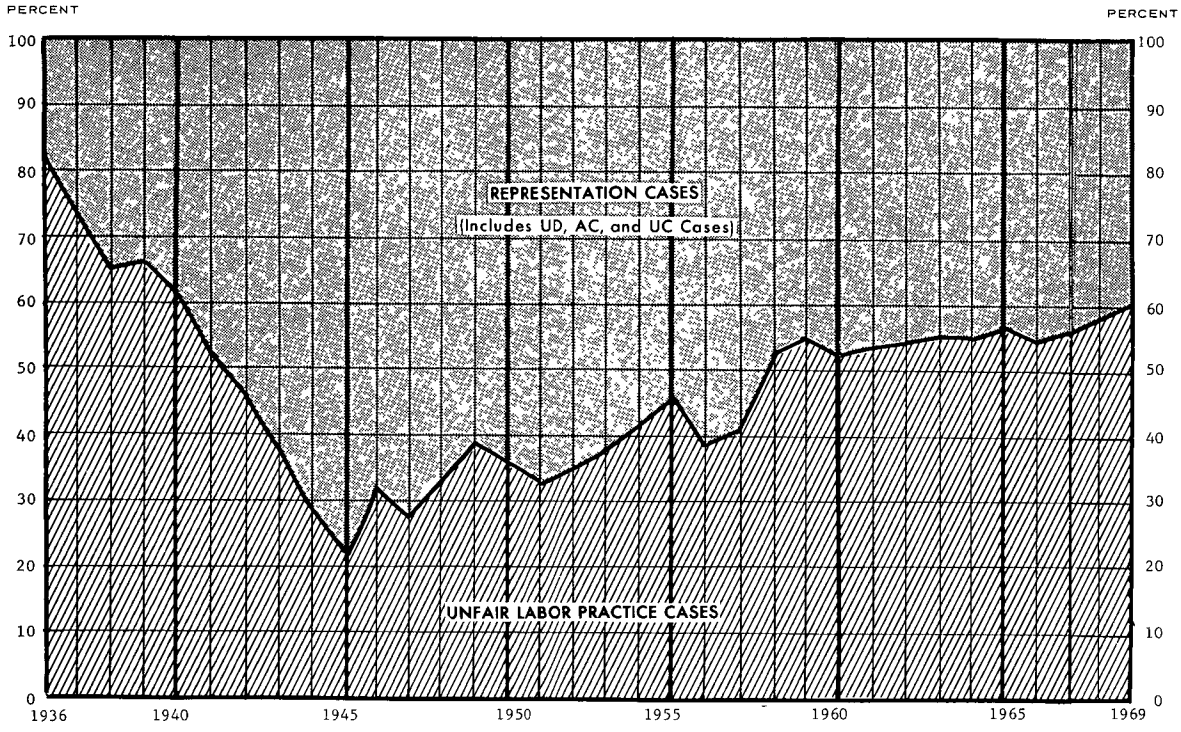
Chart 14



	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969
C CASES	11,924	12,526	13,319	13,605	15,074	15,219	15,587	16,360	17,777	18,939
R, UD, AC, AND UC CASES	0,259	10,289	11,708	11,073	11,641	11,980	12,917	13,134	12,973	12,658
TOTALS	22,183	22,815	25,027	24,678	26,715	27,199	28,504	29,494	30,750	31,597

Chart 15

COMPARISON OF FILINGS OF UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES



This graph shows the percentage division of the NLRB caseload between unfair labor practice cases and representation cases during fiscal years 1936-1969.

The number of unfair labor practice charges found to have merit is important to the evaluation of regional workload. In fiscal 1958, 20.7 percent of cases were found to have merit. The highest level was 36.6 percent in fiscal 1966. In fiscal 1969 it was 32.3 percent.

In 1969 the merit factor in charges against employers was 31.9 percent as against 34.2 percent in 1968. In charges against unions the merit factor was 33.0 percent in fiscal 1969; it was 35.6 percent in fiscal 1968.

Since 1961 (see chart 5) more than 50 percent of merit charges have resulted in precomplaint settlements and adjustments, amounting to 57 percent in fiscal 1969.

In 1969 there were 2,599 merit charges which caused issuance of complaints, and 3,451 precomplaint settlements or adjustments. The two totaled 6,050 or 32.3 percent of the unfair labor practice cases. (See chart 5.)

In fiscal 1969 NLRB regional offices issued 2,061 complaints, about 3 percent more than the 2,004 issued in 1968. (See chart 6.) Of complaints issued, 78.1 percent were against employers, 17.8 percent against unions, and 4.1 percent against both employers and unions.

In 1969 NLRB regional offices processed cases from filing of charges to issuance of complaints in a median of 58 days, the same number of days as in 1968. The 58 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (See chart 6.)

Trial examiners in 1969 conducted 951 initial hearings involving 1,368 cases, compared with 977 hearings involving 1,399 cases in 1968. (See chart 8 and table 3A. Also, trial examiners conducted 49 additional hearings on supplemental matters.

At the end of fiscal 1969, there were 7,089 unfair labor practice cases pending beore the Agency, 4 percent less than the 7,377 cases pending at the end of fiscal 1968.

In fiscal 1969 NLRB awarded backpay to 6,225 workers, amounting to a total of $4.4 million. The backpay awarded was 37 percent more than in fiscal 1968. (See chart 9.)

Employees in fiscal 1969 received $156,890 in reimbursement for fees, dues, and fines as a result of charges filed with the NLRB.

During fiscal 1969, in 1,405 cases there were 3,748 employees offered reinstatement, and 2,726, or 73 percent, accepted rein-

statement. In fiscal 1968, about 66 percent of the employees offered reinstatement accepted.

Work stoppages ended in 270 of the cases closed. Collective bargaining was begun in 1,388 cases. (See table 4.)

b. Representation Cases

In fiscal 1969 the NLRB received 12,652 representation petitions, which included 11,338 collective-bargaining cases; 769 decertification petitions; 173 union-shop deauthorization petitions; 134 petitions for amendment of certification; and 238 petitions for unit clarification. The NLRB's total representation intake was about 2 percent, or 237 cases, below the 12,889 of fiscal 1968.

There were 12,658 cases closed in fiscal 1969, about 2 percent below the 12,973 closed in fiscal 1968. Cases closed in 1969 included 11,350 collective-bargaining petitions, 766 petitions for elections to determine whether unions should be decertified, 170 petitions for employees to decide whether unions should retain authority to make union-shop agreements with employers, and 372 unit clarification and amendment of certification petitions. (See chart 14 and tables 1 and 1B.)

There were 12,286 representation and union-deauthorization cases closed in fiscal 1969. About 68 percent, or 8,293 cases, were closed after elections. There were 2,968 withdrawals, 24 percent of the total number of cases, and 1,025 dismissals.

Of the 8,293 cases closed, 6,579, or 79 percent (78 percent in 1968), were conducted under election agreements.

NLRB regional directors ordered elections following hearings in 1,587 cases, or 19 percent of those closed by elections. There were 39 cases which resulted in expedited elections pursuant to the 8(b) (7) (C) provisions pertaining to picketing. Board elections in 88 cases, about 1 percent of election closures, followed appeals or transfers from regional offices. (See table 10.)

c. Elections

There were 8,083 elections in cases closed in fiscal 1969. Of those, 7,700 (95 percent) were collective-bargaining elections. (See chart 12.) During the year there also were 293 elections conducted to determine whether incumbent unions would continue to represent employees, and 90 elections to decide whether unions would continue to have authority to make union-shop agreements with employers.

Unions lost the right to make union-shop agreements in 54

of the 90 deauthorization elections, while they maintained the right in 36 other elections, which covered 2,935 employees. (See table 12.)

By voluntary agreement of parties involved, 6,405 stipulated and consent elections were conducted. These were 79 percent of the total elections, compared with 78 percent in fiscal 1968. (See table 11.)

Although fewer elections were won by unions in 1969, as compared with 1968, more employees—526,419—exercised their right to vote. This was an increase of 19,647 voters, about 4 percent above the previous year. For all types of elections, the average number of employees voting, per establishment, was 66. About three-fourths of collective-bargaining elections each involved 59 or fewer employees. There was about the same average of 59 employees for the decertification elections. (See tables 11 and 17.)

In decertification elections, unions won in 99, lost in 194. Unions retained the right of representation of 12,422 employees in the 99 elections won. Unions lost the right of representation of 9,349 employees in the 194 elections in which they did not win. As to size of bargaining units involved, unions won in units averaging 126 employees and lost in units averaging 48 employees. (See table 13.)

The average number of employees per election on the question of union-shop deauthorization was 29 where deauthorization was voted, and 82 where authorization was continued. (See table 12.)

d. Decisions Issued

There were 4,387 decisions issued by the Agency in fiscal 1969, a 7-percent increase over the 4,107 decisions of fiscal 1968. Board Members issued 1,922 in 2,467 cases—224 more than the 1,698 of 1968. Regional directors issued 2,465 in 2,619 cases, a gain of 56 over the 2,409 in 1968.

Trial examiners issued 929 decisions and recommended orders in fiscal 1969, a 1.5-percent decline from the 943 of fiscal 1968. (See chart 8.) Trial examiners in 1969 also issued 22 backpay decisions (24 in 1968) and 16 supplemental decisions (21 in 1968). (See table 3A.)

In 1969 Board Members and regional directors issued 4,171 decisions involving 4,836 unfair labor practice and representation cases. (See chart 13.) The Board and regional directors issued 216 decisions in 250 cases regarding clarification of employee bargaining units, amendments to union representation certifications, and union-shop deauthorization cases.

Parties contested the facts or application of the law in 1,244 of the 1,922 Board decisions. The contested decisions follow:

Total contested Board decisions	1,244
Unfair labor practice decisions (including those based on stipulated record)	732
Supplemental unfair labor practice decisions	23
Backpay decisions	11
Determinations in jurisdictional disputes	47
Representation decisions:	
After transfer by regional directors for initial decisions	100
After review of regional directors' decisions	27
Total representation decisions	127
Decisions on objections and/or challenges	286
Decisions as to clarification of bargaining units	14
Decisions as to amendments to certifications	4

This tally left 678 decisions which were not contested before the Board.

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

A number of related cases may be covered in Board decisions. In 1969 the 732 contested unfair labor practice decisions were concerned with 1,080 cases. In ruling on the 1,080 cases, the Board found violations of the Act in 892, or 83 percent. In 1968 violations were found in 929, or 86 percent, of the 1,079 contested cases.

Contested case decisions by the Board showed the following results:

1. *Employers*—During fiscal 1969 the Board issued decisions in 850 contested unfair labor practice cases against employers, or 7 percent of the 12,404 unfair labor practice cases against employers disposed of by the Agency. Violations were found in 741 (87 percent), the same as in 1968 when violations were found in 87 percent of 914 cases. Board remedies in the 741 cases included ordering employers to reinstate 1,022 employees, with or without backpay; to give backpay without reinstatement to 56 employees; to cease illegal assistance to or domination of labor organizations in 36 cases; and to bargain collectively with employee representatives in 329 cases.

2. *Unions*—In fiscal 1969 there were 199 Board decisions in contested unfair labor practice cases against unions. This was 3 percent of the 6,535 union cases closed in 1969. Of the 199 cases,

151 resulted in findings of violations, amounting to 76 percent. In 1968, there were violations in 165 cases, or 83 percent. Remedies in the 151 cases included orders to unions in 13 cases to cease picketing and to give 51 employees backpay. Unions and employers were held jointly liable for backpay for 26 of the 51 employees.

3. *Employers and Unions*—There were 31 hot cargo cases ruled upon by the Board in which no violations were found. A hot cargo case involves an agreement between an employer and a union under which the employer will refuse to handle or deal in any product of another employer or will cease doing business with another person.

At the close of fiscal 1969, there were 527 decisions pending issuance by the Board—356 dealing with alleged unfair labor practices and 171 with employee representation questions. The total was a 6-percent increase over the 496 decisions pending at the beginning of the year. (See chart 11.)

e. Court Litigation

In fiscal 1969, appeals courts handed down 363 decisions in NLRB-related cases, 62 more decisions than in fiscal 1969. In the 363 decisions, NLRB was affirmed in whole or in part in 81 percent. This was a decrease from the 85 percent in 301 cases of the prior year.

A breakdown of appeals courts rulings in 1969 follows:

Total NLRB cases ruled on	363
Affirmed in full	208
Affirmed with modification	83
Remanded to NLRB	16
Partially affirmed and partially remanded	4
Set aside	52

In 17 contempt cases (18 in the prior year) before the appeals courts, the respondents in 9 cases complied with the NLRB order after the contempt petition had been filed but before the court decision. In seven, the courts held the respondents in contempt, and in one a court denied the Agency petition. (See tables 19 and 19A.)

The U.S. Supreme Court affirmed in full four NLRB orders. In another case the Court affirmed with modification. Five other cases were remanded to the NLRB. (See table 19.)

U.S. District Courts in fiscal 1969 granted 84 contested cases litigated to final order on NLRB injunction requests filed pursuant to section 10(j) and (l) of the Act. This amounted to 88 percent of the contested cases, compared with 64 cases granted

in fiscal 1968, or 86 percent.

The following shows NLRB injunction activity in district courts in 1969:

Granted	84
Denied	11
Withdrawn	29
Dismissed	9
Settled or placed on courts' inactive docket	60
Awaiting action at end of fiscal 1969	24

There were 205 NLRB-related injunction petitions filed with the district courts in 1969, against 181 in 1968. NLRB in 1969 also filed three petitions for injunctions in courts of appeals pursuant to provisions of the Act's section 10(e). The courts ruled on two petitions, granting both. (See table 20.)

In 1969 there were 54 additional cases involving miscellaneous litigation decided by appellate and district courts, 50 (93 percent) of which upheld the NLRB's position. (See table 21.)

3. Decisional Highlights

In the course of the Board's administration of the Act during the report year, it was required to consider and determine complex problems arising from the many factual patterns in the various cases reaching it. In some cases new developments in industrial relations, as presented by the factual situation, required the Board's accommodation of established principles to those developments. Chapter II on "Jurisdiction of the Board," chapter III on "Effect of Concurrent Arbitration Proceedings," chapter IV on "Board Procedure," chapter V on "Representation Cases," and chapter VI on "Unfair Labor Practices" discuss some of the more significant decisions of the Board during the fiscal year. The following summarizes briefly some of the decisions establishing basic principles in certain areas.

a. Jurisdiction

In implementation of the "intention on the part of Congress that the terms of Section 8(b)(4)(B) be given full effect in protecting municipal and State governments from secondary pressures," the Board in the *City of Juneau* case [1] exercised jurisdiction over a section 8(b)(4)(B) proceeding in which both the primary and the secondary employers were political subdivisions and therefore did not meet the statutory definition of "employer"

[1] *Local 16, Intl. Longshoremen & Warehousemen's Union (City of Juneau)*, 176 NLRB No. 121, *infra*, pp. 28–29.

set forth in section 2(2). Noting that the legislative history of the 1959 amendments to section 8(b)(4)(B) made clear that Congress intended to protect all "persons" from secondary pressures, the Board found that the political subdivisions were "persons" within the Act's definition of that term, that the operations of the political subdivisions had an impact on commerce, and that the dispute fell within the scope of section 8(b)(4)(B). It therefore concluded that it had jurisdiction and should assert it to effectuate the purposes of the Act.

b. Representation Issues

The "blurred line" [2] between work assignment disputes and controversies over the scope of the bargaining unit received the attention of the Board in the *McDonnell Company* case.[3] There the representative of a certified unit of electricians doing maintenance and instrument calibration work on testing equipment in an aircraft factory, and the representative of a certified unit of production employees, each claimed that the maintenance and calibration of sophisticated electronic circuit analyzers newly installed by the employer was encompassed within the certification of their unit. The production employees concededly had always operated the circuit analyzers and the electricians had adjusted or calibrated them. However, the maintenance and calibration of the new equipment was so integrated into the production process —a faulty circuit reading required verification of the operation and calibration of the analyzer as well as examination of the wiring circuits being tested—that the employer sought by a unit clarification petition to have the work defined as production work within the certification of the production unit. Although the Board recognized that the issue could be raised for Board consideration by strike action and an 8(b) (4) (D) charge, it concluded that the matter was "essentially a unit issue," involving a question of accretion to an existing unit. It noted also that to decline to consider the matter in a unit clarification proceeding would subject the parties to additional litigation, expense, and delay and would not serve the purposes of the Act.

c. Validity of Oral Union-Security Clause

In one case [4] decided during the year the Board held that "a union-security agreement which is otherwise valid is not neces-

[2] *Carey* v. *Westinghouse Electric Corp*, 375 U.S. 261, 268
[3] 173 NLRB No 31, *infra*, pp. 62–63
[4] *Pacific Iron & Metal Co.*, 175 NLRB No. 114, *infra*, pp. 74–75.

sarily unlawful in its maintenance or performance merely because its terms are not in writing." It emphasized, however, that the parties to such agreement must satisfy a "stringent burden" in establishing the existence and precise terms and conditions of such an agreement and that the employees have been fully and unmistakably notified concerning it.

d. Bargaining Obligation

Consistent with its *Laidlaw* decision,[5] holding that a replaced economic striker retains his status as an employee and is entitled to have his reinstatement request honored when openings become available so long as he has not abandoned the employee of the employer, the Board in the *Pioneer Flour Mills* case[6] held that such replaced economic strikers are to be included in the unit of the employer's employees for purposes of determining the union's majority status. The employer had withdrawn recognition from the incumbent union following an economic strike of short duration because of his asserted doubt of the union's continued majority in the unit, which he viewed as consisting of the employees who did not join the strike together with the replacements for the strikers. In holding that the replaced economic strikers were to be counted in the unit for purposes of assessing the adequacy of the basis of the employer's asserted doubt, the Board noted that the replaced strikers had retained their status as employees, had applied for reinstatement, and would have been eligible under section 9(c)(3) to vote in an election had one been held at the time of the termination of the strike withdrawal of recognition. Evaluating the employer's basis for doubting the union's majority in the light of a unit including the replaced strikers, the Board found it inadequate and directed the employer to bargain with the union.

The right of a duly designated employee representative to select the members of its contract negotiating team was upheld by the Board under the circumstances of a case[7] in which the representative had designated as nonvoting members of its team individuals who were members of other unions who represented, in separate bargaining units, other employees of the employer. The unions had expressly disclaimed any intent to engage in coalition bargaining or to bargain for employees represented by any other union, and the employer had walked out of the bar-

[5] *Laidlaw Corp.*, 171 NLRB No. 175; Thirty-third Annual Report (1968), p. 83.
[6] *C H. Guenther & Son, Inc., d/b/a Pioneer Flour Mills*, 174 NLRB No 174, *infra*, p. 80.
[7] *General Electric*, 173 NLRB No. 46; see also *Minnesota Mining & Manufacturing Co.*, 173 NLRB No. 47, *infra*, pp 81–82.

gaining sessions without waiting to see whether the union's demands and actions were consistent with its disclaimer. In holding that the mere presence of members of other unions on the negotiating committee of a representative does not justify a refusal to bargain, even though those individuals at another time may be negotiating directly for the employees their unions represent, the Board emphasized that the right of the representative to designate its bargaining team is directly derived from the employees' right under section 7 of the Act to "bargain collectively through representatives of their own choosing." As such the right, although not absolute, it not to be qualified unless the choice of members of another union as negotiating representatives is made with an ulterior motive or in bad faith, or actually disrupted negotiations. The Board further held that abuse of the bargaining process is not inherent in an attempt at coordinated bargaining, and that abuse was not to be inferred, but must be established by substantial evidence of ulterior motive or bad faith, neither of which were present in the case before it.

e. Union Fines

The circumstances under which a union may impose fines upon its members as a means of enforcing adherence to union objectives was considered by the Board in two cases during the report year. In *Toledo Blade* [8] union action in imposing fines upon three of its members, the employer's superintendent and two foremen, for performing excessive work in violation of the contract was found to have violated section 8(b)(1)(B) by restraining the employer in the selection of his representatives for the purposes of negotiations and handling grievances. The union's assertion of disciplinary authority over the supervisors, who had substantial authority to handle grievances, was found to infringe upon the employer's right to control and rely on his representatives. The Board further held that even if the foremen had not actually served their employer as bargaining representatives, the employer was entitled to the protection of section 8(b)(1)(B) in his future designation of and reliance on representatives selected from an uncoerced group of supervisors qualified as representatives because of their day-to-day supervisory roles.

A union which fined a member for crossing an economic picket line of a sister local placed at the employer's place of business was found by the Board to have thereby violated section 8(b) (1)

[8] *Toledo Locals 15-P & 272, Lithographers Union (Toledo Blade Co.)*, 175 NLRB No. 173, *infra*, p. 98.

(A), where a no-strike clause in the fining union's contract would have prohibited such a work stoppage by its members in their own interest.[9] The Board viewed the fine as union endorsement of the actions of its other members who refused to cross the line. It was thus in effect a penalty for refusing to participate in a work stoppage in violation of the no-strike clause of the union's own contract, and therefore not immune under the proviso to section 8(b)(1)(A).

f. Common Situs Picketing

The circumstances which satisfy the requirement of the presence of the "primary employer" at a common situs to render picketing there legitimate activity were further defined by the Board in the *Auburndale Freezer* case.[10] The picketing by employees of the primary employer of the site of an independently owned and operated freezer warehouse, where the primary employer delivered his product for storage until picked up by commercial carriers, was found in that case to be legitimate picketing in conformance with the *Moore Dry Dock* standards, even though no products were being delivered at the time of the picketing due to the strike. Although the freezer warehouse served many other employers, the Board found the primary employer constantly present there for purposes of the picketing. This finding was based upon the employer's long use of the warehouse, his long-term reservation of a large storage capacity, and the fact that his products were then stored at the warehouse, were regularly brought to the warehouse by his employees, and were shipped by the warehouse only in accordance with instructions from him.

4. Financial Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1969 are as follows:

Personnel compensation	$27,950,052
Personnel benefits	2,163,199
Travel and transportation of persons	1,391,815
Transportation of things	46,536
Rent, communications, and utilities	1,296,245
Printing and reproduction	472,271
Other services	1,007,596
Supplies and materials	291,813

[9] *Local 12419, United Mine Workers (Natl. Grinding Wheel Co.)*, 176 NLRB No. 89, *infra*, p. 97.
[10] *United Steelworkers of America, AFL–CIO, & Loc 6991 (Auburndale Freezer Corp.)*, 177 NLRB No. 108, *infra*, p. 103.

Equipment	221,733
Insurance claims and indemnities	8,160
Subtotal obligations and expenditures [1]	34,849,420
Transferred to other accounts (GSA)	6,577
Total Agency	34,855,997

[1] Includes reimbursable obligations distributed as follows.

Personnel compensation	29,453
Personnel benefits	1,993
Travel and transportation of persons	1,916
Rent, communications, and utilities	2,547
Other services	42
Supplies and materials	244
Total obligations and expenditures	36,195

II

Jurisdiction of the Board

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

The following cases among those decided by the Board during the report year involving issues concerning its jurisdiction are of note.

A. Jurisdiction Over Dispute Involving State Agencies

In the *City of Juneau* case [6] the Board held that it had, and should assert, jurisdiction in a proceeding where a union was

[1] See secs 9(c) and 10(a) of the Act and also definitions of "commerce" and "affecting commerce" set forth in secs. 2(6) and (7), respectively. Under sec. 2(2), the term "employer" does not include the United States or any wholly owned Government corporation, any Federal Reserve Bank, any State or political subdivision, any nonprofit hospital, any person subject to the Railway Labor Act, or any labor organization other than when acting as an employer. "Agricultural laborers" and others excluded from the term "employee" as defined by sec. 2(3) of the Act are discussed, *inter alia*, in the Twenty-ninth Annual Report (1964), pp. 52–55, and Thirty-first Annual Report (1966), p. 36.

[2] See Twenty-fifth Annual Report (1960), p 18.

[3] See sec. 14(c)(1) of the Act.

[4] These self-imposed standards are primarily expressed in terms of the gross dollar volume of business in question.

[5] While a mere showing that the Board's gross dollar volume standards are met is ordinarily insufficient to establish legal or statutory jurisdiction, no further proof of legal or statutory jurisdiction is necessary where it is shown that its "outflow-inflow" standards are met. Twenty-fifth Annual Report (1960), pp. 19–20. But see *Sioux Valley Empire Electric Assn.*, 122 NLRB 92 (1958), as to the treatment of local public utilities

[6] *Local 16, Intl. Longshoremen & Warehousemen's Union*, 176 NLRB No. 121.

alleged to have violated section 8(b)(4)(B) by picketing a State-owned ferry with an object of forcing the State to cease doing business with a city with which the union had a labor dispute over the handling of mooring lines for the ferry. The contention that jurisdiction should not be invoked because the Board could not resolve the underlying labor dispute, since neither the primary nor the secondary employer met the statutory definition of "employer," was rejected. The Board noted that the legislative history of the 1959 amendments to section 8(b)(4) indicated that Congress intended to protect all persons, including those not subject to other provisions of the Act, from secondary pressures. Since a political subdivision is clearly a "person" within the meaning of section 2(1) of the Act, the instant dispute fell within the literal terms of section 8(b)(4)(B), and since the operations of the city and State had an impact on commerce, the Board concluded that asserting jurisdiction would effectuate the purposes of the Act.[7]

B. Territorial Scope of Board Jurisdiction

In *Star-Kist Samoa*,[8] the Board dismissed a petition seeking an election among certain employees on the island of American Samoa, concluding that under all the relevant considerations American Samoa does not come within its jurisdiction under the Act. In considering the scope of its jurisdiction over matters affecting "commerce," as defined in section 2(6) of the Act,[9] the Board observed that it has previously interpreted "Territory," as used in section 2(6), to include, *inter alia*, Puerto Rico,[10] the Virgin Islands,[11] and Guam.[12] It also observed that the Supreme Court, in defining the characteristics of a "Territory," [13] held that Congress had plenary power over the territories, that the form of

[7] Chairman McCulloch and Members Fanning and Brown for the majority. Member Jenkins, dissenting, was of the view that the application of section 8(b)(4) to a situation where the Board could not apply other provisions of the Act because the primary, as well as the secondary, employer was exempted from the other provisions, was not justified by the legislative history and would not effectuate the policies of the Act.

[8] 172 NLRB No 161. And see companion cases *Van Camp Sea Food Div., Ralston Purina Co.*, 172 NLRB No. 162, and *Standard Oil Co of Calif.*, 172 NLRB No. 163.

[9] Sec. 2(6) of the Act defines "commerce" as. " . trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other Sate or any Territory or the District of Columbia or any foreign country "

[10] *Ronrico Corp.*, 53 NLRB 1137 (1943).

[11] *Virgin Isles Hotel*, 110 NLRB 558 (1954).

[12] *RCA Communications*, 154 NLRB 34, Thirty-first Annual Report (1966).

[13] *I.C.C.* v *U.S. ex rel Humbolt S.S Co.*, 224 U.S. 474, 482.

government to be established is not prescribed and may not necessarily be the same in all territories, and that the government of a territory need not meet a sophisticated standard for it to be an "organized territory." Upon the basis of these precedents, the Board distinguished American Samoa from those dependencies of the United States which had been found to be "Territories," since it is neither "incorporated" or "organized"; it does not have even a rudimentary government established by Congress, but rather one established by the executive branch to function through the person of the Secretary of the Interior to whom administrative authority was delegated by the President; its inhabitants, while American Nationals, are not citizens; and it is not within the jurisdiction of any United States Circuit Court and has no Federal District Court. The Board also noted that American Samoa is not listed as a territory in section 14(c)(2) of the Act which enumerates other territories over which Congress intended the Board to assert jurisdiction.[14]

C. Hospitals and Related Enterprises

In *Wesleyan Foundation*,[15] the Board determined that jurisdiction should not be asserted over a combination accredited general hospital and accredited nursing home which was operated by the employer foundation to provide skilled medical, surgical, convalescent, and health-care services for the elderly and aged, and basically to supplement the functions of a short-term hospital which offered acute surgical and medical attention. Although the employer was organized on a common stock basis, the Board found that the usual incidents of stock ownership were not present. Thus, the employer classified as a shareholder "anyone interested in the welfare of the institution." There was no price for a share of stock, nor were any benefits conferred upon shareholders except their participation "in the glory of doing good for the sick and elderly." Shareholders had no property rights, and the articles of incorporation precluded payment of dividends. Although shareholders had voting rights, they were not exclusive in that anyone else, including the general public and nonresidents of the State, had equal voting rights. Accordingly, the Board held that the not-for-profit charitable facility, insofar as it furnished hos-

[14] Sec. 14(c)(2) provides that: "Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."

[15] 171 NLRB No. 22.

pital services, fell within the statutory exclusion of enterprises over which the Board may assert jurisdiction.[16] In addition, the nonhospital services were closely related to, and in some situations may have been inseparable from, the hospital services.[17]

In another case, *United Hospital Services*,[18] the Board declined to assert jurisdiction over a nonprofit corporation providing laundry services to member hospitals, which were required by the articles of incorporation to be either public hospitals or nonprofit, private hospitals. Noting particularly that the corporation was created by, wholly controlled by, and existed only to provide services to exempt hospitals, the Board was of the opinion that such corporation was an integral part of the exempt nonprofit and public hospitals it was established to serve; and as it had no existence independently of such hospitals, it shared their statutory exemption. The Board, therefore, held that it was not an employer within the meaning of section 2(2) of the Act.

However, jurisdiction was asserted in *Miami Inspiration Hospital*[19] over a hospital corporation which operated a hospital and clinic, notwithstanding that the hospital corporation was organized on a nonstock membership and nonprofit basis, with several members but no stockholders. No other person, corporation, or entity was legally entitled to receive any of its earnings. In this case the Board found that the hospital corporation was operated, realistically speaking, by two profit-making mining companies and only nominally by the nonprofit employer hospital corporation, wherefore the limitations of the exemption from section 2(2) were exceeded. Furthermore, the facts showed that the operations of the employer hospital were an integral part of the operations of the two mining companies.[20] The employer hospital functioned primarily to care for the employees and dependents of employees of the two mining companies for whom no other hospital facilities were readily available. It was for that purpose that the two companies originally established the employer hospital corporation, which was itself a substitution for and continuation of medical facilities formerly operated by them directly.

In one case[21] in which the employer had discharged four em-

[16] Sec. 2(2) of the Act excludes from the term "employer," *inter alia*, "any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual."

[17] Cf. *University Nursing Home*, 168 NLRB No. 53, Thirty-third Annual Report (1968), p. 29.

[18] 172 NLRB No. 188.

[19] 175 NLRB No 99.

[20] *Kennecott Copper Corp.*, 99 NLRB 748 (1952).

[21] *Robert Scrivener, d/b/a A A Electric Co.*, 177 NLRB No. 65.

ployees in retaliation for their having met with and given evidence to a Board field examiner investigating unfair labor practice charges which had been filed against the employer, the Board asserted jurisdiction over the employer where his operations were within the Board's statutory jurisdiction notwithstanding that the business volume did not meet the Board's discretionary standards for the assertion of jurisdiction. The Board found that the discharges interfered with the Board's investigation of those charges, an integral and essential stage of Board proceedings, wherefore the employer's conduct fell within the prohibitions of section 8(a)(1) and (4) of the Act. The Board pointed out that these sections were designed, at least in part, to safeguard the procedure established for the vindication of section 7 rights by assuring employees protection against employer retaliation for exercise of those rights. In the circumstances of the case before it, the Board was of the opinion that public policy required it to assert jurisdiction for the purpose of remedying the employer's unlawful interference with the statutory right of employees to freely resort to and participate in the Board's processes. However, the Board did not assert its jurisdiction over alleged violations of section 8(a)(1), (3), and (5) of the Act by the employer which were independent of and unrelated to the discharges. It reasoned that, unlike the remedying of the violations of section 8(a)(4), remedying the alleged violations of section 8(a)(1), (3), and (5) would have no immediate impact on the vindication of an individual employee's right to resort to the Board's processes and concluded that equal and effective administration of the policies of the Act required limitation of its exercise of jurisdiction to the remedying of the 8(a)(4) violations.[22]

[22] Chairman McCulloch and Members Fanning, Jenkins, and Zagoria. Member Fanning was of the view that once the Board exercised jurisdiction, public policy required the fullest exercise to protect employees from unlawful conduct, and would therefore assume jurisdiction over the allegations of other unfair labor practices also.

III

Effect of Concurrent Arbitration Proceedings

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

In a number of cases decided during the report year, the Board was called upon to determine whether arbitration proceedings met the *Spielberg* standards [2] of fairness and regularity, and deferral was therefore appropriate. Other cases involved the appropriateness of deferral to arbitration where it was asserted that the particular nature of the issues was such as to render them more appropriately handled under available contract procedures.

A. Prerequisites to Deferral

In *Eazor Express*,[3] the Board held that a grievance-arbitration proceeding, which ultimately found that the employer's discharge of an employee was justified, satisfied the requisite standards of fairness and regularity and should be honored, and that the complaint alleging the discharge as a violation of section 8(a)(3) and (1) should be dismissed. In rejecting the contention that the proceeding was not fair and regular because the dischargee was

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

[2] In *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955), the Board concluded that encouragement of voluntary settlement of labor disputes would best be served by recognition of an arbitrator's award where "the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act." *Id.* at 1082.

[3] 172 NLRB No. 201.

not present at every stage of the arbitration proceeding, the Board pointed out the basic question is really whether the grievant was honestly and adequately represented by someone purporting to speak for him. Here, the employee had been represented by his union at each stage of the proceedings, did not seek to be represented by his own counsel, and never complained that the union's representation was unfair or inadequate. Nor did it appear, in view of the vigorous representation of his interest by the union, that his presence would have affected the result.

In *McLean Trucking Co.*,[4] the Board declined to withhold exercise of its jurisdiction to resolve the unfair labor practice issues posed by an employer's discharge of one of its employees notwithstanding the availability of contractual grievance-arbitration machinery for the settlement of the controversy; the agreement of the parties to the contract to use that machinery as a basis for settling the dispute; and the fact that the basic controversy in the dischargee's case was the same as that involved in the cases of the 12 other employees as to whom an arbitration award had already been issued. It noted that the dischargee's case was not then pending arbitration, the unfair labor practice issue had already been fully litigated and was before the Board for decision, and no issue was involved which only an arbitrator would be competent to determine. Under such circumstances, the Board was of the view that it would not effectuate statutory policy to defer the dischargee's case for arbitration, and proceeded to resolve the unfair labor practice issues on the merits.[5]

In another case,[6] employees of the employer engaged in an unauthorized strike contrary to the terms of their collective-bargaining agreement, and subsequently two employees, one of whom was a shop steward, were discharged for encouraging the strike. The discharges were upheld by a duly constituted employer-employee committee under the grievance procedures of the bargaining agreement, which found as a fact that the strike lasted more than 24 hours and the employer was therefore entitled under the contract to discharge the employees, although he could not have done so had the strike lasted less than 24 hours. The Board, however, found that the employer thereby violated section 8(a)(3) and that the arbitration panel's award was not entitled to

[4] 175 NLRB No. 66.

[5] Chairman McCulloch and Member Jenkins, for the majority, dismissed the complaint on the merits. Member Brown was of the view that the issue of the employee's discharge is one which should appropriately be referred for resolution to the contractual grievance-arbitration machinery.

[6] *Wagoner Transportation Co.*, 177 NLRB No. 22.

deference because based upon an erroneous finding of a material fact. The Board found that the strike lasted only 13 hours and the employees were thereafter willing to return to work, but were unable to do so within the 24-hour period because the employer did not schedule any work for them.

The Board also declined to defer to arbitration in *Zenith Radio Corp.*,[7] where it concluded that the issue of a complaint alleging that the employer violated section 8(a)(5) and (1) of the Act by unilaterally reclassifying jobs was not before the arbitrator in a pending proceeding and therefore should be resolved by the Board on the merits. It agreed that the dispute between the parties as to the employer's right to unilaterally make the reclassifications should be resolved, but found that an arbitration proceeding then underway related to the propriety of the classifications of the new jobs, and did not reach the underlying issue of the right of the employer to unilaterally establish the new jobs while the arbitration was pending. The Board also noted that the complaint alleged that the employer's unilateral action was a violation of its statutory bargaining obligation, and that the parties deliberately refrained from submitting this basic question to arbitration but rather indicated that they believed the issue to be an appropriate one for determination by the Board.[8] Accordingly, the Board proceeded to resolve the issues of the employer's alleged unilateral action, finding that such action was not violative of section 8(a)(5).

B. Appropriateness of Deferral

In a case[9] involving the appropriateness of deferral because of the nature of the issue in dispute, the Board dismissed an 8(a)(5) complaint and deferred to arbitral consideration of a dispute involving the employer's unilateral change in the employees' relief periods during the terms of the contract. The Board noted that the contract provided grievance and arbitration machinery and found that the unilateral action taken was not designed to undermine the union and was not patently erroneous but rather was based on a substantial claim of contractual privilege, and that arbitral interpretation of the contract would resolve both the unfair labor practice aspect and the contract interpretation issue in a manner compatible with the purposes of the Act. In

[7] 177 NLRB No. 30.

[8] Chairman McCulloch and Member Jenkins for the majority. Member Brown, dissenting in part, would dism ss this aspect of the complaint as involving essentially a contract dispute better resolved by the agreed grievance procedures.

[9] *Jos Schlitz Brewing Co.*, 175 NLRB No. 23.

concluding that the case was an appropriate one for deferral,[10] the Board pointed out that the parties had had an unusually long-established and successful bargaining relationship, the dispute involving substantive contract interpretation almost classical in its form with each party asserting a reasonable claim in good faith in a situation wholly devoid of unlawful conduct or aggravated circumstances of any kind. Furthermore, the parties had a clearly defined grievance-arbitration procedure which the employer had urged the union to use for resolving their dispute; and, significantly, the employer, although it firmly believed in good faith in its right under the contract to take the action it did take, had offered to discuss the entire matter with the union prior to taking the action.

However, in *Combined Paper Mills*,[11] a proceeding involving an allegedly unlawful action by the employer in unilaterally increasing insurance premiums for unit employees, the Board did not defer to the arbitration machinery in the parties' contract, but affirmed a Trial Examiner's finding of a violation of section 8(a)(1) and (5), where the critical facts were not in dispute, the issue was solely whether a legal obligation existed under the statute which the Board administers, and the right asserted therefore grew out of the statute, not the contract. It noted that if the employer's action in fact contravened statutory rights, any arbitration decision exculpating him would be in a conflict with the statute and contrary to its policies.

In another case,[12] the Board held that the lawfulness of a discharge under the Act was not an issue which fell within the special competence of an arbitrator to determine. It rejected the employer's contention that the availability of contractual grievance procedures required the Board to withhold its processes, but emphasized that the decision to entertain the complaint did not turn on the fact that the parties invoked but then failed to exhaust the grievance procedure. The Board was of the view that the controversy did not require the exercise of its discretion to defer to the grievance arbitration procedure, but rather was one which called for resolution under the provisions of the statute which the Board is charged with enforcing.[13]

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[10] Cf. *C & S Industries*, 158 NLRB 454, 459–460 (1966).

[11] 174 NLRB No. 71.

[12] *Eastern Illinois Gas & Securities Co.*, 175 NLRB No. 108.

[13] Chairman McCulloch and Member Jenkins, for the majority, found an 8(a)(1) violation. Member Brown, dissenting, would hold the case in abeyance and require the discharge to exhaust the available contractual grievance-arbitration machinery before processing the case any further.

C. Unit Accretion Issues

The recurring problem of whether there should be deference to available arbitration procedures on unit acretion issues[14] was considered by the Board in three cases. In *Warehouse Markets*,[15] the Board continued to decline to defer to arbitration on accretion issues. Notwithstanding the contention that a multistore contract was a bar to the petition since an arbitrator had found the new store to be an accretion to the existing unit and covered by the contract, the Board approved the direction of an election in a unit of employees at a new store, which the regional director had found not to be an accretion.[16] A similar result was reached in the *Patterson-Sargent* case,[17] where the Board noted that in the accretion situation two separate issues were presented: first, whether the contract was intended to cover the disputed employees; and second, whether, assuming the first question is answered in the affirmative, the parties could so extend their contract without consent of the employees in dispute. Reaffirming its view that only it could validly resolve the second issue, the Board concluded that it need not decide whether the arbitrator who had interpreted the collective-bargaining agreement to find it covered the employees at the new location was correct because the issue before the Board was whether there was an accretion to an existing unit. Finding that the new headquarters clerical employees were not an accretion to the existing office clerical contract unit, and, therefore, the collective-bargaining contract relied on by the union was not a bar, the Board directed an election among the employees at the new location.

In another case,[18] the employer and an incumbent union relied on the Board's decision in *Raley's Inc.*[19] to support their contention that the Board should defer to the arbitrator's award which found that head cashiers and cashiers were not intended by the employer and the incumbent to be excluded from the bargaining unit. There the Board had deferred to an arbitrator's award holding that certain employees not specifically mentioned in the contract were covered by it and based its decision to defer, in part, on a finding that, although the other claiming union was

[14] See Thirty-second Annual Report (1967), pp. 38–39.

[15] 174 NLRB No. 70.

[16] Chairman McCulloch and Members Fanning and Jenkins for the majority. Members Brown and Zagoria, dissenting, would find an accretion and dismiss the petition as barred by the contract.

[17] *Patterson-Sargent Div. of Textron*, 173 NLRB No. 203.

[18] *Horn & Hardart Co.*, 173 NLRB No. 164.

[19] 143 NLRB 256, see Twenty-eighth Annual Report (1963), pp. 40–41.

not represented at the arbitration hearing, its position was identical with that of the employer and the employer "vigorously" asserted its position in the arbitration proceeding. In this case the Board found that, as in *Raley's,* the petitioning union did not participate in the arbitration proceeding but the employer did, and asserted a position identical with that union's position; namely, that the existing contract did not cover the cashiers. The Board concluded, however, that deference should not be accorded the award since, in its view, the award suffered from two primary deficiencies—the failure of the parties to provide the arbitrator with information concerning the long history of the incumbent's attempts to organize the employees of the employer and the consistent exclusion of cashiers from these efforts and the failure to provide him with a clear understanding of the duties of the employees in question. In directing an election, the Board also rejected the employer's contention that the cashiers constituted an accretion to the unit covered by the agreement, since the parties clearly intended to exclude cashiers at the time the agreement was signed, and the duties of the cashiers had not changed.

IV

Board Procedure

A. Multiple Litigation

Among the cases considered by the Board during the report year were two cases involving issues which had been or could have been considered in other completed proceedings. In *Jackson Bldg. & Construction Trades Council*,[1] the Board dismissed a complaint alleging unlawful picketing in violation of section 8(b)(4)(B), where another charge alleging a violation of section 8(b)(7)(C) by the same picketing had been settled by informal agreement. The 8(b)(7)(C) charge had been filed when the regional director dismissed the 8(b)(4)(B) charge, and the settlement agreement entered into while an appeal from the dismissal of the first charge, subsequently reinstated upon appeal, was pending. The Board concluded that the union's acceptance of and compliance with the informal settlement agreement, in which it agreed to, and did, cease the picketing which was the subject of the charge, should be considered as having disposed of the entire matter. It noted that the settlement agreement did not specifically exempt the first charge from its scope and reserve it for future litigation, and in view of the fact that no subsequent independent unfair labor practices had been alleged, any further action by the Board would unnecessarily harass the respondent union.

In another case,[2] the Board "as a matter of sound judicial administration of the Act" dismissed the allegation of a complaint alleging the employer's unilateral change in the overtime hours worked by its employees, because the change occurred prior to the filing of the charge and issuance of the complaint in an earlier 8(a)(5) proceeding involving the same parties.[3] The Board order in that proceeding included imposition of a general bargaining obligation and was pending enforcement in the court of appeals at the time of the second hearing. The Board noted

[1] 172 NLRB No 135.
[2] *New Enterprise Stone & Lime Co.*, 176 NLRB No. 71.
[3] *New Enterprise Stone & Lime Co.*, 168 NLRB No. 95 (1967).

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that the events were not included in that complaint, although the parties were apparently aware of them, and no special circumstances had been shown to justify making the alleged violation the subject of a separate 8(a)(5) proceeding.

B. Conduct of Board Agents

During the report year, the Board had occasion to consider cases in which it was contended that the conduct of Board agents had prejudiced the proceedings. The role of the General Counsel's representative in a postelection hearing in a representation case was explained by the Board in *Sahara-Tahoe Hotel*,[4] where it held that the trail examiner erred in overruling challenges to ballots on procedural grounds because of his view that the General Counsel's representative "overstepped tolerable limitations by assuming the role of a partisan advocate in the representation proceeding." After a careful review of the record, the Board concluded that the conduct of the General's Counsel representative was consistent with his responsibility, as agent for the regional director, for the development of a complete record concerning the issues raised by the challenges "to assure that a determinative issue concerning employee choice in a Board-conducted election be resolved on the basis of competent evidence and a record fully presenting the evidence developed in the prehearing investigation." The Board noted that no prejudice resulted from the conduct of the agent at the hearing, who had, in accordance with his opening statement, called, examined, and cross-examined witnesses, objected to evidence he considered improper, and argued the admissibility of evidence bearing on the eligibility of the challenged voters. It held that in no event would it be consistent with fundamental statutory policies to decline consideration of the merit of fully investigated, determinative challenges for the reason assigned by the trial examiner.

In *Singer Co.*,[5] the Board rejected the employer's contention that an affidavit of a supervisor, taken by a Board attorney without notice to and outside the presence of the charged party, and therefore contrary to instructions to Board personnel issued by the General Counsel and published in the NLRB Field Manual,[6]

[4] 173 NLRB No. 204.

[5] 176 NLRB No. 149.

[6] Sec. 10056.5, NLRB Field Manual, reads as follows.

Where respondent is represented by counsel or other representative and cooperation is being extended to the Region in connection with its investigation of unfair labor practice charges, the charged party's counsel or representative is to be contacted and afforded an opportunity to be present during the interview of any supervisor or agent whose state-

was inadmissible as evidence. It also disagreed with the trial examiner who found "that the fundamentals of fair play and the policy underlying General Counsel's administrative instructions require dismissal" of the complaint allegations. In reinstating the complaint allegations, which it ultimately found meritorious, the Board held that since the employer did not allow interviews with any of its supervisors, it was not "cooperating in the Region's investigation" within the meaning of section 10056.5. The Board also noted that the supervisor was present voluntarily at the interview in which he gave the affidavit in question. It therefore concluded that there was no impropriety in the taking of the affidavit, and therefore no grounds for the refusal to admit it into evidence.

C. Other Issues

The failure to serve a copy of objections to the election and the authority of the trial examiner over settlement terms were considered by the Board in the *Certain-Teed Products* [7] and *Local 138, IUOE* [8] cases, respectively. In the former case the employer excepted to the regional director's consideration of the union's objections to an election, in view of the union's delay in serving the employee-petitioner with a copy of the objections as required by section 102.69(a) of the Board's Rules.[9] Although the objections were timely filed and served on the employer, service was not made on the employee who filed the decertification petition until more than 2 weeks later. The employer did not contend that either it or the employee-petitioner had been prejudiced by the delay. The Board pointed out that the cases relied on by the employer which express the policy of "strict adherence" to a timely service requirement predate the court decision of the *Brown Lumber Co.* case.[10] In that case, the court held that the

ments or actions would bind a respondent. This policy will normally apply in circumstances where (a) the charged party or his counsel or representative are cooperating in the Region's investigation, (b) counsel or representative makes the individual to be interviewed available with reasonable promptness so as not to delay the investigation; and, (c) where during the interview counsel or representative does not interfere with, hamper, or impede the Board agent's investigation.

This policy does not preclude the Board agent from receiving information from a supervisor or agent of the charged party where the individual comes forward voluntarily, or where the individual specifically indicates that he does not wish to have the charged party's counsel or representative present. Similarly, in cases involving individuals whose supervisory status is unknown, this policy would not be applicable.

[7] 173 NLRB No. 38.

[8] *Local 138, IUOE (Nassau & Suffolk Contractors' Assn.)*, 174 NLRB No. 111.

[9] Sec. 102.69(a) states, *inter alia*, "Copies of such objections shall immediately be served on the other parties by the party filing them, and a statement of service shall be made."

[10] *N.L.R.B.* v. *Brown Lumber Co.*, 336 F.2d 641 (C.A. 6, 1964).

Board had improperly rejected and refused to investigate election objections timely filed by the employer simply because the employer had not served on the union a copy of its objections as required by the Board's Rules. In so holding the court expressly noted that the Board had acted under a literal interpretation of its Rules and in accord with a policy requiring strict observance of their service provisions. The court viewed that policy as inappropriate because not according consideration to relevant factors such as any resulting prejudice to the parties, the impact of its policy on employee rights, and the Board's own commitment to a liberal construction of its rules as expressly stated in them. Applying the standard of the *Brown Lumber* decision, the Board overruled the exceptions, holding that where a party has timely filed election objections, such objections should not be rejected without considering their merits simply because of delay by the objecting party in serving the other parties with a copy of them, unless some prejudice is shown.[11]

In the *Local 138, IUOE* case,[12] the Board reopened the hearing in a backpay proceeding, remanded to the Board by the court of appeals, to permit the union to examine any or all of the discriminatees concerning their job availability and interim earnings during the backpay period.[13] In the course of the reconvened hearing, the union made an offer to settle the case by payment of the entire amount of backpay liquidated at the prior hearing provided that the Board would withdraw a civil contempt proceeding it had initiated against the union for alleged violations of the judgments in the underlying hiring hall referral discrimination cases.[14] The General Counsel, although willing to recommend approval of the proposed backpay settlement, rejected the proposal that the settlement be contingent on the withdrawal of the contempt action pending in the court of appeals. The trial examiner, over the objections of the General Counsel, closed the hearing and recommended that the Board approve the backpay settlement offer. He further recommended that the Board move for the withdrawal of the pending civil contempt proceedings as part of the settlement.

The Board, in rejecting the recommendations of the trial examiner and directing the hearing be reopened, pointed out that

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[11] The Board noted that to the extent that *General Time Corp.*, 112 NLRB 86 (1955), and similar cases are inconsistent with that principle, they are overruled.

[12] 174 NLRB No. 111. See also *J.J. Hagerty*, 174 NLRB No. 112.

[13] 380 F 2d 244 (C.A. 2).

[14] *Local 138, IUOE (Nassau & Suffolk Contractors Assn.)*, 123 NLRB 1393, enfd. as modified 293 F.2d 187 (C.A 2) , *J.J Hagerty*, 139 NLRB 633, enfd. as modified *sub. nom. Local 138, IUOE*, 321 F2d 130 (C.A. 2).

the backpay proceeding was the sole matter before the trial examiner, and that the civil contempt proceeding was in a different forum. It found that although the union's counsel had made certain representations as to the union's compliance with the court of appeals judgments, such issues were not, and could not be, appropriately litigated before the trial examiner whose authority under the Board's Rules and Regulations, section 102.35, extended only to cases assigned to him.[15] The Board emphasized that while it desires expeditious resolution of backpay issues, it has the responsibility to see that other purposes of the Act, and of court judgments enforcing the Act, are not thwarted by a settlement approved in ignorance, and that to approve settlement on the basis of the union's self-serving statements as to compliance, contested by the General Counsel, who bears public responsibility to see that Board decisions and court decrees are compiled with, might well negate public policy purposes which had necessitated the protracted litigation in this case.

[15] Sec. 102.35, provides in relevant part: "The trial examiner shall have authority, with respect to cases assigned to him . . . ."

V

Representation Cases

The Act requires that an employer bargain with the representative designated by a majority of his employees in a unit appropriate for collective bargaining.[1] But it does not require that the representative be designated by any particular procedure as long as the representative is clearly the choice of a majority of the employees. As one method for employees to select a majority representative, the Act authorizes the Board to conduct representation elections.[2] The Board may conduct such an election after a petition has been filed by or on behalf of the employees, or by an employer who has been confronted with a claim for recognition from an individual or a labor organization. Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining,[3] and formally to certify a collective-bargaining representative upon the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining 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 who have been previously certified, or who are being currently recognized by the employer. Decertification petitions may be filed by employees, by individuals other than management representatives, or by labor organizations acting on behalf of employees.

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

A. Existence of Questions Concerning Representation

Section 9(c)(1) empowers the Board to direct an election and certify the results thereof, provided the record of an appropriate

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

hearing before the Board [4] shows that a question of representation exists. However, petitions filed under the circumstances described in the first proviso to section 8(b)(7)(C) are specifically exempted from these requirements.[5] During the report year the Board was called upon to resolve in a variety of contexts the issue of the existence of a question concerning representation. These included a situation where the incumbent union sought to disclaim its representative status, cases where the employees were claimed as an accretion to represented units of employees, and problems concerning successor employers and successor representatives.

1. Disclaimer of Interest in Representation

In directing an election upon the employer's petition in the *Gazette Printing* case,[6] the Board rejected the contention of the certified incumbent union that no question concerning representation existed because it disclaimed any interest in representing the employees. The union had been on strike and had picketed in support of its bargaining demands for more than a year, but ceased picketing when it filed its disclaimer. However, 2 days later, it resumed picketing, assertedly for the purpose of obtaining reinstatement of all strikers, rather than for a recognitional objective. The Board viewed the alleged shift in purpose with "some skepticism," since reinstatement of all the strikers would, if accomplished, have immediately reestablished the union's majority status. It concluded that the continuation of picketing was, under the circumstances, inconsistent with the disclaimer and that the union's immediate recognitional objective had not been abandoned.

2. Accretion to Unit

The circumstances under which the Board will find that no question concerning representation exists because disputed employees may properly be treated as an accretion to an existing unit of employees, and therefore not entitled to a self-determination election before being included in that unit, were further defined in several cases. In *Safeway Stores,*[7] the Board concluded that a question concerning representation, to be resolved by an election, had been raised by the demand of a union representing

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

[5] See also NLRB Statements of Procedure, Series 8, as amended, sec. 101.23(b).

[6] 175 NLRB No. 177.

[7] 175 NLRB No. 146.

a multistore unit of retail food clerks that the employer treat as an accretion to that contract unit all clerks hired to staff snackbars established at two newly opened stores. The Board noted that there had been no snackbar departments in existence at the time the contract was executed and that snackbar employees were not contemplated by the unit description. In addition, a comparison of the duties and working conditions of the snackbar employees with those of the unit employees showed substantial differences which established that the snackbar employees had a separate community of interest entitling them to select a representative of their own. The employer was therefore not obligated to bargain with the union for the snackbar employees. However, as to nonfood department clerks at the new stores, the Board found them to be an accretion to the contract unit, since their duties and working conditions were essentially identical to those of the unit employees. The employer was therefore held to have violated section 8(a)(5) of the Act by refusing to reognize the union as their representative.

Similarly, the *Almacs* case [8] presented the question whether a present election in a newly opened retail food store upon a union's petition was barred by a second union's existing contract covering a multistore unit in the employer's chain. Each union contended that the new store's employees should be treated as an accretion to its respective multistore unit. The Board found no accretion to either unit, relying particularly on the fact that the new store did not comprise, with either of such units, a functionally integrated subdivision of the employer's operation. The Board noted that the new store, being geographically distant from the represented stores, had separate supervision; that its employees were recruited locally and lived in the immediate community; and that they were not subject to substantial temporary interchange with employees of other stores. Accordingly, a self-determination election was directed.

In a situation [9] where an employer and the incumbent union at an old plant executed a contract covering the unit involved at a new facility, while the old plant was being phased out, the Board held that there was no question concerning representation of the employees at the new plant, since the transfer of operations to the new plant was essentially a relocation of the old plant which did not cause any change in the character of the jobs and functions of the employees, 65 percent of whom transferred with the

[8] 176 NLRB No. 127.
[9] *Pepsi-Cola General Bottlers*, 173 NLRB No. 121.

move to the new plant. It did not view the addition of certain new employees as materially affecting the nature of the employer's operations. The Board noted that when the old plant finally shut down, the new plant was a fully going concern, and its function—the packaging and delivery of the employer's product—was the same as that of the old plant; and that while a new canning operation was added, it was nothing more than a variation in the packaging method and was not the addition of a function of an entirely different character.[10]

In another case,[11] where each of two unions represented multiplant units which between them covered all of the employer's plants, the Board dismissed a petition filed by a rival union seeking an election in a unit of employees in a newly purchased plant which, pursuant to a joint proceeding under the master contracts, had been designated by the employer and both unions as a replacement plant for those closed. The Board found that under the circumstances the new location was not in fact a new operation, but an accretion to one of the existing multiplant units, because it constituted a consolidation of the operations at the two discontinued plants which had formerly been included in such multiplant unit. The new location was staffed with employees transferred under contract procedures from the discontinued plants, who worked on the same products with the same job classifications, under the same conditions of employment as other employees in the multiplant unit. Accordingly, the petition was dismissed as not raising a question concerning representation since it sought an inappropriate unit limited to one plant of a multiplant unit.

3. Successor Employers and Successor Representatives

The advent of a successor employer, or the merger or affiliation of the employee representative with another labor organization, may also give rise to contentions that a question concerning representation is thereby created. In the *General Electric* case,[12] the employer accepted a Government contract to be performed at a production facility where another contractor was soon to complete his work. The employer hired the existing complement of

[10] The Board pointed out that the *General Extrusion*, 121 NLRB 1165 (1958), "consolidation" rule does not provide that every consolidation or merger will remove a preexisting contract as a bar to an election, the bar quality of a contract being removed only when there is a "merger of two or more operations resulting in the creation of an entirely new operation with major personnel changes."

[11] *Armour & Co.*, 172 NLRB No. 189.

[12] 173 NLRB No. 83.

employees who continued to perform the same type of work with little change in the method or nature of the operations, and extended recognition to and signed a labor agreement with the incumbent representative of those employees. In dismissing a petition for an election among those employees, the Board concluded that no question concerning representation existed because the employer was a successor employer obligated to recognize the incumbent union. It found that under the circumstances of the transfer of operations and employment control from one contractor to another, the employing industry had remained substantially the same. Noting that the employees had already selected their bargaining representative which the employer had recognized, the Board distinguished the objectionable prehire situation in which recognition is extended without a prior designation of the bargaining representative by the employees.

Among the cases involving the effect to be given the affiliation of an employee representative with another labor organization was *Equipment Manufacturing*.[13] There a petition was filed to amend the certification issued to an independent union to reflect its affiliation with an international union which it had defeated in the Board-conducted election only a year earlier. In granting the amendment to reflect the current name and affiliation of the certified union, the Board found that no question concerning representation was raised where the affiliation action was taken with the full support of the officers of the independent and was approved by a large majority of the unit employees who voted in a properly run secret ballot election, with proper safeguards and after adequate notice. It also noted that subsequent to the affiliation there were no inconsistent actions by officers of the independent nor a revival of it.

An amendment to a certification was similarily approved in another case[14] where an international union for administrative convenience merged two local unions with the surviving local taking over the affairs of the one abolished. A special meeting of the unit employees, members of the local to be abolished, was held at which they were given the opportunity to vote in a properly conducted secret ballot election in which they agreed to a transfer of representation rights to the surviving local. Finding that the employees had under these circumstances approved the transfer of representation rights, the Board amended the certification by substituting the name of the surviving local.

[13] 174 NLRB No. 74.

[14] *Safway Steel Scaffolds Co. of Ga.*, 173 NLRB No. 52.

In *Missouri Beef Packers*,[15] however, the Board dismissed an international union's petition to amend certain certifications of an independent union by substituting the name of the international on grounds that the independent had affiliated with it. The Board concluded that an amendment of the certification was not appropriate, since a question concerning representation was presented. Although the independent's officials had initially agreed to the affiliation, they repudiated it well before the vote by the union membership for affiliation, and continued to oppose it thereafter. Distinguishing *Equipment Manufacturing, supra,* where it found no survival of the old independent after the affiliation, the Board found that under these circumstances there was no guaranty of continuity of representation since the certified labor organization remained a functioning, viable entity opposing the amendment. In its view, granting the amendment would have abridged the Act's requirement that the employees select their own bargaining representative.[16]

The disaffiliation of a local union from one international, and its merger with a local union of another international, was found by the Board not to raise a question concerning representation of the affected employees under the circumstances present in the *Gate City Optical* case.[17] It was the employee's avowed purpose in effecting the change in affiliation, and causing their newly designated representative to file a petition for an election, to circumvent the existing contract and enable their new representative to negotiate a more favorable one.

The employer conceded the formal defunctness of the certified incumbent and the majority status of the local with which it had merged, and expressed a willingness to recognize the petitioner as representative of the unit employees if it assumed the incumbent's unexpired contract. The Board found, however, that the incumbent was not defunct in a substantive sense—particularly where the formal defunctness was "created as a stratagem to achieve an end inimical to policies of the Act"—and had not changed its identity to any significant extent. It pointed out that an election at this time would disrupt conditions already stabilized by the existing contract. In view of the fact that the petitioning union was clearly entitled to recognition, which the em-

[15] 175 NLRB No. 179.

[16] Members Fanning and Brown for the majority Member Zagoria, concurring in the result, would find the affiliation vote inadequate in any event, since a number of employees sufficient to have affected the outcome of the election were disenfranchised because not members of the independent.

[17] *Gate City Optical Co., A Div. of Cole Natl. Corp.*, 175 NLRB No. 172.

ployer was willing to extend, the Board found no need to hold an election to resolve a question concerning representation. Further, as the Board viewed the situation, the petitioner did not seek an election to obtain the benefits of certification and the petition was therefore dismissed.[18]

B. Bars to Conducting an Election

1. Contract as Bar

There are situations, however, where the Board, in the interest of promoting the stability of labor relations, will conclude that circumstances appropriately preclude the raising of a question concerning representation. In this regard, the Board has adhered to a policy of not directing an election among employees currently 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 in accordance with the Board's contract-bar rules. Generally, these rules require that to operate as a bar a contract must be in writing, properly executed, and binding on the parties; that it must be of definite duration and in effect for no more than a "reasonable period"; and that it must also contain substantive terms and conditions of employment which in turn must be consistent with the policies of the Act.

Well-established Board policy provides that a valid contract for a fixed term constitutes a bar to an election for the contract term not to exceed 3 years.[19] Agreements for a longer term will for the duration of the contract bar an election upon the petition of either of the contracting parties, but after the first 3 years will not bar the petition of a rival labor organization.[20] The Board continued to adhere to the 3-year contract-bar rule in the *General Dynamics* case [21] where an employer with long-term defense project commitments contended that its 5-year contract with the incumbent union should bar a petition which was timely filed by a rival union after the third year of the contract. The employer's

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[18] Chairman McCulloch and Members Brown, Jenkins, and Zagoria for the majority. Member Fanning, dissenting, would find the petitioner entitled to an election and certification under *General Box Co.*, 82 NLRB 678 (1949), regardless of the employer's voluntary recognition, and emphasized that traditionally the Board had refused to put any conditions on certification, citing *American Seating Co.*, 106 NLRB 250 (1953).

[19] *General Cable Corp*, 139 NLRB 1123 (1962); Twenty-eighth Annual Report (1963), p. 48

[20] *Montgomery Ward & Co.*, 137 NLRB 346 (1962), Twenty-seventh Annual Report (1962), p. 53.

[21] *General Dynamics Corp, Pomona Div.*, 175 NLRB No. 154. See also *General Dynamics Corp., Convair Div.*, 175 NLRB No. 155.

contentions that since long-term procurement commitments made to meet Department of Defense regulations characterize the defense projects industry, such employers should be enabled to stabilize labor costs also through long-term contracts, and that in fact such long-term labor contracts were common in the industry, were rejected. The Board reaffirmed its position as stated in *General Cable* that if the contract-bar period were extended beyond 3 years "stability of industrial relations would in our judgment be so heavily weighted against employee freedom of choice as to create an inequitable balance. . . ." [22]

The employer's further contention that the petitioning union was not in fact a rival union but rather a fronting legal successor to the incumbent was found by the Board to be without foundation in the record. The Board found that, while the officers of the incumbent had indeed approached the petitioner with a proposal for affiliation, the offer was rejected and there was no agreement between the two unions as to what would occur should the petitioner win the election. Although officials of the incumbent comprised a substantial majority of the organizing committee for the rival, the incumbent union continued to function at all times as a viable labor organization actively administering the current contract. The Board observed that although some members of the incumbent were dissatisfied with the current contract as administered and may have sought to avoid the agreement, such circumstances do "not operate to preclude all of the employees in the unit from their right to select a new union representative, where the petition is otherwise timely."

2. Waiver of Pending Board Proceedings

The Board's longstanding rule against conducting an election while an 8(a)(2) proceeding, involving illegal assistance to a labor organization which affects employees in the same unit, is pending, received further examination by the Board in two cases decided during the report year. In the *Intalco Aluminum* case,[23] an election was blocked by an outstanding Board order, pending on court review, which as a remedy for 8(a)(2) violations required the employer, *inter alia,* to withdraw and withhold recognition from the assisted union until certified, and to repay to the employees dues and initiation fees exacted under the illegal contract. Rival unions, in an effort to proceed to an election upon their petitions, offered to agree (1) to waive objections to the

[22] 139 NLRB 1123, 1125 (1962).
[23] 174 NLRB No. 122. See also *Sufsun Co.*, 174 NLRB No. 123.

election based on conduct occurring prior to the filing of the petition, (2) that the assisted union could appear on the ballot and be certified if it won, and (3) that, if the assisted union was certified, no further action be taken to enforce the Board's order on the 8(a)(2) violations. In the exercise of its discretion to approve the waiver, the Board concluded that under the circumstances a further delay in affording the employees an opportunity to select a representative was not warrented. Relying as a precedent for its action on the *Carlson Furniture* case,[24] where it accepted a written request to proceed where the remedy for the 8(a)(2) violation merely required the withdrawing and withholding of recognition, the Board concluded that the dues disgorgement requirement of the remedy in this case did not require a different result. It pointed out that neither the waiver nor the results of an election if directed would affect the Board's right to enforcement of the disgorgement remedy and that its acceptance of the request to proceed should not be so construed. As the election thus could not affect in any manner the reimbursement of moneys collected under the illegal contract, the Board rejected a contention that the petitioning unions could claim that the dues disgorgement would follow only if the petitioning unions, and not the assisted one, were selected by the employees. It emphasized that the "specified condition for a request to proceed as it relates to the concurrent complaint case is the affirmative indication by the petitioner-charging party of a *willingness* to withdraw an 8(a)(2) assistance charge in the event the subject union is certified. Approval of any withdrawal remains in the Board's discretion. . . ." [25]

C. Units Appropriate for Bargaining

1. Single-Location Units in Multiple-Location Enterprises

The appropriateness of a unit of employees at a single location in a retail store chain or other multiple-location enterprise was again [26] an issue in cases considered by the Board during the report year. In the *May Department Store* case,[27] the petitioning union sought separate units at each of 3 of the employer's 12

[24] 157 NLRB 851 (1966).

[25] Chairman McCulloch and Members Brown, Jenkins, and Zagoria for the majority. Member Fanning, dissenting, would not grant a waiver unless the results of the election would dispose of the entire proceeding, which it did not do in this case.

[26] See Thirty-third Annual Report (1968), pp. 51–53; Thirty-second Annual Report (1967), pp. 58–61.

[27] 175 NLRB No. 97.

branch department stores. In holding that, under the circumstances, single-store units were appropriate, the Board noted that each store constituted an entity subject to substantial control of day-to-day operations by the branch manager and his supervisory staff, since most hiring was done at the branch stores, employee training and initial evaluations are performed there, and working hours for individual employees were set there. It recognized that this control was not complete, and a central executive committee also had considerable control over the branch store employees, but in its view the store managers were the day-to-day supervisors vital to employee welfare and working conditions. The Board considered factors militating against the appropriateness of a single-store unit but concluded that they did not preponderate in this case. The employer's bargaining history indicated neither a pattern of chainwide bargaining nor that its established bargaining relationships would be disturbed by a finding that the separate petitioned-for stores were appropriate. The Board noted that the petitioner's unit request specifically excluded all employees represented by these other labor organizations. Although there was employee interchange in the chain, it was insubstantial and in no way destructive of the homogeneity of the single-store units. The dependency of branch stores on the employer's two warehouses for merchandise and supplies again did not destroy the individual identity of each branch. Such dependency exists in most chain store operations and does not destroy the basic economic identity of each branch.

In another case,[28] notwithstanding that there had been some history of bargaining in an agreed unit of certain employees of the employer's six discount stores in an administrative division, the Board found that a requested unit limited to employees at one of such discount stores was appropriate. The Board noted that it has long been its policy not to consider itself bound by a bargaining history resulting from a consent election in a unit stipulated by the parties, as here, rather than one determined by the Board.[29] It further noted that the instant bargaining history involved in part employees other than those petitioned for in the instant case, and that insofar as the historic divisionwide unit urged by the employer was concerned, a significant hiatus existed between the prior bargaining and the present petition. Moreover, even if this bargaining history might have indicated the possible appropriateness of a broader geographic unit, it would not have precluded a finding that a single-store unit might

[28] *Grand Union Co.*, 176 NLRB No. 28.
[29] Citing *Mid-West Abrasive Co.*, 145 NLRB 1665 (1964).

also be appropriate. The unit sought, confined to the employees of a single store, was presumptively appropriate; and the Board found that the evidence of store operations in the instant case, taken as a whole, supported that presumption.

In *Shop 'n Save,*[30] the Board found that the record evidence of store operations served to buttress, rather than to rebut, the presumption that the employees of one of employer's five retail food stores constitute an appropriate unit. The store in question there was geographically separated from all of the employer's other stores and served a different market area. The Board found it was also separately incorporated, maintained its own bank account, had a profit-sharing plan determined on its own record, and was distinctive in appearance. Goods were purchased locally; individual employees' working hours were fixed; and time off and permission to leave work early were granted locally. In addition, the Board noted, there was considerable local control over hiring and discharge, and the store manager exercised independent judgment in carrying out employer policy at the store and in the store's day-to-day operations. Considering the totality of the circumstances, and in the light of the Board's guiding principles as declared in the *Haag Drug* case,[31] the Board concluded that a unit confined to employees of the single store was appropriate.

In two other cases, however, the Board found that the presumptive appropriateness of the single location unit had been effectively rebutted. In one such case,[32] where petitioner was seeking a separate unit of meat department employees at 1 of the employer's 12 retail food products stores, the Board considered particularly the very substantial interchange among the stores of meat department employees as well as other employees generally, the minimal amount of local control over employees and their day-to-day problems which was exercised by the local store manager, and the relative location of the store in question with respect to others in the chain. It found that upon the balance of these factors the presumptive appropriateness of a single-store unit had been rebutted, and that the unit of meat department employees confined to one store was inappropriate.

To similar effect was the Board's decision in the *Star Market* case.[33] The petitioner had requested a unit of employees at one of the employer's five retail food stores of an administrative

[30] 174 NLRB No. 156.
[31] 169 NLRB No. 111 (1968).
[32] *Mott's Shop-Rite of Meriden,* 174 NLRB No. 157.
[33] 172 NLRB No. 130.

division. In finding that the requested single-store unit was not appropriate, the Board emphasized that it was persuaded by the limitation on the store manager's authority in personnel matters and the direct supervision of store departments by divisional supervisors, as well as the geographic closeness of two of the stores and the amount of employee interchange, that the presumption of appropriateness had been rebutted. It therefore found the requested unit inappropriate.

2. Craft or Departmental Units

A number of cases decided during the year concerned the appropriateness of severance of a craft or traditional departmental unit or the initial establishment of such a separate unit. The cases required application by the Board of the policy explicated in *Mallinckrodt Chemical Works* and *E. I. Dupont de Nemours & Co.*,[34] under which such issues are to be resolved upon evaluation of "all considerations relevant to an informed decision." [35] In *Radio Corp. of America*,[36] requests for severance of various groups of skilled employees from a production and maintenance unit were denied when the Board found that the units sought did not consist of clearly defined groups of skilled craftsmen, but were heterogeneous groups of workers performing dissimilar work, much of which was essentially production work, so that the employees could not be regraded as funtionally distinct departments. Moreover, the Board noted that there had been a long and stable bargaining history in the existing unit; there had never been a strike; [37] the skilled employees had been adequately represented by the incumbent union; and they were the highest salaried employees and had been protected from layoff, despite the lack of work, by assignment to regular production work and it was doubtful whether, under the employer's national agreement with the incumbent union, the employees could continue to do production work if they were severed from the existing unit. In view of all these factors, none of the requested units could be found appropriate.

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[34] 162 NLRB 387 (1966) and 162 NLRB 413 (1966), respectively, see Thirty-second Annual Report (1967), pp. 49–55.

[35] See also cases discussed in Thirty-third Annual Report (1968), pp. 44–51.

[36] 173 NLRB No. 72.

[37] The Board rejected the petitioner's contention that the bargaining history should be disregarded because the employer and the union had included guards in the existing unit, since the issue in this case was not the appropriateness of the existing unit, but the probable effect of severance on the stability of labor relations. Moreover, section 9(b)(3) of the Act does not prohibit the parties from voluntarily including guards in a unit with other employees; the Board was not deciding, in violation of section 9(b)(3), that such a unit was appropriate.

In two cases, the Board approved initial establishment of separate units of employees engaged in printing operations. In one [38] the union sought a unit of roller and screen print machine operators at a textile manufacturing plant. The Board noted that it had consistently held that roller machine operators form a traditional craft unit appropriate for the purposes of collective bargaining, particularly where, as here, there was no interchange or transfer between printers and employees of other departments, and no bargaining history on a plantwide basis. The petitioning union had traditionally represented machine printers on a craft basis, the printers received a substantially higher rate of pay than other employees on the machine, they directed the other employees in operating the machines, and all had previously worked on the machines as inspectors or backtenders. In view of the common supervision, interchange, and similarity of work performed by the screen and roller printers, the Board found that a unit composed of operators of both types of machines was appropriate.

The other case [39] involved a request for a separate unit of employees in the lithography department of a company engaged in the manufacture of aerosol metal containers. The Board noted that the employees in question utilized the standard equipment, performed the usual duties, and exercised the customary skills utilized by lithographic employees whom the Board had frequently held to be a cohesive unit appropriate for collective bargaining. The frequency of transfer of employees into the lithographic department and the degree of integration of the employer's operations were insufficient to negate the appropriateness of a separate unit of lithographic department employees and since the plant involved was not yet fully operative, similarity of working conditions with other employees could not be relied on as a determinative factor. Accordingly, the Board directed a self-determination election among the lithography department employees.

In *Parke Davis & Co.*,[40] the Board concluded that initial establishment of a separate unit of powerhouse employees would be appropriate. The powerhouse employees' work was found to be functionally distinct, and their supervision separate from that of other employees. They are licensed in their skills, had a separate line of seniority and job progression, received a different pay

[38] *Fulton Cotton Mills, Div. of Allied Products Corp*, 175 NLRB No. 17.
[39] *Sherwin-Williams Co.*, 173 NLRB No. 54.
[40] 173 NLRB No. 53.

scale, had separate locker facilities, and worked different shifts. No other employees operated turbines or heavy machinery. The only work which the powerhouse employees performed outside the powerplant was preventive maintenance or repair work related to powerhouse equipment. In these circumstances, and in the absence of a bargaining history in a broader unit, the Board concluded that the powerhouse employees could either form a separate unit or be included in a broader unit of all service and maintenance employees. Accordingly, it directed a self-determination election among them.

On the other hand, in a case [41] involving a lumber and plywood plant, initial establishment of a separate unit of maintenance employees was denied. The Board noted that while, under the principles announced in *Mallinckrodt,*[42] the pattern of plantwide bargaining in the basic lumber industry—which had brought substantial stability in labor relations—and the integrated nature of operations in the industry were no longer sufficient to render separate maintenance units inappropriate in all cases, they remained valid factors to be considered and weighed in making unit findings. In this case it concluded that other factors precluded the appropriateness of a separate maintenance unit. The Board pointed out that production and maintenance employees enjoyed a common wage structure and the same fringe benefits and the majority of the maintenance employees spent most of their time on the production floor working with production employees under the supervision of production foremen. The maintenance employees also frequently substituted on production jobs, were recruited largely from the production ranks, and could bump back to production work in the event of a layoff. Accordingly, the Board concluded that any separate community of interests which the maintenance employees might enjoy by reason of their skills and training had been largely submerged in the broader community of interests which they shared with other employees, and they could not therefore form a separate appropriate unit.[43]

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[41] *U S. Plywood-Champion Papers,* 174 NLRB No. 48.

[42] *Mallinckrodt Chemical Works, Uranium Div.,* 162 NLRB 387 (1966).

[43] Chairman McCulloch and Members Brown and Jenkins for the majority. Members Fanning and Zagoria, dissenting, would find the maintenance employees a readily identifiable group whose similarity of skills and functions created a community of interest warranting separate representation. In their view, the case was indistinguishable from *Crown Simpson Pulp Co.,* 163 NLRB 796 (1967), where the Board found a separate unit of maintenance employees at a pulp mill appropriate Member Fanning also viewed the majority's decision as resurrecting the absolute prohibition of separate craft units in the basic lumber industry established in *Weyerhaeuser Timber Co.,* 87 NLRB 1076 (1949), and overruled in *Mallinckrodt Chemical Works,* 162 NLRB 387 (1966).

3. Other Unit Determinations and Issues

The Board's recent decision to exercise jurisdiction over proprietary hospitals and nursing homes [44] has given rise to a number of questions concerning the appropriate unit for bargaining in such enterprises. In a recent case concerning a requested unit of nurses in a proprietary hospital,[45] the Board found that the registered nurses comprised a unit of professional employees appropriate for bargaining as they were a highly trained group of professionals who were not supervisors notwithstanding that they normally informed other less skilled hospital employees as to the work to be performed for patients. Their duties and authority in this regard were viewed by the Board as solely a product of their highly developed skills. However, the Board found that the floor head nurses and the operating room supervisors were supervisors within meaning of the Act and excluded them from the bargaining unit.

In another case which involved licensed practical nurses employed at a nursing home,[46] the Board concluded that they were neither supervisors nor professional employees and did not possess a community of interest diverse from that of the aides and orderlies. In finding that licensed practical nurses were not supervisors, the Board noted that they did not have authority to hire, discharge, promote, or reward any personnel, and while they did assign work to aides and orderlies, it was not in a manner requiring the exercise of independent judgment. With regard to their not being professionals, the Board found that they were licensed as practical nurses under a state statute defining licensed practical nurses as individuals "engaged in the performance of nursing acts . . . [which] . . . do not require the specificalized skill, judgment, and knowledge required in professional nursing," and that the employer did not impose additional educational or training requirements upon them.

The Board accordingly found that licensed practical nurses shared a sufficient community of interest with the aides and orderlies to warrant inclusion of both groups in the same unit, in view of the fact that the nurses worked at duty stations along with aides and orderlies, where both groups performed medical and personal care under the same supervision, and both had many other working conditions in common.

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[44] *Butte Medical Properties, d/b/a Medical Center Hospital*, 168 NLRB 266, and *University Nursing Home*, 168 NLRB 263. Thirty-third Annual Report (1968), p. 29.

[45] *Sherewood Enterprises, Inc., d/b/a Doctor's Hospital*, 175 NLRB No. 59.

[46] *New Fern Restorium Co.*, 175 NLRB No. 142.

In a case [47] involving a petition for a unit of individuals being trained under a program established by the employer pursuant to the Manpower Development and Training Act, to prepare them for work at the employer's glass plant, the Board concluded that the trainees were "employees" of the employer within the meaning of the Act. The trainees, by virtue of the employer's commitment to employ them in its plant upon successful completion of their training, were found to occupy a status analogous to that of probationary employees rather than to that of typical vocational students who have no commitment for employment upon completion of their training. The Board noted that the employer had applied to the Economic Development Administration for a loan under provisions of the Manpower Development and Training Act for the purpose of constructing the glass plant involved and, in order to qualify for the loan, had agreed that it would locate its plant in an economically depressed area in the State, conduct "a valid and meaningful training program" to develop manpower skills for residents of the area, and employ in its plant those who successfully completed the training. Although the training program was funded by EDA through agencies of the State and was "supervised" or administered by agencies of both the State and Federal Governments, the controls exercised by the Government agencies over the operations did not, in the Board's view, militate against a finding that the trainees were employees of the employer. The employer remained the effective operator of the program, in that it selected the trainees and the instructors, and controlled the day-to-day operations. Having found the trainees to be employees within the meaning of the Act, the Board further found that an existing contract between the employer and a labor organization covered them and constituted a bar to the petition.[48]

The significance of a prior history of bargaining as a factor in determining the appropriate unit was considered by the Board in a number of cases, among them being *Buckeye Village Markets*.[49] There one union requested a unit of all employees at the employer's grocery store, excluding employees in the meat and delicatessen departments, and another union requested a unit of all such meat and delicatessen employees. The Board concluded that separate units were not appropriate and that only a store-

[47] *Leone Industries*, 172 NLRB No. 158.

[48] Chairman McCulloch and Members Fanning and Jenkins for the majority Member Zagoria, dissenting, was of the view that the trainee's relationship to the employer was that of student-teacher rather than employer-employee, and that the contract was not a bar because at the time of execution there were no employees, only trainees, in the unit covered

[49] 175 NLRB No. 46.

wide unit was appropriate, in view of the functionally interrelated work, the common supervision and interests of all the employees, and the prior bargaining history on a storewide basis. For 22 months prior to the filing of the petitions, the requested employees had been represented in a single overall unit and were covered by bargaining agreements at the time the petitions were filed. The Board stated that in proper circumstances it has found that separate units of meat department and other retail food employees are appropriate in the absence of any contrary bargaining history, but that it is reluctant to change established bargaining units which are supported by a substantial bargaining history. It observed that it has frequently found that a 22-month bargaining history is substantial and may be controlling in determining the appropriate unit, and concluded that in this case only a storewide unit was appropriate.[50]

A history of a previously established unit was also of significance in the *Famous-Barr* case,[51] where the petition sought a more inclusive unit than that previously approved by the Board, rather than fragmentation of it. The case involved warehouse and repair and service employees at the employer's facility which serviced its six department stores. A facilitywide unit of such employees was found appropriate on the basis of a community of interest separate from the employer's department store employees. Although the Board had previously found that a separate unit limited to the warehouse employees and excluding other employees at the facility was appropriate,[52] the Board emphasized that it's prior decision was not intended to foreclose, nor could it foreclose, the possible grouping of such warehouse employees in a bargaining unit with other employees in the future. Upon consideration of all the circumstances in the light of a request for an election in a facilitywide unit, the Board found that unit appropriate upon the basis of its separate identifiable community of interest. In so holding the Board explained that "it is well settled that there may be more than one way in which employees may be grouped for purposes of collective bargaining. The fact that a given group of employees may have an identifiable community of interest separate and distinct from other employees of an employer does not mean that various groups of employees do

[50] Chairman McCulloch and Member Zagoria for the majority. Member Fanning, dissenting, would find the bargaining history not entitled to much weight since it was a unit agreed upon between the employer and a labor organization in which supervisory personnel participated significantly.

[51] *May Department Stores Co., d/b/a Famous Barr Co.*, 176 NLRB No. 14.

[52] 153 NLRB 341 (1965).

not also have a larger common community of interests. Indeed, Section 9(b) of the Act reflects this basic fact of industrial and mercantile life in establishing the presumptive appropriateness of an employer unit, craft unit, plant unit, or subdivision thereof. Quite obviously, the fact that a subdivision of a plant may be appropriate does not preclude a finding that such employees may also appropriately be included in one of the larger enumerated units."

In another case [53] the Board concluded that a prior history of bargaining in a certified unit with a joint representative did not preclude amendment of the certification to establish two units, each represented by only one of the joint representatives. It amended the certification of a unit of production and engineering department employees at a television station to permit one of the unions to separately represent engineers and technicians who have been included in the bargaining unit with film editors and stage hands. The Board found, in this case, that the bargaining history and practices showed a substantial degree of autonomy and separateness by these two unions in their relationships with each other and with the employer which justified a determination that the purposes of the Act would best be effectuated by amending the certification to provide for two separate bargaining units, one of engineers and technicians to be represented by the petitioner, and the other of film editors and stagehands to be represented by the other union. The departments involved worked independently of each other, the nature of the work of the various groups was different, and the jobs were not interchangeable. In fact, if the employer required extra engineering personnel, he notified the petitioner's representative and, in like fashion, the employer requested needed film directors and stagehands by notifying the other union. Although the bargaining agreements had not expressly provided for separate seniority lists applying to the operating departments involved, the established practice under the bargaining relationship showed that there was a separate departmental seniority governing promotions, layoffs, shift selection, vacation choice, and overtime. The bargaining history also demonstrated that the grievance and arbitration procedure was discretely oriented and implemented, i.e., each union had its own shop stewards, and grievances were processed without any joint participation or representation by the nonaggrieved union. Finally, the labor agreements included separate wage scales and progression systems for the respective union member-employees,

[53] *220 Television, Inc.*, 172 NLRB No. 142.

and members of each union participated in their own union's health and welfare plan. In these circumstances, the Board did not feel that its decision to provide for two separate bargaining units would be unduly disruptive of industrial stability because, in large measure, it was reflective of an already existing situation which was fully understood and accepted by the parties.

4. Unit Clarification Issues

The propriety of a unit clarification proceeding was considered by the Board in *Lufkin Foundry & Machine Co.*,[54] where a petition had been filed seeking to clarify the description of a certified unit to include in an existing production and maintenance unit all working foremen and certain servicemen. The Board dismissed the petition, finding that the request for the disputed foremen raised a question concerning representation which could not be resolved in a unit clarification proceeding. The Board noted especially that the working foremen's jobs have existed since prior to the 1949 certification of the bargaining unit, that contracts negotiated subsequent to the certification of the unit have excluded them, that no question as to their inclusion was raised until 1966, and that no allegation was made that recent changes in their job content have made them nonsupervisory unit employees. Without reaching the issues raised as to correctness of the regional director's finding that these working foremen were not supervisors, the Board held that they may remain excluded from the unit, since, even if the Board had found that they were not supervisors, the proper procedure for obtaining their inclusion in the unit was a petition pursuant to section 9(c) of the Act seeking an election.

The "blurred line" [55] between work-assignment disputes and controversies over the scope of the bargaining unit received the attention of the Board in the *McDonnell Co.* case.[56] There the representative of a certified unit of electricians doing maintenance and instrument calibration work on testing equipment in an aircraft factory and the representative of a certified unit of production employees, each claimed that the maintenance and calibration of sophisticated electronic circuit analyzers newly installed by the employer was encompassed within the certification of its unit. The production employees concededly had always operated the circuit analyzers and the electricians had adjusted or cali-

[54] 174 NLRB No. 90.
[55] *Carey* v. *Westinghouse Electric Corp.*, 375 U.S. 261, 268.
[56] 173 NLRB No 31.

brated them. However, the maintenance and calibration of the new equipment was so integrated into the production process—a faulty circuit reading required verification of the operation and calibration of the analyzer as well as examination of the wiring circuits being tested—that the employer sought by a unit clarification petition to have the work defined as production work within the certification of the production unit. Although the Board recognized that the issue could be raised for Board consideration by strike action and an 8(b)(4)(D) charge, it concluded that the matter was "essentially a unit issue," involving a question of accretion to an existing unit. It noted also that to decline to consider the matter in a unit clarification proceeding would subject the parties to additional litigation, expense, and delay and would not serve the purposes of the Act.[57]

D. Conduct of Representation Elections

Section 9(c)(1) of the Act provides that if, upon a petition filed, 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. Board elections are conducted in accordance with strict standards designed to assure that the participating employees have an opportunity to determine, and to register a free and untrammeled choice in the selection of, a bargaining representative. Any party to an election who believes that the standards have not been met may file timely objections to the election with the regional director under whose supervision it was held. In that event, the regional director may, as the situation warrants, either make an administrative investigation of the objections or hold a formal hearing to develop a record as the basis for decision. If the election was held pursuant to a consent-election agreement authorizing a determination by the regional director, the regional director will then issue a decision on the objections which is final.[58] If the election was held pursuant to a consent agreement authorizing a determination by the Board, the regional director

[57] Chairman McCulloch and Members Fanning and Zagoria for the majority. *Ingersoll Products Div. (Chicago Works), Borg-Warner Corp.*, 150 NLRB 912 (1965), was overruled to the extent that it implied that the lack of a question concerning representation, as distinguished from a representation-type issue, is essential to unit clarification. Members Brown and Jenkins, dissenting, would dismiss the unit clarification proceeding, since, in their view, the subject dispute did not involve a representation matter.

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

will then issue a report on objections which is then subject to exceptions by the parties and decision by the Board.[59] However if the election was one directed by the Board,[60] the regional director may either (1) make a report on the objections, subject to exceptions with the decision to be made by the Board, or (2) dispose of the issues by issuing a decision, which is then subject to limited review by the Board.[61]

1. Eligibility To Vote

The composition of the bargaining unit is determined prior to the election and set forth in the direction of election. It may, however, be further defined in some instances through determination of the voting eligibility of individual employees whose attempt to vote in the election is challenged because of special circumstances concerning them. In overruling the challenge to the ballot of a social security annuitant in the *Holiday Inns* [62] case, holding that he was eligible to vote, the Board, noting a recent court of appeals decision [63] concerning the issue, overruled its prior policy under which social security annuitants were not eligible to vote, and, in doing so, stated that "employees who are otherwise within the appropriate unit will not henceforth be excluded and found ineligible to participate in a Board-conducted election solely for the reason that they limited their working time and earnings so as not to decrease their social security annuity. . . ." The Board pointed out that the employee in question, although on leave for a portion of the year to limit his earnings, was regularly employed in a classification within the bargaining unit and shared a community of interest with those unit employees.[64]

During the report year, the Board in *Macy's Missouri-Kansas Div.*,[65] upon remand from the court,[66] clarified its decision in *Tamp Sand & Material Co.*[67] and *Greenspan Engraving Corp.*[68] with regard to the voting eligibility of permanent replacements for economic strikers. In *Tampa Sand* the Board established an exception to the rule that one must be employed on both the initial

[59] Rules and Regulations, secs. 102.62(b), 102.69(c).

[60] Rules and Regulations, secs. 102.62, 102.67.

[61] Rules and Regulations, secs. 102.69(c), 102.69(a).

[62] 176 NLRB No 124; see also *Coppus Engineering Corp.*, 177 NLRB No. 41.

[63] *Indianapolis Glove Co* v. *N.L.R.B.*, 400 F.2d 363 (C.A. 6).

[64] Chairman McCulloch and Members Fanning and Zagoria for the majority Members Brown and Jenkins, dissenting, were not persuaded that "the established law . . . warrants reversal."

[65] 173 NLRB No. 232.

[66] *Macy's Missouri-Kansas Div.* v. *N.L.R.B.*, 389 F.2d 835 (C.A. 8).

[67] 129 NLRB 1273 (1961).

[68] 137 NLRB 1308 (1962).

eligibility date and the date of election in order to vote in a Board election, by holding that permanent replacements for economic strikers were permitted to vote where the strike commenced, and the replacements were therefor hired, after the direction of election; in *Greenspan,* however, the Board held that the rule enunciated in *Tampa Sand* would not apply where the strike began prior to the direction of election setting the eligibility date and replacements hired after the eligibility date could not vote. In *Macy's Missouri-Kansas,* like *Tampa Sand,* the economic strike occurred after the direction of election, but unlike both *Tampa Sand* and *Greenspan,* the strike was over by the election date and the strikers had been returned to work but the replacements hired were retained in the unit as permanent employees. The Board, overruling the challenges to the ballots of the employees hired as permanent replacements for economic strikers but retained as additional employees, concluded that they were eligible to vote because they were employed on the day of the election and that *Tampa Sand* and *Greenspan* did not establish that the eligibility to vote of striker replacements in strikes commencing after the eligibility date would be limited to situations where the strike was also current on the election date.[69]

2. Determination of Eligibility

The Board permits parties to a representation proceeding to resolve definitively as between themselves issues of eligibility prior to an election if they clearly evidence their intention to do so in writing. Such an arrangement is final and binding upon the parties unless it is, in part or in whole, contrary to the Act or established Board policy.[70] In *Pyper Construction Co.,*[71] the Board sustained the challenge to the ballot of an employee excluded from an eligibility list where the parties had listed the employees by name and clearly intended the signed agreement to be final and binding. The Board deemed it irrelevant and not against Board policy that the employee may have been excluded through inadvertence and not as a result of discussion and agreement as to his ineligibility. However, in *American Printers &*

[69] Chairman McCulloch and Members Fanning and Jenkins for the majority. Members Brown and Zagoria, dissenting, would find that the challenged voters were "no different in fact from any other additional employees hired after the voting eligibility date" and "to overrule the challenges in these circumstances is to accord to strike replacements a preference under Board eligibility rules—founded solely upon their status as strike replacements" which "lacks support in statutory policies and constitutes an unwarranted departure from [the Board's] general rules."

[70] *Norris-Thermador Corp.,* 119 NLRB 1301 (1958).

[71] 177 NLRB No. 91.

Lithographers,[72] the Board held that a stipulation that all composing employees were included in the unit was not determinative, and concluded that the unit could be modified by a ruling sustaining a challenge to the ballot of an employee because he had a special status resulting from his financial interest in the firm which made his employment interest closely allied to management. The Board pointed out that the stipulation only defined the composition of the unit in general terms and contained no express agreement that eligibility was to be limited, and there was no evidence the parties intended to be bound by their stipulation.[73]

3. Name and Address Lists of Eligible Voters

The Board's election requirement established by the *Excelsior Underwear* decision,[74] under which a list of names and addresses of all eligible voters must be made available to all parties to an election in order to facilitate campaign communications and thereby assure an informed electorate, was the subject of further construction in the course of this fiscal year in a number of cases in which the alleged failure to comply with the requirements of the rule was asserted as a basis for setting aside the election. In *Telonic Instruments*,[75] the Board overruled the union's objection to the election based upon the employer's omission of four names from the *Excelsior* list requirement and found substantial compliance with the requirement. The Board emphasized that "there is 'nothing in *Excelsior* which would require the rule stated herein to be mechanically applied.' " The omissions were limited to 4 of about 111 eligibles and, upon discovery of the mistake, the employer took the first opportunity available to inform the region and the union that the list was not complete. Similarly, in *Singer Co.*,[76] the Board found substantial compliance, notwithstanding that 30 additional names out of a unit of 1,100 were submitted 2 days before the election. Of these, 3 were inadvertently left off the original list and the status of the other 27 as members of the unit was doubtful. In addition, the employer's omission of the full first names and zip codes of all the employees from the original list was not viewed by the Board as preventing in this instance the "expeditious communication" the rule requires.

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[72] 174 NLRB No 177

[73] Members Brown and Jenkins for the majority. Member Zagoria, dissenting, would overrule the challenge to the ballot, since in his view the parties intended the stipulation agreement to be controlling.

[74] 156 NLRB 1236 (1966).

[75] 173 NLRB No. 87.

[76] 175 NLRB No. 28.

During the report year elections were set aside in two instances for failure to comply with the *Excelsior* requirement. In *Custom Catering,*[77] unlike *Telonic,* the employer did not provide the regional director with all the information it had available. The original list, omitting nearly half of the eligible voters, was filed late and a supplemental list, filed only 6 days prior to the election, was also found to be deficient. In *Fuchs Baking,*[78] the employer failed to furnish an employee list of any kind to a union intervenor in the proceeding. The Board rejected the contention that since the intervenor received less than 4 percent of the ballots cast it would not effectuate the purposes of the Act to set aside the election and direct a rerun. The Board noted that to make the election results the controlling factor in determining whether to excuse the lack of compliance with the rule subverts one of its very purposes; namely, to provide the union with the opportunity to inform the employees of its position in order that the employees may intelligently exercise their right to vote.

4. Conduct Affecting Elections

An election will be set aside and a new election directed, if the election campaign was accompanied by conduct which, in the Board's view, created an atmosphere of confusion or fear of reprisals or which interfered with the employees' exercise of their freedom of choice of a representative as guaranteed by the Act. In evaluating the interference resulting from specific conduct, the Board does not attempt to assess its actual effect on the employees, but rather concerns itself with whether it is reasonable to conclude that the conduct tended to prevent the free information and expression of the employees' choice. In making this evaluation the Board treats each case on its facts, taking an *ad hoc* rather than a *per se* approach in resolution of the issues.

a. Preelection Interference

In *Interlake Steamship,*[79] the Board set aside an election where the employer denied representatives of one of the unions access to the unit crewmembers on its ships. The Board concluded that such action rendered a fair election impossible as the crewmembers spent virtually all of their time on board the employer's vessels during the critical period prior to the election. Under these cir-

[77] 175 NLRB No 3.
[78] 174 NLRB No. 108.
[79] 174 NLRB No. 55.

cumstances no "adequate alternative means of communication" were available notwithstanding the fact that the intervenor was able to reach the crewmembers by mail or other "catch-as-catch-can" methods.

In another case [80] the Board set aside the election where the union distributed a handbill which contained a reproduction of part of an official Board election notice, complete with the Board's seal and name. The Board considered the "possible impact" of such campaign literature, and stated, "To duplicate a part of the Board's official notice and then to add to it a personal partisan message that may be interpreted by the employee as an endorsement by the Board of one of the parties to the election, and thus have an impact on the employees' freedom of choice, is, we think, an undesirable use of Board documents designed for another purpose." [81]

In two cases the Board was concerned with the distribution by the employees of separate checks at payday to dramatize the effects of unionization on an employee's paycheck. In *TRW, Inc*,[82] the Board upheld an election over objections based upon the employer's distribution of separate paychecks 5 to 10 minutes apart 2 weeks prior to the election. The first check contained the employee's regular pay minus $7 and a note explaining that the $7 represented the union's monthly dues and that it was "the amount we would have to deduct from your pay and send to the union under their usual union-shop contract." The other check distributed a few minutes later was for the $7 withheld. The Board found that even if the note created the "erroneous implication" that checkoff would result automatically from certification without being a subject of the bargaining process, the union had ample time to correct it. The Board further found that the hiatus in the distribution of checks did not constitute election interference where the amount was not materially misrepresented and the two checks were not distributed in an intimidating manner. In *Fasco Industries*,[83] the Board concluded that a letter accompanying separate paychecks did not misrepresent the amount of dues employees at the plant would be required to pay the union. The first check was for the employee's regular pay minus $12.80 and the second was for $12.80. Attached was

[80] *Rebmar, Inc.*, 173 NLRB No. 215.

[81] Chairman McCulloch and Members Fanning and Zagoria for the majority. Members Brown and Jenkins, dissenting, were "unable to interpret the questioned handbill as conveying even the slightest suggestion that the Board was endorsing either a 'yes' or 'no' vote in the election."

[82] 173 NLRB No. 223.

[83] 173 NLRB No. 85.

a letter explaining that the sum deducted represented the amount of dues employees at another plant in the area were paying the union. The letter, after acknowledging the union's statement that dues at the instant plant would be at a lower level, went on to point out the disparity in amount of dues being paid at various other plants in the area. In refusing to set aside the election, the Board concluded that the letter "was expressed in terms that employees would clearly evaluate as argumentation," and merely stressed the uncertainty that dues would remain at announced low levels.[84]

b. Preelection Statements

Among the cases decided during the report year were two in which the question presented was whether the employer's preelection statements contained threats warranting the setting aside of an election. In *Duche Nut Co.*,[85] speeches were made to the effect that the company was in a difficult financial position and any increase in employee benefits would necessitate altering the employer's operation. The Board, in appraising the situation against a background free from unfair labor practices, refused to set aside the election, concluding that the statements represented "a reasoned noninflamatory attempt to explain the difficult economic condition in which the company was placed." The Board concluded that "such expressions constitute permissible predictions of the possible economic consequences of increased costs rather than threats of reprisal to force employees into abandoning the union." Moreover, the Board found that the statements were not rendered coercive by an additional statement expressing an intention to continue operations with replacements in the event of a strike.[86] An opposite result was reached in *Boaz Spinning Co.*[87] The Board set aside the election and found that the employer "exceeded the brink of permissible campaign propaganda" by speeches connoting the "futility of union representation." In prepared statements the employees were told that the selection of the union would mean strikes, bitterness and dissension, job and income loss, violence and bloodshed, and disruptive community relationships.[88] The Board stated:

In arguing against unionism, an employer is free to discuss rationally the

[84] The election was set aside on other grounds.

[85] 174 NLRB No. 72.

[86] Chairman McCulloch and Member Jenkins for the majority. Member Brown, dissenting, would sustain the objection to the election.

[87] 177 NLRB No 103.

[88] Chairman McCulloch and Member Jenkins for the majority. Member Zagoria, dissenting, would overrule the objection to the election.

potency of strikes as a weapon and the effectiveness of the union seeking to represent his employees. It is, however, a different matter when the employer leads the employees to believe that they *must* strike in order to get concessions. A major presupposition of the concept of collective bargaining is that minds can be changed by discussion, and that skilled, rational, cogent argument can produce change without the necessity for striking. When an employer frames the issue of whether or not the employees should vote for a union purely in terms of what a strike might accomplish, he demonstrates an attitude of predetermination that bargaining itself will accomplish nothing. . . . Policy considerations dictate that employees should not be led to believe, before voting, that their choice is simply between no union or striking.

In a union deauthorization election case [89] the Board considered employer statements concerning the possible effects of deauthorization. In urging employees to vote "no" or refrain from voting, the employer asserted that the loss of the union-security provision through an affirmative deauthorization vote might mean that the union's international might lose interest and the local's charter be withdrawn, there would then be no union contract or union at the plant, and the employer would then be free to increase benefits. The Board refused to set aside the election and found that the statements "did not prevent voters from comprehending the question upon which they were voting, and that they were not precluded from expressing a free choice in the referendum," but "merely clarified for the employees the actual issues in the election by pointing to a result which well might emerge from the contemplated deauthorization election."

c. Election Atmosphere

In several cases the Board was called upon to decide whether a pervasive election atmosphere precluded employees from expressing a free choice on the question of representation by a union. In *Al Long*,[90] the Board set aside the election where "a general atmosphere of confusion, violence, and threats of violence" occurred during the critical period prior to the election. The Board found that the anxiety and fear of reprisal rendered a fair election impossible. The election was conducted in the face of an "often violent" and "emotion-filled" strike which included extensive property damage, threatening calls, bomb threats, and unruly conduct on the picket line. In reaching this conclusion the Board did not deem it significant that the interference could not be attributed to one of the parties. As stated, "it is not material that fear and disorder may have been created by indi-

[89] *Sierra Electric*, 176 NLRB No. 63.
[90] 173 NLRB No. 76.

vidual employees or nonemployees and that their conduct cannot probatively be attributed either to employer or to the union. The significant fact is that a free election was thereby rendered impossible." A similar result was reached in *Landis Morgan Transportation,*[91] where certain acts of sabotage committed by unknown persons prior to the election precluded "a rational coerced expression of choice."

d. Secrecy of the Ballot

Section 9(c)(1) of the Act requires all Board elections to be conducted by secret ballot. The Board enforced adherence to this policy in *T & G Mfg.,*[92] where it refused to accept the stipulation of the parties that an employee's challenged but commingled ballot was cast for the union. In its view acceptance of such an agreement would not be consistent with the Board's purpose "of preserving the secrecy of the election process." As stated, "There is no way of ascertaining with certainty how the vote was cast. We will not permit solicitation of such information from the voter, nor allow the parties to stipulate how a voter exercised his franchise, for this would create the very opportunity for collusion, coercion, and election abuse the Board is committed to prevent."

Similarly protective of the election process was the decision in *J. Weingarten,*[93] where the regional director had begun his investigation of a determinative ballot challenged by an incumbent union intervening in the election because of the alleged supervisory status of the voter. In sustaining the regional director's denial of a request, made during the investigation, to withdraw the challenge, the Board stated:

> Where, as here, the challenged ballot is still uncounted and not commingled with the other ballots, and the Regional Director's incomplete investigation has revealed that in all likelihood, the challenged voter is ineligible to vote because he is a supervisor, we hold that it is incumbent upon the Regional Director to complete his investigation and to resolve the issue as to the voter's status, notwithstanding a request to withdraw the challenge.

[91] *General Truckdrivers, Warehousemen & Helpers Union, Loc. 980, Teamsters,* 177 NLRB No. 51.

[92] 173 NLRB No. 231.

[93] 172 NLRB No. 228.

VI

Unfair Labor Practices

The Board is empowered under section 10(a) of the Act "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." In general section 8 prohibits an employer or a union or their agents from engaging in certain specified types of activity which Congress has designated as unfair labor practices. The Board, however, may not act to prevent or remedy such activities until a charge of an unfair labor practice has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other person irrespective of any interest he might have in the matter. They are filed with the regional office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with decisions of the Board during the 1969 fiscal year which involved novel questions or set precedents which may be of substantial importance in the future administration of the Act.

A. Employer Interference With Employee Rights

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

An unusual issue concerning permissible employer restrictions upon employee organizational activity and issues concerning the relevancy of motive in finding preelection benefits to be viola-

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

tions of section 8(a)(1) of the Act were among the numerous cases considered by the Board involving employer interference with employee rights guaranteed by section 7 of the Act. In *Sylvania Electric Products* [2] the employer discharged a vending machine serviceman upon the complaint of one of its customers that the servicemen had expressed prounion sentiments to the employees at the customer's plant where a union organizing campaign was underway. The discharge was for violation of the company's well-established "neutrality" rule requiring the servicemen to remain strictly neutral regarding union activities or affairs at plants of customers while servicing machines there. Noting that the right of solicitation protected by section 7 encompasses almost all direct person-to-person support of organizational activity, the Board concluded that the neutrality rule was in effect a no-solicitation rule and its validity was to be determined by the principles applicable to such rules. Viewing the rule in the context of its application, the Board found no violation of section 8(a)(1) in the discharge of the serviceman. The rule was applicable only to employee activities during working time. Although it was applied to activity away from the employer's plant and among employees of another employer, there was a valid business necessity for the rule; it was required to maintain the good will of both the management and the employees at the plants where vending machines were installed.

In *Tonkawa Refining Co.*,[3] the Board emphasized that, in order to find that an employer's conferral of employee benefits while a representation election is pending is a violation of section 8(a)(1), there must be a finding that the action was taken "for the *purpose* of inducing employees to vote against the union." [4] It held that the trial examiner had applied an improper test in holding that evidence of motive was immaterial and basing his findings upon whether the conduct tended to interfere with the employees' rights under the Act. The trial examiner's finding that the employer violated section 8(a)(1) by granting wage increases to his employees just before the election was affirmed, however, since the Board found that the employer in doing so was motivated by an intent to induce employees to vote against the union. The application of this test brought a contrary result in another case [5] where the employer announced

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[2] 174 NLRB No. 159

[3] 175 NLRB No. 102

[4] Citing *N.L.R.B.* v. *Exchange Parts Co.*, 375 U.S. 405. Twenty-ninth Annual Report (1964), pp. 103–104.

[5] *Louisana Plastics*, 173 NLRB No. 218.

during the preelection period that there would be a wage increase following the election and thereafter placed the wage increase in effect while objections to the election were still pending. The Board found no improper motivation, noting the employer's expressed lack of objection to employee organization, and the fact that the wage increases were annual wage adjustments which were normally made at that time of year, which the employer announced he would defer until after the election and, which, in the event the employees chose representation, the employer would offer to the union in the course of negotiations.

B. Employer 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) make exceptions to this prohibition, which permit an employer to make an agreement with a labor organization requiring union membership as a condition of employment, subject to certain limitations.

1. Application of Union-Security Clauses

In *Pacific Iron & Metal Co.*,[6] the Board held that the employer and union did not violate section 8(a)(3) and (1) and 8(b)(2) and (1)(A), respectively, by discharging an employee pursuant to an oral union-security agreement, since maintenance and enforcement of an otherwise valid union-security agreement does not necessarily become unlawful merely because the terms of the agreement are not in writing. In so concluding, the Board pointed out that it was mindful that the requirement of "fair dealing" owed employees under union-security agreements "includes the duty to inform the employee of his rights and obligations [respecting such agreements] so that the employee may take all necessary steps to protect his job." Parties who would defend action taken on the basis of such oral agreements must, therefore, satisfy a stringent burden of proof in establishing the existence and precise terms and conditions of the agreement and in further establishing that affected employees have been fully and unmistakably notified thereof. Here, the employees, including

[6] 175 NLRB No 114.

the dischargee, were advised of and fully understood their union-security obligations under the operative agreement, and the respondents had, therefore, met their burden.[7]

2. Rights of Strikers to Reinstatement

Three cases decided during the past fiscal year involved application of the principles set forth in *Laidlaw Corp.*[8] requiring reinstatement of permanently replaced economic strikers when vacancies arise after their unconditional application for reinstatement, absent substantial business justification for failure to reinstate them. In *American Machinery Corp.*,[9] the Board held that the failure of strikers to file, and keep current, applications as new employees did not constitute legitimate and substantial business justification for the denial of reinstatement, since all of the information requested on the application was already in the employer's records. Moreover, under *Laidlaw*, the strikers were entitled to full reinstatement, so that the requirement that they file applications for employment as new employees with loss of seniority was itself a discriminatory condition, violative of section 8(a)(1) and (3) of the Act, and the strikers' failure to comply therewith could not justify the refusal to reinstate them. Accordingly, the Board found that the employer violated section 8(a)(1) and (3) by refusing to reinstate the strikers as vacancies arose.[10]

In another case,[11] the General Counsel conceded that six of eight economic strikers had been permanently replaced before an unconditional offer to return to work was made on behalf of all eight, and sought a remedy only for the two strikers who had not been replaced. The Board nevertheless held that, since all of the strikers had unconditionally offered to return to work, the *Laidlaw* principles applied to all as a matter of remedy. Since, in the instant case, two replacements had departed shortly after the end of the strike, at least two additional strikers were entitled to immediate reinstatement, and their rights under *Laidlaw* were not affected by the General Counsel's failure specifically to seek a remedy for them.

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[7] Chairman McCulloch and Members Fanning and Brown for the majority. Members Jenkins and Zagoria, dissenting, would hold that a union-security clause must be in writing to justify an employee's discharge.

[8] 171 NLRB No. 175, Thirty-third Annual Report (1968), p. 83.

[9] 174 NLRB No. 25.

[10] The Board held that strikers who applied for and accepted early retirement after the unconditional request for reinstatement were entitled to the same remedy as the other strikers, but that strikers who applied for early retirement prior to the request for reinstatement were not entitled to such remedy.

[11] *Downtowner of Shreveport*, 175 NLRB No. 178.

In *Transport Co. of Texas,*[12] the employer reinstated economic strikers after the end of a strike. Subsequently, however, when business conditions required a layoff of several employees, the employer, in selecting employees for layoff, considered only strikers. In view of the fact that the employer considered all of its employees equally desirable, and failed to show that it had used any objective, nondiscriminatory criteria in selecting employees for layoff, the Board concluded that the employer had, in effect, treated the returned strikers as new employees, thereby denying them full reinstatement to which they were entitled under *Laidlaw.* Concluding that the effect of the employer's action was to place the strikers in a position subordinate to that of other employees from whom they were distinguishable only in having engaged in protected strike activity, the Board found that the layoffs violated section 8(a)(3) and (1) of the Act.[13]

3. Other Forms of Discrimination

In *Lee A. Consaul,*[14] the Board held that an "unauthorized strike during negotiations for a new multiemployer contract constituted "concerted activities for the purpose of collective bargaining" expressly protected by section 7 of the Act and that the employers violated section 8(a)(3) and (1) by discharging employees for participation in the strike. The work stoppage occurred before the union had taken a final position with respect to striking in support of its demands and was an effort by the employees to secure a favorable and prompt resolution of the contractual dispute. It was not shown to have had the purpose or effect of bringing pressure to bear upon the union to alter any established course it had taken during collective-bargaining negotiations. The Board noted that concerted strike action by employees for the purpose of securing increased benefits may not lightly be characterized as "unprotected" activity, subjecting them to peremptory discharge, and found no reason why an employer should have carte blanche to discharge employees for engaging in such conduct unless the walkout occurred in cir-

[12] 177 NLRB No. 82

[13] In a case involving unreplaced economic strikers, *Duncan Foundry & Machine Works,* 176 NLRB No 31, the Board held that the employer violated sec 8(a)(3) and (1) by denying the strikers vacation benefits while paying such benefits to nonstriking employees and strikers who had returned to work, and by treating recalled strikers as new employees without their former seniority rights, since the strikers remained employees and both forms of discrimination against them were destructive of their sec 7 rights.

[14] 175 NLRB No. 93.

cumstances which indicate actual prejudice to the integrity of the collective-bargaining relationship.

C. The Bargaining Obligation

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 terms and conditions of employment with the representative selected by a majority of the employees in an appropriate unit.

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 requisites of good-faith collective bargaining are set forth in section 8(d) of the Act.[15]

1. Proof of Representatives' Majority Status

It is well settled that the Board's election process, although the preferred manner whereby a union may establish its majority status, is not the only way of doing so. In those circumstances where an employer's actions in refusing to recognize a union would be violative of section 8(a)(5) if the union were in fact the majority representative, other methods of establishing that status, such as valid authorization cards, may be relied on by the Board.[16] In one case [17] in which the Board considered the adequacy of authorization cards to establish the majority status of a union, it was again called upon to pass on the contention that the cards were invalid because obtained upon representations that they were to be used to obtain a Board election. Rejecting this contention, the Board held that such a representation did not provide sufficient basis in itself to vitiate an unambiguously worded authorization card on any theory of misrepresentation as to purpose, where there was no representation that the *only* purpose was to get an election.

The Board noted that the central inquiry in determining the effect to be given the cards is whether the employees manifested an intent to designate the union as their bargaining agent by

[15] As defined by sec. 8(d) of the Act, the statutory duty to bargain includes the duty of the respective parties "to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party." However, "such obligation does not compel either party to agree to a proposal or require the making of a concession."

[16] See, e.g., Thirty-third Annual Report (1968), pp. 88–90.

[17] *McEwen Mfg. Co. & Washington Industries*, 172 NLRB No. 99.

their act of signing them; and, if they did, there was no valid basis in reason of law for denying face value to the signed cards. The Board stated:

> In assessing that intent, the wording of the card is of paramount importance. Where a card on its face clearly declares a purpose to designate the union, the card itself effectively advises the employee of that purpose, and particularly so where, as here, the form of the card is such as to leave no room for possible ambiguity. An employee who signs such a card may perhaps not understand all the legal ramifications that may follow his signing, but if he can read he should and must be assumed to be aware at least that by his act of signing he is effectuating the authorization the card declares.

In the Board's view, the declarations to the employees do not constitute misrepresentations of either fact or of purpose under ordinary circumstances. In normal organizational situations, the union expects to proceed via the election route to gain representation rights, and may therefore stress the election use of cards rather than their use to establish a majority, but that is no valid reason for refusing to accord the usual probative value to unambiguous cards in an 8(a)(5) case simply because, at the time they were procured, the union still thought it could participate in a fair election. A different situation is presented, however, where the cards are solicited on the explicit or indirectly expressed representation that they will be used only for an election, and they are subsequently used for majority computation, since, in the latter case, the representation induces a conditional delivery for a restrictive purpose which invalidates them.

In the *Silver Fleet* case,[18] however, the Board declined to rely on the union authorization cards because of language ambiguities present on the face of the card. It held that the union's majority status was not demonstrated by authorization cards which first authorized the union to represent the card signer, followed by the legend in bold type, "This does not obligate me in any way," since this statement, coupled with oral assurances that the card was to be used for an election, created an ambiguity sufficient to invalidate the cards for majority status purposes.[19]

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[18] 174 NLRB No. 141.

[19] Chairman McCulloch and Member Fanning, for the majority, found it unnecessary to determine whether the disclaimer of obligation would, by itself, invalidate the cards. Member Zagoria, concurring, was of the view that the disclaimer of obligation permeated the entire card with ambiguity, irrespective of the oral statements concerning an election. Members Brown and Jenkins, dissenting, would find that the explicit designation of the bargaining agent on the card overcame whatever ambiguity might have been created by the statement of no obligation, which they found related to participation in union activities other than designation of the union

2. Withdrawal of Recognition From Incumbent Union

The Board has consistently adhered to the *Celanese* rule [20] under which after the first year of a union's certification there is a presumption of continued majority status flowing from the certification. An employer seeking to withdraw recognition from an incumbent union may rebut the presumption by an affirmative showing either that (1) at the time of a refusal to bargain the union in fact no longer enjoyed majority status, or (2) the employer's refusal was predicated on a good-faith and reasonably grounded doubt of the union's continued majority status. Further, the prerequisites for sustaining the "good-faith doubt" defense are that the asserted doubt must be based on objective considerations and it must not have been raised in the context of unfair labor practices aimed at causing disaffection from the union, or in order to gain time in which to undermine the union.

In one case [21] decided by the Board during the report year in which an employer withdrew recognition from the incumbent union at the expiration of the certification year and attempted to raise a question concerning representation by filing an election petition, the Board rejected the employer's refusal-to-bargain defense that it had the requisite good-faith doubt of the union's continued majority status. The Board, assuming *arguendo* the existence of some facts constituting the type of objective considerations which reasonably could have led the employer to doubt the union's majority, found, however, that the employer did not raise the majority issue in good faith and was not in fact willing to have the representation question resolved by the election machinery. The Board pointed out that the employer filed the petition during the contract's 60-day insulated period, which made it subject to dismissal under normal contract-bar rules, and thereafter failed to appeal the regional director's dismissal of the petition. Subsequently, it intensified its unfair labor practice campaign in a patent effort to dissipate employee support for the union and to destroy the conditions necessary to a free election. The asserted good-faith doubt having been raised in this context, the Board rejected it as a defense to the violation of section 8(a)(5) by withdrawal of recognition from the incumbent union.

In the *Skaggs Drug* case [22] the employer broke off bargaining with the incumbent union after a decertification petition sup-

[20] *Celanese Corp. of America*, 95 NLRB 664 (1951).
[21] *Ingress-Plastene, Inc.*, 177 NLRB No. 70.
[22] 176 NLRB No. 102.

ported by 12 of the 15 employees, once dismissed, had been reinstated. At that time the employer became concerned anew by the apparent desire of the union to thwart an employee election, since it immediately filed unfair labor practice charges having the effect of blocking the petition. The Board found that the first petition necessarily raised some doubt of the union's continuing majority, and the reinstatement of the petition reinforced that doubt. It concluded that under the circumstances the employer lawfully ceased negotiations until the majority question could be determined in an election, or until its duty to bargain could be determined through the charges filed. It noted that the fact that the employer had negotiated with the union over the terms of a new contract while the initial petition was pending was found not inconsistent with a good-faith doubt of majority, particularly when significant negotiations took place while the petition was dismissed and the employer engaged in no activity to dissipate the union's strength. The employer's widely spaced unilateral actions in changing certain conditions of employment, although themselves in violation of section 8(a)(5), were not viewed as having an overall purpose to undermine the union.

In another case [23] the employer had withdrawn recognition from the union following an economic strike on the ground that the union no longer represented a majority of employees in the original unit which he viewed as consisting of the permanent replacements for strikers together with the employees who did not join the strike, but excluding the replaced economic strikers. Consistent with its *Laidlaw* decision,[24] holding that a replaced economic striker retains his status as an employee and is entitled to have his reinstatement request honored when an opening becomes available so long as he has not abandoned the employ of the employer, the Board held that the 79 replaced economic strikers were to be included in the unit for purposes of determining the union's majority status, and the adequacy of the employer's asserted doubt of majority. In holding that the replaced economic strikers were to be counted in the unit for purposes of assessing the adequacy of the basis of the employer's asserted doubt, the Board noted that the replaced strikers retained their status as employees, had applied for reinstatement, and would be eligible under section 9(c)(3) to vote in an election

[23] *C. H. Guenther & Son, d/b/a Pioneer Flour Mills*, 174 NLRB No 174. See also *Frick Co.*, 175 NLRB No. 39.

[24] 171 NLRB No. 75; Thirty-third Annual Report (1968).

had one been held at the time of the termination of the strike. Evaluating the employer's basis for doubting the union's majority in the light of a unit including the replaced strikers, the Board found it inadequate and directed the employer to bargain with the union.[25]

3. Coordination of Bargaining

In a number of cases decided during the year, the Board was called upon to consider various actions taken by unions to coordinate their bargaining aims or tactics in order to increase their bargaining power. In two cases,[26] the Board held that employers violated section 8(a)(5) and (1) by refusing to meet with the negotiating committees of unions representing some of the employer's employees, because members of other unions representing, in separate bargaining units, other employees of the same employers were included on the negotiating committees as nonvoting members. The Board pointed out that the unions had expressly disclaimed any intent to engage in coalition bargaining or to bargain for employees represented by other unions or in other units and that the employers had walked out of the bargaining sessions without waiting to see whether the unions were acting in bad faith or whether their demands and actions were consistent with the disclaimer.[27] In holding that the mere presence of members of other unions on the negotiating committee of a representative does not justify a refusal to bargain, the Board [28] pointed out that the right of employees, guaranteed by section 7 of the Act, to bargain collectively through representatives of their own choosing includes the right of the employees' duly elected bargaining agent to select the bargaining team which will represent it at the bargaining table. It noted that although this right has been denied where the chosen repre-

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[25] The Board departed from the standard of *Stoner Rubber Co.*, 123 NLRB 1440 (1959), in which replaced economic strikers were excluded and other cases following it, since they were prior to the 1959 amendment to sec. 9(c)(3) of the Act.

[26] *General Electric Co.*, 173 NLRB No. 46, enfd. as modified 412 F.2d 512 (C.A. 2); *Minnesota Mining & Mfg. Co.*, 173 NLRB No. 47, enfd. 415 F.2d 174 (C.A. 8). The Board's rationale, discussed herein, was set forth in *General Electric*, and, except for the point discussed in fn. 29, *infra*, was equally applicable to *Minnesota Mining*.

[27] In *United Steelworkers of Amer. (Kennecott Copper Corp.)*, Case 27-CB-453, a trial examiner found that several unions which bargained jointly with an employer violated sec 8(b)(3) of the Act by insisting upon demands which would have resulted in the consolidation of several separate units In the absence of exceptions, the Board adopted the trial examiner's decision without passing on his rationale.

[28] Chairman McCulloch and Members Fanning, Brown, and Zagoria for the majority. Member Jenkins, dissenting, was of the opinion that inclusion on one union's bargaining committee of representatives of other unions would be inherently disruptive of the bargaining process.

sentative is so tainted with conflict or so patently obnoxious that good-faith bargaining is inherently impossible, it should not be denied merely because of the possibility of abuse.

The Board also found that the presence on one union's bargaining committee of representatives of other unions could not be regarded as inherently disruptive of the bargaining process; no such disruption occurred in the instant cases when the employers subsequently bargained with the mixed negotiating committees pursuant to court orders. Moreover, the unions involved were likely to share common objectives, rather than have conflicts of interest, since they usually received similar offers and executed similar contracts with the employer. In the Board view a blanket prohibition of mixed bargaining committees would unduly limit the opportunity for cooperation and collaboration between unions; for example, it would prevent an expert employed by one union from assisting another union at the negotiating table, even though the negotiating union sought only technical advice from the expert. Accordingly, the Board held that the employers could not exercise a veto power on the unions' selection of bargaining committees, and that the refusals to meet with the committees selected by the union constituted violations of section 8(a)(5) and (1) of the Act.[29]

In another case,[30] a union proposed a clause providing that the wage rates paid to employees in the bargaining unit represented by the union would always be equal to the wage rates paid to comparable employees in a neighboring city who were represented by a sister local. The Board found that the union had not insisted on the clause in question, but had merely proposed it as one of several alternative methods of achieving wage parity between the employees it represented and those in the neighboring city. In any event, the Board concluded, even if the union had insisted on the clause in question, such insistence would not violate section 8(b)(3) of the Act, since the clause dealt with a mandatory subject of bargaining. The fact that the clause would bind the parties to wage rates set by others did not change its basic character as a wage demand. The employers

[29] The Board (Members Jenkins and Zagoria dissenting on this point) also held in *General Electric* that the employer violated section 8(a)(5) and (1) by refusing to proceed with preliminary discussions 3 months before the period for reopening the contract. While the employer could not be required to bargain before the union served notice of contract termination, it could voluntarily agree to bargain earlier, and, having done so, was obliged to meet the statutory requirement of good-faith bargaining. Accordingly, it could not walk out of the preliminary meeting solely because of the composition of the union's bargaining committee. The Second Circuit, while enforcing the Board's order in other respects, reversed the Board's finding of a violation on this point. See discussion at p. 140, *infra*.

[30] *General Teamsters, Loc. 126 (Oshkosh Ready-Mix Co.)*, 176 NLRB No. 52.

were not being asked to yield administration of the contract to an outside source, or to let the employers in another city be their bargaining representative, but only to allow one term of the contract to be established by an outside event. In the Board's view, this case was clearly distinguishable from *Pennington,*[31] where the Supreme Court held that a union could not agree with employers that it would seek to impose on other employers the terms being negotiated. In that case, the union's subsequent bargaining with other employers would be straitjacketed, since the union had surrendered its freedom to act in its own interest in dealing with those employers. The clause in the instant case, under which terms agreed upon elsewhere would be imposed on the contract being executed, would not limit the freedom of the subsequent bargaining, which would not be done by either of the parties to the instant contract.

In another case,[32] a local union, after reaching agreement with an employer on the terms of a contract, refused to sign the contract because the international and a sister local did not approve the wage rates provided therein. The sister local, which represented employees in an adjoining geographic area, claimed jurisdiction over the employees in the bargaining unit involved in the instant case, and the international union warned the local representing these employees that this claim would be pressed unless the local obtained the same wage rates that the sister local had obtained for employees it represented.

The Board concluded that the local union did not violate section 8(b)(3) of the Act by failing to sign the agreement. It noted that for a local to condition the execution of a collective-bargaining agreement on approval by its international is not in itself unlawful.[33] Here, the parties clearly understood that the international's approval was required, and the international's refusal to approve the contract was due to its dissatisfaction with the wage scale, which was an integral part of, and not extraneous to, the local's contract negotiations. The fact that the decision to withhold approval of the wage scale might have been influenced chiefly, or even solely, by the views of the sister local was immaterial, since the decision related to the terms and conditions of employment being negotiated by the local for the unit employees it represented and not to any terms and conditions of employment elsewhere. Consequently, the precondition attached to execution of the tentative agreement was not im-

[31] *United Mine Workers* v. *Pennington,* 381 U.S. 657.

[32] *Brotherhood of Painters, Loc. 850 (Morgantown Glass & Mirror),* 177 NLRB No. 16.

[33] *Standard Oil Co.,* 137 NLRB 690 (1962).

proper, and the local's refusal to execute the agreement was not unlawful.

4. Duty To Furnish Information

The statutory duty of an employer to bargain in good faith includes the duty to supply to the bargaining representative information which is "relevant and necessary" to the intelligent performance of its collective-bargaining duty and contract administration functions.[34] The scope of this obligation was considered by the Board this past year in a number of cases.

In *Southwestern Bell Telephone Co.*,[35] the Board [36] considered whether the employer was obligated to furnish certain cost information sought by the union pertaining to subcontracting by the employer which was requested as relevant and necessary to the processing of two grievances filed by the union pursuant to contract grievance procedures. The Board observed that the specific provisions of the agreement on which the grievances were based pertained to recognition of the union as bargaining representative of unit employees, wages to be paid such employees for unit work, and a prohibition against strikes protesting the subcontracting of certain kinds of work not involved in the instant case. The Board further noted that at no time during the grievance discussions did the employer claim that cost was a factor in subcontracting, nor did the union explain how cost was relevant to its preparation or presentation of the grievances in question. Nor did the contract provisions on which the grievances were based refer to cost which, as noted previously, had not been asserted as a reason for subcontracting, and therefore the detailed information requested by the union would not have made the subcontracting any more or less permissible. Finding that no showing of relevancy or necessity had been established for the information requested, the Board dismissed the complaint.

On the other hand, in *Cowles Communications*,[37] involving a publisher of magazines and other reading matter, the Board held that the employer violated section 8(a)(5) and (1) by refusing the union's request to furnish salary and related information, including the precise formula for any commission or bonus arrangements, or other forms of compensation in excess

[34] See, e.g., *Curtiss-Wright Corp*, 145 NLRB 152 (1963), enfd. 347 F.2d 61 (C.A. 3), Twenty-ninth Annual Report (1964), p. 76, Thirtieth Annual Report (1965), p. 136.

[35] 173 NLRB No 29.

[36] Chairman McCulloch and Members Fanning, Brown, and Zagoria participating.

[37] 172 NLRB No. 204.

of the contract rate, for each employee in the editorial department unit. As noted by the Board, "Respondent's duty to furnish such information stems from the underlying statutory duty imposed on employers and union to bargain in good faith with respect to mandatory subjects of bargaining," and the law is clear that wage and related information pertaining to unit employees should, upon request, be made available to the bargaining agent without regard to its immediate relationship to the negotiation or administration of the bargaining agreement. Such information, the Board stated "is *presumptively* relevant and 'a union is not required to show the precise relevance of it, unless effective employer rebuttal comes forth. . . .' " [38]

Rejecting the arguments that salary disclosure was not essential to the union and that the requested information, linking salaries to names, should not be required because such disclosure might offend the sensitivities of some of the employees, the Board, relying on *Boston Herald Traveler*,[39] rejected the first contention because full disclosure of payroll information might reveal inequities and other factors in the wage structure upon which the bargaining representative has a right and duty to negotiate. Moreover, knowledge of full payroll information would enable the union to decide whether to press a demand respecting changes in classifications or minimum wage scales. As to the contention with respect to the confidential nature of the requested information, the Board observed that it had held in other newspaper cases that the argument that some employees may prefer financial anonymity rests but on a speculative basis and, in any event, such individual desires must yield to the interests of the great majority of unit employees.[40]

In several cases this past year the Board was confronted by the question as to the employer's duty to furnish the names and addresses of unit employees to the bargaining representative. Thus, in *Prudential Insurance Co.*,[41] the Board held that the employer violated section 8(a)(5) and (1) by refusing to furnish the union with a list of names and addresses of all bargaining unit employees who were district agents. The union had requested the list for the purpose of bargaining intelligently with the employer and in order to perform its duties and functions

[38] Citing *Curtiss-Wright Corp.* v. *N.L.R.B.*, 347 F.2d 61, 68–69, (C.A. 3, 1965).

[39] 110 NLRB 2097 (1954).

[40] Chairman McCulloch and Members Fanning, Brown, and Jenkins for the majority. Member Zagoria, dissenting, would not require the furnishing of employee identification for information concerning payments in excess of minimum contract wage rates, since such excess payment was within the sole discretion of the employer under the contract.

[41] 173 NLRB No. 117.

in administering the bargaining agreement. Citing *Standard Oil Co.*,[42] the Board observed that "the statutory duty of fair representation requires that the bargaining agent extend representation to nonunion employees as well as to union members, and where, as here, the bargaining representative has no effective means of communicating with a substantial number of unit employees, it cannot properly meet its statutory obligations under the Act." According to the Board, the union's lack of any effective means of communication with nonunion unit employees was demonstrated by the absence of any union-security or maintenance-of-membership provisions in the parties' bargaining agreement and the fact that less than 60 percent of the unit employees were members of the union. The Board agreed with the union's claim that the low rate of union membership showed the difficulties the union had in attempting to communicate with the employees in the unit. It deemed it significant that the unit was nationwide in coverage, including almost 17,000 agents employed at 897 locations, and also observed that the employer experienced a 25-percent turnover per year among unit employees. The Board further noted that, although the bargaining agreement permitted the union to establish a grievance committee at each office and granted it the right to post certain notices on office bulletin boards, neither of the applicable contract provisions allowed the union to communicate generally with unit employees. There was no contractual authorization for contract between the grievance committee members, except when a grivance was processed; the union was limited to the posting of general announcements and was prohibited from using the bulletin boards to distribute materials of any kind; and the employer reserved the right to remove from the bulletin board any contractually unauthorized material.

Under these circumstances the Board concluded that effective communication between the union and the unit employees must of necessity be conducted, if at all, at places other than the employer's offices, and because of the size and geographic scope of the unit, communication by mail to employees at their homes seemed to be the only feasible means for effecting communication. Noting that the requested information was for the purpose of soliciting the employees' views on contract proposals and preferences, informing them concerning contract benefits, and encouraging them to participate in policing and enforcing the bargaining agreement, the Board found such purposes clearly

[42] 166 NLRB 343 (1967); see Thirty-second Annual Report (1967), pp. 108–109.

relevant to collective bargaining and to the administration of the bargaining agreement.

Similarly, in *Southern Counties Gas Co.*,[43] the employer's refusal to comply with the union's request for the names and addresses of unit employees was found violative of section 8 (a)(5) and (1).[44] Although the employer had offered to send out via company mail a limited number of mailings to employees soliciting their views on "negotiations in grievances" at no cost to the union, provided that the mailings were not derogatory to the company, and had also offered to do so by United States mail if the union assumed postage costs, the union objected to the limitation on the number of mailings and pleaded its inability to know whether nonmembers would actually receive such mailings. The union also contemplated different mailings to members and nonmembers.

The Board concluded that the employer's offering to make limited mailings of material not derogatory to the employer implied inspection of the material by the employer; that there might be times when the union would prefer that the employer not know the nature of the union's solicitations; and that the employer, rather than the union, would in reality decide the number of mailings to be made. It therefore found that the names and addresses of the unit employees were necessary for effective communication between the union and the employees it represented and directed that the information be supplied.

In *General Electric Co.*[45] the Board, concluding that the union's inability to communicate effectively with 20 percent of the overall bargaining unit and with 77 percent of the unit comprised of office, clerical, and technical employees would hinder compliance with the union's statutory obligation to fairly and fully represent all employees in the unit, held that the employer violated section 8(a) (5) by refusing to furnish the union a list of home addresses of employees in units consisting of production and maintenance employees and of office, clerical, and technical employees. The absence of required union membership under the contract with the concomitant lack of home addresses seriously hindered the union's ability to communicate with nonmembers regarding their conditions of employment. Further impediments to the union's

[43] 174 NLRB No. 11.

[44] Members Fanning, Jenkins, and Zagoria. Member Zagoria relied, as in *Prudential Insurance Co*, *supra*, only on the fact that the relevance of the requested information for collective-bargaining purposes had been clearly established. Reference was made to Member Zagoria's dissent in *Standard Oil Co., supra.*

[45] 176 NLRB No. 84.

communication with unit employees found by the Board were the dispersal of their residences and places of work, and the existence of numerous vacancies in union steward positions, and the fact that the union's ability to communicate with employees through the use of bulletin boards was subject to curtailment by the employer.

5. Unilateral Changes in Working Conditions

The obligation to recognize and bargain with a labor organization representative of its employees precludes an employer from taking unilateral action changing the terms and conditions of employment of those employees. In a case [46] where the employer bank unilaterally imposed a fee for investment banking services which it had been providing free of charge to unit employees for about 28 years, the Board found the unilateral action to be an unlawful refusal to bargain, notwithstanding that the employer's current contracts with the union had not expressly referred to the free investment service and it had not historically been the subject of bargaining between them. The Board viewed the service as an emolument of value accruing out of the employment relationship and therefore a mandatory subject of bargaining encompassed by section 8(d). The mere fact that such subject has not been introduced into the bargaining process does not mean that it must henceforth be barred as a matter of discussion. Nor did the employer's failure to refer to the free investment services as a benefit in communicating to the employees or potential employees exclude them from the coverage of section 8(d). A defense by employer that the services were so insubstantial as to be *de minimis* in that they were requested only by about 3 percent of the unit employees was rejected by the Board, in view of totality of the value of the services over a period of years.

The limitation of section 8(d) of the Act [47] was also involved in the *Standard Oil Co. (Ohio)* case [48] where the Board found that an employer violated 8(a)(5) by unilaterally publishing and implementing terms and conditions of employment inconsistent with the existing bargaining agreement, notwithstanding

[46] *Seattle-First National Bank*, 176 NLRB No. 97.

[47] Although sec. 8(d) permits modifications of an existing contract if certain requisites are met, the section also provides that "the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period if such modification is to become effective before such terms and provisions can be reopened under the provisions of the contract."

[48] 174 NLRB No. 33.

that the employer and union had reached a stalemate concerning the employer's proposed modifications. The Board pointed out that under section 8(d) the union's consent was required if management's proposed modifications were to take effect, and when the union lawfully withheld its assent, a stalemate resulted. However, although an employer may unilaterally institute change when an impasse occurs during the negotiations for an initial bargaining agreement or following the expiration date of an expiring contract, the Board found that an employer may not do so where, as here, the contract had not yet terminated. Accordingly, the employer was not free to modify the unexpired agreement over the union's objections, but was obligated to maintain in effect all preexisting contractual commitments for the contract term.

In another case[49] where a reopener clause of a bargaining contract and an exception to the contract's no-strike clause were limited to matters concerning wages and job classifications, and a related provision for automatic expiration in the event the parties failed to reach an agreement in 60 days was similarly limited to wages and classifications, the Board held that the employer did not unlawfully refuse to bargain with the union about other matters after 60 days of bargaining about wages and classifications had passed without agreement having been reached, and employees had struck in support of their demands. As the union had not given the employer notice that it desired to cancel the entire contract, as was required by a general termination clause contained in the contract, the contract remained in force in all respects other than wages and job classifications, and the employer was under no duty to bargain about other subjects.

6. Disregard for Board Designated Representative

A number of cases decided during the report year involved attempts on the part of labor organizations to compel employers to bargain with them rather than with the Board certified employee representatives, or attempts on the part of employers to disregard such representatives and act unilaterally or after dealing directly with the employees, to change their terms and conditions of employment.

In one case,[50] a union sought to file grievances with an em-

[49] *Firestone Synthetic Rubber & Latex Co.*, 173 NLRB No. 178.

[50] *Smith Steel Workers, Directly Affiliated Labor Union 19806 (A. O Smith Corp.)*, 174 NLRB No. 41.

ployer over the employer's recognition of another union as the bargaining representative of certain employees. Those employees had been represented by this union, prior to the time when the Board, in a unit clarification proceeding [51] during the term of the union's contract with the employer, held that the employees in question should be included in the unit represented by the other union. When the employer refused to submit the matter to arbitration, the union filed a suit in a Federal district court under section 301 of the Labor Management Relations Act to compel arbitration.[52] The Board [53] concluded that these actions amounted to adamant insistence by the union that the employer continue to bargain with it for a unit which the Board had already found inappropriate, and hence constituted a refusal to bargain in violation of section 8(b)(3) of the Act.

In *General Transformer Co.*,[54] the employer had refused to grant a wage increase demanded by the international union certified as the bargaining representative of its employees unless the union agreed to an extension of the contract, which was executed in the name of a local union affiliated with the international, and approved as to content and form by the international. When the international union refused to agree to extend the contract, the employer met with the bargaining committee of the local union, which agreed to the extension. The resulting agreement was signed by the employer and the local union, but was never presented to the international for signature. The Board,[55] noting that it was the international union which had always negotiated with the employer, and that the employer had never questioned the international's status as the employees' bargaining representative, pointed out that the employer had, in effect, dealt directly with its employees, and had unilaterally offered them a wage increase greater than that offered the international union. Such bypassing of the bargaining representa-

[51] *A. O. Smith Corp.*, 166 NLRB 845 (1967), discussed in Thirty-third Annual Report (1968), p. 58.

[52] The district court's decision in this suit, in which the Board intervened as a defendant, is discussed in Thirty-third Annual Report (1968), pp. 177–178.

[53] Members Fanning, Brown, and Jenkins for the majority. Chairman McCulloch and Member Zagoria, dissenting, were of the view that the union's actions were merely designed to enable it to exercise its lawful privilege to institute a law suit under sec. 301 to compel arbitration, since the attempt to exhaust the grievance-arbitration provisions of the contract was a prerequisite to the filing of such a suit under the Supreme Court's decisions in *Drake Bakeries* v. *Bakery Workers*, 370 U.S. 254, and *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650.

[54] 173 NLRB No. 61.

[55] Members Brown, Jenkins, and Zagoria for the majority. Chairman McCulloch and Member Fanning, dissenting, viewed the contract, as well as various intraunion documents, as indicating that the local union had been substituted for the international as the employees' bargaining representative, so that the employer could properly bargain with the local.

tive was held clearly violative of section 8(a)(5) and (1) of the Act.

The Board held in another case [56] that an employer who had subcontracted work during a strike violated section 8(a)(5) and (1) of the Act by unilaterally entering into leasing agreements with individual employees, and by bargaining unilaterally with two striking employees to get them to work for the subcontractor which was performing the struck work. On the first point, the Board [57] held that it was immaterial that the employees might have initiated the negotiations which led to the leasing arrangements; bargaining with individual employees when the employer should have bargained with the union which represented them necessarily undercut the union and hence violated section 8(a)(5) and (1) of the Act. On the second point, the Board pointed out that, while an employer may unilaterally subcontract work during a strike in order to continue its business, it does not follow that the employer may then negotiate with its own employees to get them to work for the subcontractor who is performing that struck work. Such negotiation makes the subcontractor a mere conduit for the employer's efforts to unilaterally change the terms and conditions of employment, and thereby undermine the union's objections at the bargaining table. Accordingly, the Board found that, by negotiating with the strikers when it was obligated to bargain with the union, the employer violated section 8(a)(5) and (1) of the Act.

In another case,[58] the Board, in certifying a union as bargaining representative of the truckdriver employees of an employer whose petroleum distribution operations were seasonal, included in the bargaining unit, over the objection of the employer, those employees who worked only in the winter months when the employee complement was doubled. The employer, without bargaining with the union, then compelled the winter employees, at the end of the season, to sign notices permanently severing their employment. The following winter, the employer denied reemployment to several former winter employees, despite its prior practice and policy of recalling and reemploying such employees. Further, for his additional work force requirements in the winter, the employer used mostly independent contractors, rather than employees, whereas, in prior winters, the employer's ad-

[56] *Tobasco Prestressed Concrete Co.*, 177 NLRB No. 101.

[57] Members Fanning and Brown for the majority. Member Zagoria, dissenting on this point, viewed the leasing arrangements as merely temporary for the duration of the strike and thus lawful in view of the employer's right to continue operations during a strike.

[58] *C. H. Sprague & Son Co.*, 175 NLRB No. 61.

ditional operations had been manned almost entirely by employees. The Board concluded that, in view of the employer's unilaterial actions adversely affecting the winter employees' status and tenure and his refusal to reemploy the winter employees who had nevertheless sought reemployment—a refusal which was discriminatory as to some employees and based on reasons found to be pretextual as to all—it was clear that the employer had deliberately subcontracted its winter operations to achieve by unlawful means what it had been unable to achieve by lawful means: avoidance of union representation of the winter employees. Moreover, the Board found the increase in subcontracting to be such a basic change in operations that the failure to bargain with the employees' representative about it was, without more, a violation of section 8(a)(5) and (1) of the Act. Accordingly, it ordered the employer to return to its former mode of operations and to reinstate with backpay the winter employees who were denied reemployment as a result of the employer's unlawful conduct.

7. Survival of Terms of Expired Contract

The extent to which contractual terms continued in effect after the expiration of the contract was in issue in two cases decided during the year. In one,[59] the employer, after the old contract had expired, laid off certain employees without regard to seniority, although the contract required that layoffs be in inverse order of seniority and gave employees in each department a limited right to "bump" employees in other departments with less seniority. The parties, in attempting to negotiate a new contract, had failed to reach agreement on a number of issues but had not discussed any changes in seniority and layoff procedures. The Board concluded that the layoffs violated section 8(a)(5) and (1) of the Act because they were not made in conformance with the provisions of the previous contract, even if an impasse had been reached on other issues. It pointed out that while an employer may, after bargaining to an impasse, make unilateral changes which are reasonably comprehended within his preimpasse proposals, he may not unilaterally modify, even temporarily, terms of employment which were not within the area of negotiations during the bargaining sessions. The

[59] *Lacled Gas Co.*, 173 NLRB No. 35.

Board rejected the employer's contention that it was actually locking out the laid-off employees, and that the right of lockout necessarily includes the right to deviate temporarily from existing seniority practices without consulting the union. In the Board's view, the layoff was not used as an affirmative bargaining strategy, but was motivated by a desire to eliminate those operations which could not operate efficiently under threat of a strike and which involved potential danger to the public in the event that a strike actually occurred. Under these circumstances, a unilateral change in contractually established terms could not be justified merely by saying it was temporary, since no such unilateral change could be made unless the employer had first satisfied its obligation to bargain with the union before making the change.[60]

In the other case,[61] in return for the employer's agreement that if negotiations for a new contract continued beyond the expiration date of the old contract any wage increase would be made retroactive to that date, the union agreed, in effect, that all of the terms of the old contract would be kept in effect until agreement on a new contract was reached or the union called a strike. Some of the employees subsequently went on strike and continued on strike despite repeated warnings by both the employer and the union that they were in violation of the no-strike clause of the old contract and that their jobs were in jeopardy. The Board held that the employer did not violate section 8(a)(1) of the Act when it discharged some of the striking employees and placed the others on probation, since the employees had forfeited their right to reinstatement by striking in violation of the no-strike provision of the extended contract then in effect. In the Board's view, there was no factual basis for concluding that the no-strike provision, one of the most essential elements of the old contract, was deleted while the remainder of the contract was extended. Without the extension of the no-strike provision, there would be no logical or economic reason for the employer's willingness to accede to the union's demand for wage retroactivity. Moreover, it was clear that the parties intended that the existing contract would be terminated only if the

[60] Chairman McCulloch and Member Fanning for the majority. Member Brown, concurring, would find the unilateral changes in seniority and layoff practices unlawful even if the employees involved were locked out after an impasse, since such charges had not been at issue in the negotiations prior to the impasse.

[61] *Kroger Co. (Cleveland Div.)*, 177 NLRB No. 104.

union authorized a strike, and only after, not before, a bargaining impasse was reached.[62]

8. Successor Employer and Plant Relocation Bargaining Obligation

Three cases among those decided during the year involved the effect of a transfer of an employing company's stock or assets, or a relocation of its plant, upon its obligation to bargain with the union representing its employees. In *Miller Trucking Service*,[63] the sole stockholder of a corporation sold all his stock to another company which established the corporation as a separate organizational division, rehired most of the original company's former employees, and operated in substantially the same manner as before the stock transfer, using the same equipment, servicing the same customers, and employing the same number of employees at the same work and under the same general terms and conditions of employment. Pointing out that, while a corporate identity will sometimes be pierced in order to avoid its use to shield one who seeks to evade legal responsibility, it will not be pierced to sanction the corporation's wrongdoing, the Board held that the transfer of stock did not result in the substitution of the purchaser for the former stockholder as employer. It found that the original corporation, which was never dissolved and continued as a legal entity, remained the employer at all times and was obligated to remedy the former stockholder's refusal to bargain with the union prior to the transfer of stock, which the Board found violative of section (8) (a) (5) and (1) of the Act. In addition, the Board found that the employer's unilateral termination of its employees just before the transfer of stock violated section (8) (a) (5) and (1) of the Act. Had the employer honored the union's request for recognition, it might profitably have bargained with the union about such questions as whether mass terminations were necessary at all, and, if so, when the terminations should occur; notice to employees of the impending termination; and rights of employees with respect to rehiring. Such bargaining might well have affected the very terms

[62] Chairman McCulloch and Members Jenkins and Zagoria for the majority. Members Fanning and Brown, dissenting, were of the view that the parties had merely provided for the continuation of existing contract terms on a day-to-day basis, and that the statutory policy of maintaining industrial peace and stability during the term set by the contract did not require a holding that the no-strike clause remain in effect under these circumstances. Since the strike was supported by a majority of the bargaining unit, and had no objectives inconsistent with the union's contract demands, it was protected activity, notwithstanding the disapproval of the union leadership.

[63] 176 NLRB No. 76.

of the transfer of stock with respect to the employees' job tenure. Accordingly the unilateral termination was found unlawful, despite the absence of evidence that it was discriminatorily motivated, and the employer was ordered to reinstate, with backpay, those terminated employees who had not been reinstated.

In *Tom-A-Hawk Transit,*[64] a city bus company franchised by the state commission went out of business for economic reasons, and was replaced by a new company, authorized directly by city governmental authorities, which operated on essentially the same routes and employed a majority of the same employees, but with new buses operating out of a different garage and charging different fares. The Board held that the question was not whether the employment enterprise remained substantially the same. In the instant case, the fact that the new company did not purchase any of the old one's assets was not viewed as controlling, since a majority of the same employees were doing the same work and the new company, like the old, was engaged on one business—transportation of the public along city streets. Accordingly, the Board found that there had been no change in the employment enterprises and the new company was obligated to bargain with the union which had represented the employees of the old company.

In *Westinghouse Electric* [65] the Board held that the employer was not obligated to bargain with the union representing employees at one of its plants concerning the transfer of some of those employees to a new plant to which the employer moved part of the operations formerly performed at the old plant. Nor was it obligated to bargain with the union as the representative of the employees at the new plant. On the first point, the Board found that, while the work formerly done at the old plant had been transferred, no employee at that plant had been laid off or downgraded because of the transfer, since all continued to be employed doing other work. Moreover, the employees who transferred did so voluntarily and with the full knowledge and consent of the union, which remained the bargaining representative at the old plant. There was no contention that the employer had failed to bargain about the establishment of the new plant or the transfer of work to that plant. Accordingly, the transfer of employees to the new plant did not affect the old plant, and the employer was not required to bargain about it.

As to the second point, the Board held that the new plant

[64] 174 NLRB No. 24.
[65] 174 NLRB No. 95.

was not an accretion to the old one, but a relocation of the work formerly performed at the old plant, since work of that kind was no longer being done at that plant, and the employer and the union had customarily bargained on the basis of single-plant units. The union clearly did not have a majority at the new plant, since most of the employees there were newly hired employees, and there was no evidence that any employees other than those who had transferred from the old plant had designated the union as their bargaining representaive. Nor could the union's lack of a majority be attributed to unfair labor practices on the part of the employer. While a few employees at the old plant may have failed to request transfer because supervisors had told them that there would be no union at the new plant, there was no showing that the hiring of new employees for the new plant, or the determination of which of the employees from the old plant who had requested transfer to the new plant should be transferred, was based on any factor other than economic necessity. Accordingly, there was no basis for holding that the employer was obligated to recognize or bargain with the union at the new plant.

D. Union Interference With Employee Rights and Employment

The applicability of section 8(b)(1)(A) and of section 8(b)(1)(B) as a limitation upon union actions in imposing fines upon their members for actions considered inimical to union interests was considered by the Board in a number of cases. In others, union rules constituting conditions of employment and the union's duty of fair representation came under scrutiny.

1. Fines for Crossing Picket Lines

It is now clear that a union's policy to strike to support economic demands may be lawfully enforced against its members by internal discipline [66] as a legitimate exercise of the powers reserved to the unions by the proviso to section 8(b)(1)(A).[67] In two cases, however, the Board concluded that the union policy being enforced was such that the union was not protected by the proviso in fining its members for refusing to participate

[66] *Allis-Chalmers Mfg. Co.* v. *N.L.R.B.*, 388 U.S. 175, Thirty-second Annual Report (1967), p. 138. See *Tulsa General Drivers, Loc. 523 (Rocket Freight Lines)*, 176 NLRB No. 94.

[67] That section makes it an unfair labor practice for a labor organizatino or its agents: "to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, 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, . . ."

in a work stoppage. In one case [68] the Board concluded that a union violated section 8(b)(1)(A) by imposing fines on its members who crossed a picket line of a sister local at the plant where each union represented a separate unit of employees. The Board noted that although the picket line was lawful as to the local establishing it, the other local in fining its members for crossing the line was in effect enforcing a work stoppage or partial strike by its members in violation of the no-strike provision of its contract with the employer. It found that the union could not take action in advancing another union's cause which it could not take on its own behalf and that the immunity of the proviso was not available to it because of the assertedly internal nature of the dispute, in view of its breach of the basic statutory policy of encouraging adherence to collective-bargaining contracts. A similar result was reached in another case [69] where the union threatened disciplinary action and fined two of its members for refusing to join a work stoppage which was in violation of the no-strike provision of its contract with the employer. The work stoppage was in support of the union's claims concerning wage rates payable for work at certain locations, a matter resolvable under contract procedures which the union made no effort to utilize to resolve the dispute. In holding that the imposition of the fines was in violation of section 8(b)(1)(A), the Board emphasized that the public policy of enforcement of collective-bargaining agreements overrides and outweighs the union's right to discipline its members for violating rules enforced to compel their participation in a strike in breach of a contract.

2. Fines Imposed on Employer Representatives

Section 8(b)(1)(B) of the Act, which prohibits a labor organization from "restraining or coercing . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances," was also found by the Board in several cases to constitute a limitation upon a union's right to fine its members for actions deemed contrary to union policy and interest. In the *San Francisco-Oakland Mailers* case,[70] the union had imposed fines upon the employer's foreman and assistant foreman, both required by the contract to be members of the union, because of alleged contract violation they had permitted while supervising operations, and had

[68] *Loc. 12419, Intl. Union of Dist. 50 (Natl. Grinding Wheel Co.)*, 176 NLRB No. 89.
[69] *Glaziers Loc. 1162 (Tusco Glass)*, 177 NLRB No. 37.
[70] *San Francisco-Oakland Mailer's Union 18 (Northwest Publications)*, 172 NLRB No. 252.

threatened disciplinary action over disagreements involving contract interpretations and grievance adjustments. Noting that section 8(b)(1)(B) was enacted to prevent union interference with an employer's control over its own representatives, the Board found the prohibition no less applicable because the union sought the substitution of attitudes rather than persons, and exerted its pressure on the employer through indirect rather than direct means. As the pressure was in fact exerted for the purpose of interfering with the employer's control over his representatives, the Board held the conduct fell outside the legitimate internal interests of the union and therefore violated section 8(b)(1)(B). In *Toledo Blade,*[71] union action in imposing fines upon three of its members, the employer's superintendent and two foremen, for performing excessive work in violation of the contract was found to have violated section 8(b)(1)(B) by restraining the employer in the selection of his representatives for the purposes of negotiations and handling grievances. The union's assertion of disciplinary authority over the supervisors, who had substantial authority to handle grievances, was found to infringe upon the employer's right to control and rely on his representatives. The Board further held that even if the foremen had not actually served their employer as bargaining representatives, the employer was entitled to the protection of section 8(b)(1)(B) in his future designation and reliance upon representatives selected from an uncoerced group of supervisors qualified as representatives because of their day-to-day supervisory roles.

In other cases the Board held a union violated section 8(b)(1)(B) by fining a member of the union employed as a construction superintendent for having urged employees to vote against the union in an upcoming Board election,[72] and by fining a member for reporting to work as a supervisor without having obtained job clearance and referral from the union, for working thereafter for an employer who did not contribute to the union health and welfare fund, and for failing to cease work when requested to do so by the union's business agent.[73]

3. Union Rules and the Duty of Fair Representation

The actions of labor organizations in enforcement of union rules establishing conditions of employment for its members,

[71] *Toledo Locals 15-P & 272, Lithographers (Toledo Blade Co.),* 175 NLRB No. 173.
[72] *New Mexico District Council (A.S. Horner),* 176 NLRB No. 105.
[73] *New Mexico District Council (A.S. Horner),* 177 NLRB No. 76.

and in fairly representing all employees in dealing with employers, were considered by the Board in several cases. In one [74] the Board found no violation of section 8(b)(1)(A) and (2) by the union in invoking a union bylaw to prevent an employer from employing a union member as a substitute proofreader, notwithstanding the fact that there was no other substitute available. The member's name had not been placed as a substitute on the board from which all hiring was to be done under the contract, since she did not qualify in a job classification as a practical printer, and the union had adopted a bylaw under which only practical printers were to be placed on the board as substitutes. The Board found that the parties had in practice recognized and adopted the bylaw as a rule governing employment in the composing room. It further found that the rule had been adopted for the legitimate purposes of (1) preserving employment opportunities for unit employees too aged and infirm to perform as practical printers, and (2) averting the consequences of technological unemployment which had its greatest impact on the practical printer job classifications. As there was no showing that the rule, applicable to member and nonmember employees alike, was motivated by a desire to encourage union membership, loyalty, or fealty, the Board found the union did not violate the Act in its enforcement of the rule.[75]

In the *Associated Musicians* case [76] the Board found that, in the absence of any approach to the employer by the union, it did not violate section 8(b)(2) and (1)(A) by informing members who inquired that under the provisions of a union bylaw they would be subject to internal disciplinary proceedings if they were to perform in an orchestra in which a nonmember plays, or to perform with a member of the local who is not in good standing. Finding that the bylaw provisions were protected by the proviso to section 8(b)(1)(A) as rules prescribed by a labor organization with respect to the acquisition or retention of membership, the Board noted that the union did no more than inform the employees that the bylaw existed and that there would be no exception in its application. As there had been no direct

[74] *Intl. Typographical Union, Columbus Typographical Union 5 (Dispatch Printing Co.)*, 177 NLRB No. 58.

[75] Chairman McCulloch and Members Fanning, Brown, and Zagoria for the majority. Member Jenkins, dissenting, was of the view that the union violated section 8(b)(1)(A) and (2) of the Act by applying the rule when no other employee was available for a vacancy which the employer wished to fill, since it then became an absolute prohibition of any employment as proofreaders for employees in classification other than practical printers and so was invidious and arbitrary

[76] *Associated Musicians of Greater N.Y., Loc. 802 (Joe Carroll Orchestra)*, 176 NLRB No. 46.

approach by the union to the employer and no conduct or pattern of action directed toward causing him to change his hiring policies or to act to implement the bylaw, the Board dismissed the complaint.

In another case,[77] however, the union's lack of communication with an employer did not preclude the Board's finding a violation of section 8(b)(1)(A). The union represented the drivers of a limousine service who were released when the company's operating rights were purchased by another company, whose employees were also represented by the union. The former employees were informed by the union that their applications for employment would be considered by the new company, and the union actively interceded with that employer to obtain the hire under preferred circumstances of the only two employees who made application. As to three other employees, however, the Board found the union failed to encourage applications by them or intercede on their behalf because they had opposed the reelection of an incumbent union official at a recent union election. In view of the protected nature of that intraunion activity under section 7 of the Act, the Board concluded that the disparate treatment accorded the three employees constituted coercion and restraint in violation of section 8(b)(1)(A), in that it "clearly demonstrated to employees that their job opportunities would be curtailed if they refused to support incumbent union officials." In rejecting the union's contention that no violation could be found where the union had not contacted the employer to prevent the hiring of the employees, and there was no exclusive hiring agreement, the Board pointed out that the union's discriminatory refusal to assist represented employees in finding new jobs does not lack coercive impact merely because the employees might have obtained jobs without its assistance. In its view, the coercive impact on the employee who knows that he is reducing his chance for future employment by supporting a particular candidate for union office is only the greater if the discriminating union is party to an exclusive hiring arrangement.

E. Prohibited Strikes and Boycotts

The Act's prohibitions against certain types of strikes and boycotts are contained in section 8(b)(4). Clause (i) of that section forbids unions to strike, or to induce or encourage strikes or work stoppages by an individual employed by any person

[77] *Chauffeur's Union Loc. 923, IBT (Yellow Cab Co.)*, 172 NLRB No. 248.

engaged in commerce, or in an industry affecting commerce, and clause (ii) makes it unlawful for a union to threaten, coerce, or restrain any such person, in either case, for any of the objects proscribed by subparagraphs (A),(B),(C), or (D). A proviso to the section exempts from its prohibitions "publicity, other than picketing."

1. Identification of Neutral Employer

The prohibition against secondary boycotts is intended to protect neutral or secondary employers from being drawn into a primary dispute between a union and another employer. Therefore, the identification of the employer with whom the union has its primary dispute frequently becomes the crucial issue in secondary boycott cases. In numerous cases [78] the Board has held that if an employer under economic pressure from a union is powerless to resolve the underlying dispute, such an employer is to be considered a neutral or secondary, and the employer who has the "right of control," and therefore power to resolve the dispute, is the primary employer.

Among the cases in which the Board evaluated the facts in the light of the right-of-control test was the *Plumbers Loc. 636* case,[79] in which the union had instructed its members not to handle or install fan coil units because they had been prepiped by the manufacturer in some particulars which impinged upon plumbing work reserved to the unit employees under their contract with the employer. The prepiping was done in accordance with the builder's architect's specification subject to which the employer had bid on and been awarded the contract, and which the architect refused to modify even though requested to do so by the employer. In concluding that the union's actions were in violation of section 8(b)(4)(i) and (ii)(B), the Board found that "in a real and practical sense" the employer was a neutral, caught between the conflicting demands of the union and of the builder and architect, and was without power to resolve the dispute in the manner sought by the union. As the employer was incapable of complying with the union's demands, the Board concluded that the inevitable object of the union's conduct must have been to cause the employer to rescind the contract and thus cease doing business with the builder, a violation of section

[78] E.g., *Intl. Longshoremen's Assn. & Loc. 1694 (Board of Harbor Commissioners)*, 137 NLRB 1178, Twenty-eighth Annual Report (1963), p. 93. See also Twenty-ninth Annual Report (1964), pp. 89–90; Thirty-third Annual Report (1968), pp. 116–117.

[79] *Loc. 636, Plumbers (Mechanical Contractors Assn. of Detroit)*, 177 NLRB No. 14.

8(b)(4)(B). In rejecting the contention that the right-of-control test can no longer be considered of decisive significance in view of certain language of the Supreme Court in the *National Woodwork* [80] opinion, the Board pointed out that the Supreme Court had specifically noted that the right-to-control doctrine was not before it. In announcing that it would continue to use the test in appropriate circumstances in determining whether a secondary boycott exists, the Board expressed its view that the 'right-of-control' test . . . is the most readily available analytical tool in deciding the primary-secondary dichotomy and conforms, we believe, with the congressional intent in proscribing secondary boycotts."

The right-of-control test was relied on by the Board in *Carpet Layers, Loc. 419*,[81] where it found that the union violated section 8(b)(4)(i) and (ii)(B) in picketing a retail department store in furtherance of the union's dispute with carpet installers whose services were utilized by the store in installing carpet it sold. Finding that the installers were independent contractors with a scope of decision-making power adequate to resolve the underlying dispute, and that the store was "not sufficiently related to the contractors to destroy its neutrality," the Board concluded that the picketing was for the unlawful object of forcing the store to cease doing business with the installers, and therefore was prohibited secondary activity. In the *Local 1066* case,[82] however, the Board found reliance upon the right-of-control test to be misplaced. There the Massachusetts Port Authority as operator of a port terminal exercised it reserved option under published terminal regulations to direct the agent for a steamship line to have all freight not claimed by the consignee within the 5-day free-time period removed to a public warehouse. The union representing the employees of the steamship agent refused to permit them to effect the transfer of the cargo as directed, since removal of the unclaimed cargo would eliminate employment for the clerk crews represented by the union who were required under the contract to be present with the cargo so long as it remained on the dock. The Board rejected the view that as the port authority alone had the power to invoke the regulation, it had the right of control and the steamship agent employer

[80] *National Woodwork Mfrs. Assn.* v. *N L.R.B.*, 386 U.S. 612, 625; Thirty-second Annual Report (1967), p. 139. The Court of Appeals for the Eighth Circuit expressed the view that under that decisions the right-of-control was only one of many factors to be weighed, *American Boiler Mfrs. Assn.* v. *N.L.R.B.*, 404 F.2d 556.

[81] *Carpet, Linoleum, Soft Tile & Resilient Floor Covering Layers, Loc. 419 (Sears, Roebuck & Co.)*, 176 NLRB No. 120.

[82] *Loc. 1066, I.L.A. (Bay State Stevedoring Co.)*, 175 NLRB No. 5.

was a neutral powerless to resolve the underlying dispute. It pointed out that the decision to invoke the regulation was not a unilateral one but rather one in which the employer association representing the steamship lines and their agents had participated. The employers were, in fact, the direct beneficiaries of the action taken by the port authority, as it eliminated the cost to the employer of the clerk crews otherwise maintained and reduced to a predictable minimum the costs to the employers after expiration of the free-time period for claiming the cargo. Under these circumstances the Board dismissed the complaint, concluding that the union "had a lawful work preservation object in attempting to retain for its members clerical work theretofore performed by them and of which they were summarily deprived by their employer, acting in concert with the port authority and others."

2. Permissible Primary Activity

The recurrent problem of determining what union activity within the ambit of clauses (i) or (ii) of section 8(b)(4) is nonetheless permissible because it is primary activity not motivated by a prohibited object, was faced by the Board in several contexts. The circumstances which satisfy the requirement of the presence of the "primary employer" at a common situs to render picketing there legitimate activity were further defined by the Board in the *Auburndale Freezer* case.[83] The picketing by employees of the primary employer at the site of an independently owned and operated freezer warehouse where the primary employer delivered his product for storage until picked up by commercial carriers was found in that case to be legitimate picketing in conformance with the *Moore Dry Dock* standards, even though no products were being delivered at the time of the picketing due to the strike. Although the freezer warehouse served many other employers, the Board found the primary employer constantly present there in view of his long use of the warehouse, his long-term reservation of a large storage capacity, and the fact that his products were then stored at the warehouse, were regularly brought to the warehouse by his employees, and were shipped by the warehouse only in accordance with instructions from him.[84]

[83] *United Steelworkers of America, Loc. 6991 (Auburndale Freezer Corp.)*, 177 NLRB No 108.

[84] Members Fanning, Jenkins, and Zagoria for the majority Chairman McCulloch and Member Brown, dissenting, would not base a finding of the "presence" of the primary employer at a situs upon the simple presence of that primary employer's product, pursuant to an established business relationship, on the separate premises of a neutral employer independently engaged in another business.

In the *American Guild* case,[85] the Board applied in an unusual context the established principle that direct appeals to all those approaching the situs of a dispute for the purpose of contributing to the operations which the strike is seeking to halt is traditional primary activity outside the scope of section 8(b)(4). In support of a strike by the union representing the orchestras at Nevada gambling casinos, AGVA sent telegrams to those of its members scheduled to provide star entertainment at the casinos advising them to honor the picket lines or they would be in violation of the union constitution and subject to disciplinary action. The Board noted that the request to honor the primary picket lines called for action only at the situs of the dispute and was not substantially different than the appeal of the striking union in conducting the picketing. As such, it found the conduct was not illegal secondary activity by virtue of the fact that it assisted another union in that union's labor dispute. The Board also found that the performances of the star entertainers to whom the appeals were directed were considered to be customary and necessary adjuncts of the casino operations, enhancing the financial success of the casinos. It therefore concluded that the communications were appeals for actions constituting permissible primary activity and dismissed the complaint.

3. Work Preservation Issues

The Board has long held, with court approval, that a union's strike to preserve the work of employees in the bargaining unit represented by it is primary action within the protection of the proviso to section 8(b)(4)(B),[86] notwithstanding that it may also have a secondary impact.[87] It is equally well established, however, that a similar strike to preserve the work of union members generally exceeds the legitimate interests of the union in the bargaining unit and therefore constitutes secondary activity prohibited by section 8(b)(4)(i) and (ii)(B) of the Act. The Board had occasion during the year to draw this line in several cases, among them one[88] in which the union brought

[85] *American Guild of Variety Artists (Harrah's Club)*, 176 NLRB No. 77.

[86] The proviso reads as follows: "*Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

[87] E.g., *Intl. Assn. of Heat & Frost Insulators*, 148 NLRB 866, enfd. in part *sub nom. Houston Insulation Contractors Assn.* v. *N.L.R.B.*, 357 F.2d 182 (C.A. 5), offd. 386 U.S. 664.

[88] *Teamsters, Chauffeurs, Warehousemen & Helpers, Local 386, IBT (R. P. B. Trucking)*, 172 NLRB No. 102.

pressure on the employer trucking company to secure enforcement of a contract provision requiring the employer to "refrain from using the services of any person who does not observe the wages, hours, and conditions of employment herein set forth for all work covered by this agreement." Inquiries leading to enforcement, and threats of a strike if the requested information was not provided, were made, concerning only one of the many suppliers of extra trucks to haul agricultural produce on a seasonal basis at which time the employer's permanent complement of 12 drivers and trucks may expand by as many as 80 additional drivers and trucks under subhaul contracts. The Board found that the hauling contracted by the employer entailed the same skills as utilized by the permanent work force and did not differ significantly from that historically performed by the contract unit. It therefore viewed the work done by the seasonal haulers to be work fairly claimable by the bargaining unit, finding "no distinction between seasonal and overflow or extra work available when regular employees are fully occupied." Holding that the clause was a lawful wage standards provision, in that it was designed to assure that the employer did not perform unit work through outside contractors with inferior wage and fringe benefit costs, the Board concluded that the clause and its enforcement against the employer were primary rather than secondary in application.[89]

4. Other Aspects

Among other cases were ones involving the scope of protection afforded handbilling by the section 8(b)(4) publicity proviso, the requirement of employer knowledge that he is performing struck work as an element of the ally doctrine, and the related work doctrine as applied to reserved gate picketing. In the *Local 54, Sheet Metal Workers* case,[90] the union, in furtherance of its dispute with a contractor providing air-conditioning and heating services and maintenance to a shopping center, distributed handbills to consumers at the shopping center stores publicizing its dispute, an action concededly legal under the publicity proviso to

[89] Members Fanning and Brown for the majority. Chairman McCulloch, dissenting, would find the seasonal work not to be "fairly claimable," since it never presented a possibility of substituting a subcontract hauler for the permanent unit employees, and would in any event find a cease-doing-business object on the grounds that the union was in fact seeking retaliation against the particular subhauler against whom it obtained enforcement of the contract because of the recent failure of its efforts to organize that subhauler's employees.

[90] *Loc. 54, Sheet Metal Workers (Sakowitz)*, 174 NLRB No. 60.

section 8(b)(4)[91] since it did not have the effect of cutting off deliveries or inducing employees to cease work. The union thereafter extended its handbilling to the other stores of shopping center tenants at locations away from the shopping center. In holding that handbills at the stores of the secondary employers other than the one at which the services of the primary employer were utilized to be within the protection of the publicity proviso, the Board noted that "[n]either the Act nor the legislative history indicate the existence of a geographic limitation on the publicity proviso." It found that utilization of mass media for publicity was clearly contemplated by Congress in enacting the proviso, and concluded that "to restrict the locus of permissible handbilling, while protecting appeals to all prospective consumers who listen to radios or read newspapers would be patently inconsistent."

The criteria for determining whether an employer doing work which would otherwise be done by the striking employees of the primary employer is a neutral protected from union pressures or an ally of the primary employer who may be treated in like manner with the primary, was clarified by the Board in the *General Drivers* case.[92] There the Board rejected the view that under the *Royal Typewriter* case [93] an employer who unknowingly performs struck work, even though it is performed pursuant to arrangements with the primary employer, is entitled to protection as a neutral. The Board pointed out that it is the nature of the work performed by the employer furnishing services to the primary and the relation of that work to the primary's work, rather than his awareness of its nature as struck work, which is critical in determining whether that employer is a neutral or an ally of the primary employer. It viewed *Royal Typewriter* as imposing on the employer the burden of determining whether or not he is engaged in neutral or ally type work. Finding under the circumstances that the employer, in contracting to complete construction site grading work left unfinished by the strike, had

[91] The language of the "publicity" proviso states: "*Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution."

[92] *General Drivers & Dairy Employees Loc. 563 (Fox Valley Material Suppliers Assn.)*, 176 NLRB No. 51.

[93] *N.L.R.B.* v. *Business Machine & Office Appliance Mechanics, Local 459, IUE (Royal Typewriter Co.)*, 228 F.2d 553, 559 (C.A. 2), cert. denied 351 U.S. 962.

entangled himself in the primary dispute, and placed himself in a position to secure benefits at the same time he aided the primary employer, the Board found him to be allied in interest with the primary. It therefore held that the union did not engage in secondary activity by attempting to persuade the employer to cease working on the project and remove his equipment.

As the Supreme Court held in the *Local 761* case,[94] picketing at a gate on the premises of the primary employer appropriately marked and reserved for the employees of secondary employers may nevertheless be lawful primary activity if, *inter alia,* the work being done by the employees of the secondary is related to the normal operations of the primary employer. The "related work" nature of the work to be performed by employees using a reserved gate at a petrochemical plant was assessed by the Board in *OCAW, Loc. 4—23* case[95] to determine whether the union's picketing of that gate in furtherance of its strike against the primary was in violation of section 8(b)(4)(i) and (ii)(B). The Board found that the employees using the reserved gate were engaged in the construction of an effluent ditch as part of the plant's water treatment system upon the proper functioning of which virtually all other plant systems depended. It also found that, although it was a new effluent ditch being constructed, the construction was in the nature of a repair to the water treatment system, and, although contracted out in this instance, the employer's own employees have on occasion performed such work in the past and the project might or might not have been contracted out under normal circumstances. The Board viewed as most important, however, the fact that the normal operation of the plant depended upon the continuous operation of the water treatment system, and would include both the functioning and repair necessary for the functioning of the system, irrespective of who performed the repairs. It therefore held the work of constructing the effluent ditch was "related work" and picketing of the reserved gate was primary activity not violative of the Act.

F. Recognitional Picketing

Section 8(b)(7) of the Act makes it an unfair labor practice for a labor organization, in specified situations, to picket or threaten to picket for "an object" of "forcing or requiring" an

[94] *Loc. 761, IUE (General Electric Corp.)* v. *N.L.R.B.,* 366 U.S. 667 (1961), Twenty-sixth Annual Report (1962), pp. 157–58.

[95] *Oil, Chemical & Atomic Workers, Loc. 4—23 (Firestone Synthetic Rubber Co.),* 173 NLRB No. 195.

employer to recognize or bargain with it, or employees to accept it, as the bargaining representative, unless the labor orfiazination is currently certified as the employees' representative. But even a union which has not been certified is barred from such picketing, only in the three general areas delineated in subparagraphs (A), (B), and (C) of section 8(b)(7).

The contention of a union that its picketing was in protest of the employer's withdrawal of recognition and to enforce bargaining, rather than for initial recognition,[96] was considered by the Board in an unusual context in the *Central Arizona Dist. Council* case.[97] There the employer had withdrawn recognition shortly after execution of the contract, but the General Counsel refused to issue a complaint on the union's charges of violation of section 8(a)(5). This action was based on the grounds that the union did not represent a majority of the employees at the time the contract was executed and that it was not a valid prehire contract since the employer was not in the construction industry, wherefore there was no 8(a)(5) violation since the employer's continued recognition would have violated section 8(a)(2). In holding that the union's picketing with signs alleging contract violation for more than 30 days without filing a petition was a violation of section 8(b)(7)(C), the Board concluded that the contract could not be honored as a defense, since it was executed by an employer not in the construction industry at a time when the union had no representation among the employees. The Board emphasized that it was not finding execution of the contract to be a violation of the Act, a matter concerning which no timely charge was filed, but only that the contract could not be honored under these circumstances. The union was therefore in the position of picketing for initial recognition under prohibited circumstances.

G. Remedial Order Provisions

During the report year, the Board was confronted in a number of cases with the task of designing a remedy appropriate to the circumstances presented by the violations found and capable of effectuating the purposes of the Act.

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[96] The Board has held that the words "recognize and bargain" in section 8(b)(7) were not intended to be read as encompassing two separate unrelated terms but, rather, were intended to proscribe only picketing to obtain initial acceptance of the union as the bargaining representative *Bldg. & Construction Trades Council of Santa Barbara (Sullivan Electric Co.)*, 146 NLRB 1086, Twenty-ninth Annual Report (1965), pp 98–99.

[97] *Central Arizona Dist. Council of Carpenters, Loc. 2093 (Wood Surgeons)*, 175 NLRB No. 63.

Of particular interest among them are two cases decided during the year, in which the Board was called upon to determine the appropriate remedy for an employer's action in withholding a wage increase from employees at one of his plants while granting it to employees at other plants under circumstances violative of the Act. In one,[98] the Board found that the employer, in addition to violating section 8(a)(1), (3), and (5) of the Act in other respects, withheld from employees at a recently unionized plant wage increases granted to unrepresented employees at all of its other plants, only because those employees had selected the union as their bargaining representative. As a remedy for this refusal to bargain, the Board ordered the employer to compensate the employees at the unionized plant for the wage increases which, on the basis of the increases granted to the employees at other plants, these employees would reasonably have been expected to receive had they not selected the union to represent them. The Board noted that wage increases for these employees were admittedly long overdue and that the employer had not offered to pay them during negotiations with the union only because it did not want the union to take credit for obtaining such increases for the employees. Accordingly, the Board ordered that the employer, upon request by the union, immediately put into effect for the employees represented by the union wage increases in the amounts that such increases had been given to the employees at other plants and make such increases retroactive to the beginning of the 10(b) period. However, in order to avoid limiting the parties' attempts to reach a mutually acceptable contract in future negotiations, the employer was held to be free to take these wage increases into account in bargaining with respect to other economic benefits for its employees.

In the other case,[99] where union activities were taking place at only one of an employer's two plants, the Board found that the employer violated section 8(a)(1) of the Act by granting a wage increase to the employees at the other plant and then using that increase to discourage union activity at the first plant by impressing upon the employees there what they had lost because of union activity. The Board found that, since the employer would have been willing to grant a wage increase to the employees at the first plant but for their union activities, and did, in fact, later grant them such an increase, the withholding of the wage increase had the effect of discriminating against the employees

[98] *Petrolane-Franklin Gas Service*, 174 NLRB No. 88.
[99] *Congdon Die Casting Co.*, 176 NLRB No. 60.

at this plant. Accordingly, the Board ordered the employer to remedy the unlawful discrimination by paying the employees at the first plant the wage increase for the period beginning when the wage increase was given to the employees at the other plant and continuing until the date it was given to the employees at the first plant.[1]

[1] Chairman McCulloch and Member Jenkins for the majority. Member Brown, dissenting, considered the reimbursement order inappropriate in the absence of a showing that the employer had unlawfully withheld a wage increase at the first plant.

VII
Supreme Court

During fiscal year 1969, the Supreme Court decided five Board cases. Two cases [1] involved the power of the Board to order an employer to bargain with a union whose sole evidence of majority status consisted of authorization cards signed by a majority of the employees in an appropriate unit, and one of those cases also involved the scope of the protection accorded an employer's anti-union statements by section 8(c) of the Act. Another case concerned the validity of a Board requirement that the employer furnish the union with a list of the names and addresses of its employees eligible to vote in an election directed by the Board. A fourth case involved the legality of fines imposed by a union on its members for accepting payment for production in excess of ceilings imposed by the union and acquiesced in by the employer. And, the fifth case involved the power of the Board to issue a remedial order requiring an employer to pay certain benefits provided for in a collective-bargaining contract which he had unlawfully refused to abide by. The Board was upheld in all five cases, although one was remanded for further findings.

A. Validity of Requirement That Employer Furnish Names and Addresses of Employees Eligible To Vote in Board Election

In *Wyman-Gordon*,[2] the Supreme Court held that the Board was entitled to enforcement of a subpena directing the employer to furnish to all participants in a Board election a list of the names and addresses of the employees who would vote in the election. The Court readily concluded that this requirement, first an-

[1] *N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575 (discussed, *infra*, pp. 113–114), covered four cases. The Court, in a single opinion, overturned three decisions by the Fourth Circuit (*N.L.R.B.* v. *Gissel Packing Co.*, 398 F.2d 336, *N.L.R.B.* v. *Heck'c, Inc.*, 398 F.2d 337, and *General Steel Products* v. *N.L.R.B.*, 398 F 2d 339), and sustained the decision of the First Circuit in *N.L.R.B.* v. *The Sinclair Co.*, 397 F.2d 157. The three Fourth Circuit cases are treated as a single proceeding, and *Sinclair* is treated as a separate case.

[2] *N.L.R.B.* v. *Wyman-Gordon Co.*, 394 U.S. 759, reversing 397 F.2d 394 (C.A. 1), Thirty-third Annual Report (1968), p. 179, and affg. 270 F.Supp. 280 (D.C.Mass.).

nounced in *Excelsior Underwear Inc.*,[3] was substantively valid, since the Board has wide discretion to ensure the fair and free choice of bargaining representatives, and the "disclosure requirement furthers this objective by encouraging an informed employee electorate and by allowing unions the right of access to employees that management already possesses." The Court also had no difficulty in concluding that the list in question was encompassed by section 11 of the Act, which empowers the Board to subpena "any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question." The Court held that the term "evidence" in this context means not only "proof at a hearing but also books and records and other papers which will be of assistance to the Board in conducting a particular investigation."

However, the Court divided on the question whether the Board could properly establish a general names and addresses requirement in an adjudicatory proceeding, as it did in *excelsior,* or whether it should have followed the rulemaking procedures of the Administrative Procedure Act.[4] The plurality opinion (written by Justice Fortas, and joined by Chief Justice Warren and Justices Stewart and White) concluded that the Board, in the *Excelsior* case itself, should have followed the APA rulemaking procedures, for the Board did not merely "provide a guide to action that the agency may be expected to take in future cases," but "purported to make a rule: *i.e.,* to exercise its quasi-legislative power." Indeed, the Board "did not even apply the rule it made to the parties . . . in that case." [5] But, the plurality opinion found that this procedural defect did not impair the *Wyman-Gordon* case, since the Board, in directing the election therein, had specifically ordered the employer to furnish a list of its employees' names and addresses for use by the unions in connection with the election. "This direction, which was part of the order directing that an election be held, is unquestionably valid. . . . it is an order in the present case that the respondent was required to obey."

Justices Harlan and Douglas agreed that the *Excelsior* decision was defective because of the Board's failure to follow the APA

[3] 156 NLRB 1236 (1966), Thirty-first Annual Report (1966), pp 61–62.

[4] Sec. 4 of the Administrative Procedure Act (5 U.S.C. § 553) requires, *inter alia,* publication in the Federal Register of notice of proposed rulemaking, opportunity to be heard, a statement in the rule of its basis and purposes, and publication in the Federal Register of the rule as adopted.

[5] In the *Excelsior* case, the Board held that the requirement enunciated therein would apply "only in those elections that are directed, or consented to, subsequent to 30 days from the date of [the] Decision." 156 NLRB at 1240, fn 5.

rulemaking procedures, but disagreed that this defect was rendered immaterial by the specific direction in *Wyman-Gordon.* However, a majority for upholding the names and addresses requirement in that case was obtained through the votes of Justices Black, Brennan, and Marshall, who filed a separate concurring opinion. In the view of the three concurring Justices, the Board, in *Exclsior,* was not required to follow the APA rulemaking procedures, for both the APA and the NLRA gave "the Board the authority to decide, within its informed discretion, whether to proceed by rule making or adjudication." Moreover, the concurring Justices added, the *Excelsior* decision constituted an "adjudication" even though the requirement was to be prospectively applied. "The Board's opinion [in *Excelsior*] should not be regarded as any less an appropriate part of the adjudicatory process merely because the reason it gave for rejecting the unions' position was not that the Board disagreed with them as to the merits of the disclosure procedure but rather . . . that . . . the Board did not feel that it should upset the Excelsior Company's justified reliance on previous refusals to compel disclosure by setting aside this particular election."

B. Authorization Cards as Proof of Majority and the Basis for a Bargaining Order

In *Gissel,*[6] the Supreme Court sustained the Board's position that an employer who refuses to recognize a union which has obtained valid authorization cards from a majority of the employees in an appropriate unit may be ordered to bargain with the union if he engages in unfair labor practices which tend to undermine the union's support and prevent a fair election. The Court rejected the contention that the 1947 amendments to the Act made a Board election the exclusive means of establishing a union's representative status, pointing out that, on the contrary, Congress had specifically declined to accept an amendment which would have limited an employer's obligation to bargain under section 8(a)(5) to unions certified by the Board. The Court further rejected the contention that authorization cards were such inherently unreliable indicators of employee desires that they could never be used to support a bargaining order. The Court acknowledged the superiority of the election process for determining whether a union has majority support, but con-

[6] *N.L.R.B.* v. *Gissel Packing Co.,* 395 U.S. 575, As noted (fn. 1, *supra*), *the Court's* opinion covered four cases, *Gissel, Heck's, General Steel,* and *Sinclair.*

cluded that this "does not mean that cards are thereby rendered totally invalid, for where an employer engages in conduct disruptive of the election process, cards may be the most effective—perhaps the only—way of assuring employee choice." And, as for misrepresentation, "the proper course is to apply the Board's customary standards . . . and rule there was no majority if the standards were not satisfied." [7]

Respecting the substantive theory of the unlawful refusal to bargain, the Court noted that, under the Board's current practice, "an employer's good faith doubt [as to the union's majority status] is largely irrelevant, and the key to the issuance of a bargaining order is the commission of serious unfair labor practices that interfer with the election processes and tend to preclude the holding of a fair election." The Court held that a bargaining order was appropriate in these circumstances.[8] The only effect of its holding, the Court added, was to approve the Board's use of the bargaining order, not only in " 'exceptional cases marked by 'outrageous' and 'pervasive' unfair labor practices," [9] but also "in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." Thus, "[i]f the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employer sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue." [10]

The Court concluded that the bargaining order in the *Sinclair* case (see fn. 1, *supra*) was adequately supported, since the Board had "made a finding, left undisturbed by the First Circuit, that the employer's threats of reprisal were so coercive that, even in the absence of 8(a)(5) violation, a bargaining order would have

[7] The Court approved the Board's *Cumberland Shoe* principle, 144 NLRB 1268 (1963), enfd. 351 F.2d 917 (C.A. 6), under which a card that unambiguously designates the union as the signer's collective-bargaining representative will not be invalidated unless the employee is told in some form of words that the only purpose of the card is to obtain an election The Court specifically rejected "any rule that requires a probe of an employee's subjective motivations," since that entails "an endless and unreliable inquiry."

[8] Because the employer's refusal to bargain in each of the cases before the Court was accompanied by independent unfair labor practices which tended to preclude the holding of a fair election, the Court found it unnecessary to decide "whether a bargaining order is ever appropriate in cases where there is no interference with the election process."

[9] The Fourth Circuit, while refusing to validate the general use of a bargaining order based on cards, left open the possibility of imposing one in such cases. See *N.L.R.B.* v. *Logan Packing Co*, 386 F.2d 562, 570 (C.A. 4).

[10] The Court emphasized that "[i]t is for the Board and not the courts . . . to make that determination, based on its expert estimate as to the effects on the election process of unfair labor practices of varying intensity."

been necessary to repair the unlawful effect of those threats." However, in the three Fourth Circuit cases (*Gissel, Heck's,* and *General Steel*), the Board did not make a similar finding, nor did it find that, "even though traditional remedies might be able to ensure a fair election, there was insufficient indication that an election (or a rerun in *General Steel*)[11] would definitely be a more reliable test of the employees' desires than the card count taken before the unfair labor practices occurred." Accordingly, the Court remanded those cases to the Board for further findings.[12]

C. Antiunion Speeches by Employer

In *Sinclair,*[13] the Supreme Court considered, in addition to the authorization card issues discussed above, the scope of protection which section 8(c) of the Act[14] and the First Amendment afford antiunion statements made by an employer in the course of a union's organizational drive. The Court noted that section 8(c) recognizes the right of the employer to express to his employees his views concerning unionization, so long as the communications do not contain threats of reprisal or promises of benefit. The employer may even make a prediction as to the precise effects he believes unionization will have on his company. But, the Court added: "[T]he prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. . . . If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment" and section 8(c).

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[11] The Court approved the Board's *Bernel Foam* doctrine (146 NLRB 1277 (1969)), noting that thereunder "there is nothing inconsistent in the Union's filing an election petition and thereby agreeing that a question of representation exists, and then filing a refusal-to-bargain charge after the election is lost because of the employer's unfair labor practices."

[12] Subsequently, the Court reversed the judgments of the Sixth Circuit enforcing bargaining orders in three cases—*Atlas Engine Works* v. *N.L.R.B.*, 396 F.2d 775, *Thrift Drug Co. of Pa.* v. *N.L.R.B.*, 404 F.2d 1097; and *N.L.R.B.* v *Lou De Young's Market Basket*, 406 F.2d 17—and the judgment of the Second Circuit denying enforcement of the bargaining order, in *N.L.R.B.* v. *Pembeck Oil Corp.*, 404 F.2d 105, and remanded all four cases to the Board for further consideration in the light of *Gissel.*

[13] *N.L.R.B.* v *Sinclair Co.*, 395 U.S. 575.

[14] Sec. 8(c) reads: "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

In *Sinclair,* the Board had found that the employer's communications to the employees had conveyed the message that the company was in a precarious financial condition, that the "strike-happy union would in all likelihood have to obtain its potentially unreasonable demands by striking, the probable result of which would be a plant shutdown, as the past history of labor relations in the area indicated, and that the employees in such a case would have great difficulty finding employment elsewhere. Applying the standard outlined above, the Court held that the Board was reasonable in concluding "that the intended and understood import of that message was not to predict that unionization would inevitably cause the plant to close but to threaten to throw employees out of work regardless of the economic realities."

D. Union Fines for Exceeding Production Ceilings

In *Scofield,*[15] the Supreme Court affirmed the Board's holding that the union did not violate section 8(b)(1)(A) of the Act by imposing, and bringing court suits to collect, fines against members who violated a union rule prohibiting the acceptance of immediate payment for production in excess of a ceiling rate. The Court noted that, under its prior decisions interpreting section 8(b)(1)(A),[16] a union is free "to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy which Congress had imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." It found that these conditions were satisfied in *Scofield.*

Thus, the Court noted that there was no showing that "the fines were unreasonable or the mere fiat of a union leader, or that the membership of [the disciplined employees] in the union was involuntary." The Court further found that the union ceiling rule served a legitimate union interest, guarding against competitive pressure which would endanger workers' health, foment jealousies, and reduce piece rates and the work force. Moreover, the union rule neither impeded collective bargaining, nor was it in derogation of the collective-bargaining agreement. The union had never refused to bargain about the ceiling, and at various

[15] *Scofield* v. *N.L.R.B.*, 394 U.S. 423, affg. 393 F.2d 49 (C.A. 7), which sustained 145 NLRB 1097.

[16] *N L R B* v. *Industrial Union of Marine & Shipbuilding Workers,* 391 U S. 418, Thirty-third Annual Report (1968), pp. 135–136; *N.L.R.B.* v. *Allis-Chalmers Mfg. Co.,* 388 U.S. 175, Thirty-second Annual Report (1967), p. 138.

times had agreed to raise the ceiling in return for an increase in the piece rate. The employer had never bargained to impasse respecting elimination of the ceiling, but, on the contrary, had signed contracts recognizing it, had tolerated it, and had cooperated in its administration. And the collective agreement established as the norm of production of an average, efficient worker a rate considerably below the union ceiling. Finally, the Court found that the union rule did not impermissibly discriminate between union members and other employees in the bargaining unit; any disadvantage incurred by a union member flowed merely from the fact that he had chosen to become and remain a union member.

E. Remedy Requiring Performance of Contract Provision

In *Strong*,[17] the Supreme Court held that the Board, as a remedy for an employer's refusal, in violation of section 8(a)(5) and (1) of the Act, to sign the contract which had been negotiated on his behalf by a multiemployer association, has power to order him not only to sign the contract, but also to pay the fringe benefits provided for in the contract. Regarding such a remedy as analogous to the backpay remedy explicitly authorized by section 10(c) of the Act, the Court rejected the contention that it impermissibly intruded the Board into the area of contract enforcement. The Court noted that, while arbitrators and courts are the principal sources of contract interpretation, the Board may proscribe conduct which is an unfair labor practice even though it is also a breach of contract remediable as such by arbitration and in the courts,[18] and it may, if necessary to adjudicate an unfair labor practice, also interpret and give effect to the terms of a collective-bargaining contract.[19] Similarly, the Court held that, since a refusal to execute a written contract incorporating any agreement reached is an unfair labor practice, the Board is not "trespassing on forbidden territory when it inquires whether negotiations have produced a bargain which the employer has refused to sign and honor," and as a remedy for that refusal it may thus require payment of those fringe benefits which would have been paid had the employer promptly signed and acknowledged the contract which had been duly negotiated on his behalf.

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[17] *N.L.R.B.* v. *Strong Roofing & Insulating Co.*, 393 U.S. 357, reversing in part 386 F.2d 929 (C.A. 9), and enfg. 152 NLRB 9.

[18] *Smith* v. *Evening News Assn.*, 371 U.S. 195.

[19] *N.L.R.B.* v. *C & C Plywood Corp.*, 385 U.S. 421.

VIII

Enforcement Litigation

Board orders in unfair labor practice proceedings were the subjects of judicial review by the courts of appeals in 363 court decisions issued during fiscal 1969.[1] Some of the more important issues decided by the respective courts are discussed in this chapter.

A. Court and Board Procedure

1. Preservation of Issues for Court Review

In three cases decided during the year, the courts concluded that the parties seeking review of certain aspects of Board decisions had failed to take the procedural steps necessary to preserve these issues for review, wherefore they were not properly before the court for decision. In the *Riverside Press* case,[2] the Fifth Circuit held that an employer, who sought review of the Board's finding that it unlawfully refused to bargain with a union after the union's victory in an election, had waived its right to challenge the Board's key finding that an individual whose ballot would have been decisive in the election was a supervisor and hence ineligible to vote. While the employer had raised this issue before the Board in the unfair labor practice proceeding, it had not done so before the court either in its brief or at oral argument. Accordingly, the court held that the matter could not be considered and therefore only a cursory look at the adequacy of the Board's findings was necessary on its cross-petition for enforcement. The court found that in view of the respondent's waiver of the issues presented by it to the Board, the court in enforcing the order need only satisfy itself that the Board had jurisdiction and that the form of the order was such that enforcement would be practicable, but need not assert a substantive interest in the correctness of the decision underlying the order.

[1] The results of enforcement and review litigation are summarized in table 19 of Appendix A.
[2] *Riverside Press* v. *N.L.R.B.*, 415 F.2d 281, cert. denied 397 U.S. 912.

In another case,[3] the court reviewed a Board bargaining order directed against an employer who had refused to bargain with a union whose election victory depended on the votes of strikers whose status as employees eligible to vote was contested by the employer. In a prior proceeding the Board had held that the employer violated section 8(a)(1) of the Act by failing to reinstate the strikers in question,[4] and the court had enforced its order to reinstate them. In the representation proceeding, the employer contended that the strikers were not employees because they had never been on the payroll. In view of the prior consideration of the issue, the Board refused to consider this contention either in the representation proceeding or in the subsequent unfair labor practice proceeding after the employer's refusal to bargain. The District of Columbia Circuit held that the Board had properly granted summary judgment in the unfair labor practice proceeding, since the employer was estopped from raising in the representation proceeding underlying it a contention as to the strikers' employee status which could have been raised in the prior unfair labor practice proceeding. In the court's opinion, the Board was justified in applying the doctrine of estoppel in this case, since the issue of whether the strikers were employees was presented in both proceedings, and the employer was on express notice that the decision on the strikers' eligibility to vote in the representation election was being deferred pending the hearing in the unfair labor practice proceeding. Having failed to raise the issue in a proceeding resulting in a full-fledged adjudicative determination made after an evidentiary hearing in which the burden of proof was on the Board, the employer could not raise it for the first time in the subsequent election proceeding.

In another case,[5] the District of Columbia Circuit held that a union could not obtain judicial consideration of its contention that an erroneous finding of fact by the Board impugned the Board's conclusion that the union had engaged in secondary picketing in violation of section 8(b)(4)(i) and (ii)(B) of the Act. The parties had waived a hearing and submitted the case directly to the Board on a stipulation of facts. The General Counsel submitted a brief to the Board, but the union did not submit a brief, nor did it file a petition for reconsideration after the Board had rendered its decision. The court held that, under

[3] *Truck Drivers, Loc. 728 (Georgia Highway Express)* v. *N.L.R.B.*, 415 F.2d 986, cert. denied 397 U.S. 935.

[4] *Georgia Highway Express*, 165 NLRB 514 (1967), enfd. *sub nom. Truck Drivers Loc. 728* v. *N.L.R.B.*, 403 F.2d 921.

[5] *Glaziers' Local 558* v. *N.L.R.B.*, 408 F.2d 197.

the circumstances of this case, the failure to file a petition for reconsideration barred the union from asserting the Board's alleged factual error on appeal. Having submitted a stipulation to the Board, the union had never thereafter presented to the Board the issue which it now sought to raise for the first time before the court on appeal. The policy reflected in section 10(e) of the Act [6] required that the Board be given an opportunity to correct its error, if any, before being subject to judicial review, especially since the alleged error was a factual one which the Board could easily correct. Accordingly, in the court's view the union should have filed a petition for reconsideration pointing out the alleged factual error and the contention that this factual finding was crucial to the Board's decision.

2. Record on Review

In the *Southwestern Portland Cement* case,[7] the Fifth Circuit held that the regional director erred when, in transmitting to the Board his report on an employer's objections to a representation election which the union had won, he failed to forward certain affidavits which the employer had submitted in support of its objections. The court pointed out that section 102.68 of the Board's Rules and Regulations provides that the record in a representation case transferred to the Board is to include, *inter alia,* "any briefs or other documents submitted by the parties to the regional director," and that the affidavits in question were clearly "other documents" within the meaning of the rule. However, the court concluded that the regional director's failure to forward the affidavits to the Board was harmless error, since the employer's exceptions to the regional director's report on its objections incorporated all of the relevant contents of the affidavits in question. It therefore enforced the Board's order directing the employer to bargain with the certified union.

3. Representation Case Procedures

In the *Pepsi-Cola Buffalo* case,[8] the Second Circuit considered the scope of review which the Board is required to make of a regional director's decision in a representation proceeding before it may rely on that decision to make a finding in a related

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[6] Sec. 10(e) of the Act provides, in relevant part: "No objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances."

[7] *Southwestern Portland Cement Co.* v. *N.L.R.B.*, 407 F.2d 131, cert denied 396 U.S. 820.

[8] *Pepsi-Cola Buffalo Bottling Co.* v. *N.L.R.B.*, 409 F.2d 676.

unfair labor practice proceeding. In the representation proceeding in the instant case, the regional director rejected the employer's contention that certain individuals were independent contractors who should be excluded from the bargaining unit. The employer's request for review of the regional director's decision, which, as required by the Board's regulations, was in a self-contained document enabling the Board to rule on the basis of its contents without examining the entire record, was denied by the Board under Board rules which called for Board review only for "compelling reasons." In the unfair labor practice proceeding following the employer's refusal to bargain with the union which had won the election, the Board granted summary judgment against the employer, since Board rules prohibited relitigation, in unfair labor practice proceedings, of issues with respect to which the Board had denied a request for review of a regional director's decision.

The court held that the Board, by failing to review the record independently of the regional director's decision or consider whether that decision was wrong, once it was found not to be an egregious error, had improperly abdicated its responsibility to decide whether an unfair labor practice had been committed. It noted that while section 3(b) of the Act permits the Board to delegate determinations of appropriate bargaining units to a regional director, it does not authorize a similar delegation of authority to make unfair labor practice findings, which have more serious consequences. Indeed, while Congress authorized some administrative agencies to delegate authority to make final decisions to officials generally on the level of the Board's regional directors, it had declined to give the Board similar power to delegate authority to trial examiners in unfair labor practice cases. The reason, in the court's opinion, was that Congress wanted final decisions in such cases to be made only by Board members, whose expertise and experience was superior to that of subordinates not subject to Senate confirmation. The Board's superior knowledge and background was especially desirable in cases like the present, which involved difficult factual and legal issues.

The court recognized the Board's desire for speedy resolution of issues in representation proceedings and, accordingly, disclaimed any intent to require the Board to follow all of the requirements of the Administrative Procedure Act—which specifically exempts from its coverage cases involving the certification of employee representatives—or to permit the employer to intro-

duce in the unfair labor practice proceeding evidence which could have been presented in the representation proceeding. However, the court was of the opinion that plenary review of the record to determine whether or not the regional director's decision was correct, and not merely whether or not it was clearly erroneous, is required before the Board finds that an unfair labor practice has been committed. Since there had been no such review in this case, enforcement of the Board's order was denied, and the case was remanded to the Board for further proceedings.[9]

In another case,[10] the First Circuit disapproved the procedure which had been utilized by the regional director in resolving an issue as to whether an individual was a supervisor when it arose in a consent election proceeding where the regional director had authority to make the final decision. As the same issue was present in an unfair labor practice case concerning that individual's discharge, the regional director had consolidated the representation proceeding with the unfair labor practice proceeding to permit a single hearing before a trial examiner on that issue. When the trial examiner's decision issued the representation case was severed from the unfair labor practice case and returned to the regional director for decision. He took no action, however, until more than a year after the election. Then, a few days after the trial examiner's unfair labor practice decision was affirmed by the Board, he issued an order adopting, without discussion, the findings and conclusions of the trial examiner in the representation case.

The court noted that, in a consent election, the parties agree to forgo resort to the Board for resolution of disputes and to allow the regional director to make the final decisions. As the Board cannot, in other elections, delegate the ultimate decision to the regional director, so the regional director, in a consent election, must make the final decision and not abdicate this responsibility to the Board. In the court's opinion, such an abdication occurred in this instance; the delay in the regional director's decision in the representation case until the Board had decided the unfair labor practice case, followed by the adoption of the trial examiner's findings immediately thereafter, indicated that the regional director was principally concerned with avoiding a decision inconsistent with the result which might be reached in the unfair labor practice case. The resulting delay defeated the principal purpose of the consent election procedure: to expedite the

[9] The Board's petition to the Supreme Court for a writ of certiorari was denied 396 U.S. 904.
[10] *N.L.R.B.* v. *Chelsea Clock Co.*, 411 F.2d 189.

resolution of disputes in representation elections. The court concluded that although decision of the representation case issues after the trial examiner's decision in the unfair labor practice case may save some time and avoid the danger of inconsistent results, the best procedure was for the regional director to decide the representation case without consolidation. The goal of preventing whatever few inconsistencies might occur under this procedure did not justify undermining the expediting policy of consent elections by permitting the delay which would result from postponing decision in the representation case even until the trial examiner's decision in the unfair labor practice case. Moreover, consolidation created at least the appearance of a conflict of interest on the part of the regional director, since he was both the ultimate judge in the representation case and presiding over the office which was prosecuting the unfair labor practice case.

4. Agricultural Employees Exemption

One case decided during the year considered the recurrent issue of whether employees engaged in some form of activities related to agriculture are agricultural laborers excluded from the coverage of the Act by the definition of employees set forth in section 2(3).[11] In *Strain Poultry Farms*,[12] the Fifth Circuit was called upon to review a Board determination that under the circumstances of the case truckdrivers who hauled chickens to market were not agricultural laborers but rather were employees. The court noted that, under a rider attached annually to the Board's appropriation bill, the term "agricultural laborer" is defined in the same manner as in section 3(f) of the Fair Labor Standards Act,[13] and that court decisions interpreting the latter statute had defined "agriculture" to include both farming—including the raising of poultry and the delivery by the farmer of the poultry so raised—and any activities performed by farmers or on a farm, incidentally to or in conjunction with such farming operations. Thus, in the instant case, the truckdrivers would be agricultural laborers if their duties were incidental to or in conjunction with their own employer's poultry raising operations but not if the trucking operations were entirely separate from the poultry raising venture. The Board had

[11] Sec. 2(3) of the Act provides in relevant part that "The term 'employee' . . shall not include any individual employed as an agricultural laborer . . ."

[12] *N.L.R.B.* v. *Strain Poultry Farms*, 405 F.2d 1025.

[13] 29 U.S.C. § 203 (f).

concluded that the drivers were not agricultural laborers because they hauled produce from the farms of independent growers rather than from their employer's own farm. The court rejected this conclusion, pointing out that, although the employer's chickens were raised by independent growers, the employer supplied the feed and supplies and a number of followup services to insure the growth of the birds, and retained title to the birds and the risk of their loss throughout the entire process. Accordingly, the actions of the independent growers were part of an integrated poultry raising operation conducted by the employer, and the trucking activities were an integral part of the poultry raising operation rather than a separate business. Since the employer's business, the raising of poultry, and the drivers' activities, delivery of the poultry to market, were expressly included in the definition of "agriculture" in the Fair Labor Standards Act, the court held that the drivers were agricultural laborers and denied enforcement of the Board's order based on findings of violations of Section 8(a)(1), (3), and (5) of the Act, which depended on the conclusion that the drivers were not agricultural laborers.

B. Representation Proceeding Issues

In a number of cases decided by the courts, enforcement of Board orders based on findings of 8(a)(5) violations was opposed on the ground that the Board had incorrectly resolved various issues in the representation proceeding prior to the unfair labor practice proceeding. The cases included contentions that the Board had erred in its determination of the appropriate bargaining unit, in denying an evidentiary hearing on objections to an election, and in refusing to set aside an election because of the conduct of a Board agent.

1. Unit Determinations

In general, the courts continued to consistently affirm Board unit determinations as within the board area of the Board's discretion. In one such case,[14] the Seventh Circuit sustained the Board's finding that a unit limited to the claims offices supervised by an insurance company's divisional superintendent was appropriate. Pointing out that the Board "is not required by the Act to choose the most appropriate unit, but only to choose

[14] *State Farm Mutual Automobile Insurance Co.* v. *N.L.R.B.*, 411 F.2d 356, cert. denied 396 U.S. 832.

an appropriate unit within the range of several appropriate units in a given factual situation," the court noted that the unit was composed of employees who did similar work under similar circumstances and was headed by an official who directly controlled and supervised the day-to-day work of the employees. The next larger unit available under the employer's organizational structure would cover a multistate area. The court agreed with the Board that requiring a bargaining unit of this size would arrest the organizational development of insurance agents in highly centralized insurance companies and would deny such employees the "fullest freedom in exercising the rights guaranteed by the Act," which, under section 9(b) of the Act, the choice of an appropriate bargaining unit should be designed to assure. Accordingly, the court concluded that the Board's decision as to the appropriate unit was within its broad discretion.

However, in *Solis Theatre*,[15] the Second Circuit rejected the Board's holding that a unit limited to one theatre in a chain of movie theatres throughout a metropolitan area was appropriate, where management functions were handled centrally, the pattern of unionization of the employer's other employees was circuitwide, the theatre was centrally located only a short distance from two of the employer's other theatres, and the local manager of the theatre had authority only to oversee the daily activities of the employees of that theatre, with little or no authority on labor policy, which was determined centrally for the entire circuit. Pointing out that other courts of appeals had been "reluctant to sanction bargaining units whose managers lack the authority to resolve issues which would be the subject of collective bargaining," the court found no "compelling reason" in this case which would justify fractionating an otherwise centrally controlled system of branch units. It therefore set aside the Board's order directing the employer to bargain with that unit of employees.

In another case,[16] however, that court sustained the Board's determination that two separate units, each limited to one of an insurance company's claims offices, were appropriate. The court noted that, while final decisions concerning labor relations matters were made centrally, the supervisor of each claims office prossessed considerable influence in such decisions, and each office enjoyed complete control over the processing of the vast majority of claims. Characterizing the situation in *Solis Theatre*

[15] *N.L.R.B.* v *Solis Theatre Corp.*, 403 F.2d 381.
[16] *Continental Insurance Co.* v. *N.L.R.B.*, 409 F.2d 727 (C.A. 2), cert. denied 396 U.S. 902.

as "somewhat unusual," the court rejected an interpretation of that decision which would "permit any employer to impede unionization merely by centralizing final decisions on labor policies," and held that such centralization did not preclude establishment of a separate unit of an office where, as here, that office possessed substantial administrative autonomy in matters other than labor relations, temporary transfers between offices were infrequent, and the geographic compactness and established bargaining pattern among the other employees present in *Solis Theatre* were absent.

In *Harry T. Campbell Sons,*[17] the Fourth Circuit rejected the Board's determination that a unit limited to the calcite operation at a stone quarry, and not including employees at other quarry facilities, was appropriate. In the court's view, all of the operations at the quarry should be regarded as a single plant whose separate processing operations were entirely dependent on the quarry as a source of supply, and as possessing "an extraordinary degree of integration and interdependence, both from an operational and personnel standpoint." It found this conclusion required by the proximity of the different operations, the substantial interchange and contact between the employees engaged in different operations, and the uniformity of job classifications and labor relations policies, common administration, and centralized control of management functions, not only at the quarry, but for all of the employer's facilities. In the court's opinion, allowing the calcite operation to form a separate unit would eliminate the possibility of effective and stable collective bargaining, since neither the union nor the employer could bargain concerning the calcite employees without considering the effect of any agreement reached on other employees at the quarry. Moreover, it found that creation of such a separate unit would impose the will of the calcite employees, who were only a minority of the employees at the quary, on the majority and deprive the majority of their freedom to choose their own representatives, since a strike by the calcite employees would undoubtedly severely disrupt the operations of the remaining facilities, causing economic hardship to employees not involved in the dispute but dependent upon the uninterrupted functioning of the quarry operations. Accordingly, the court concluded that the calcite operation was neither *the* appropriate unit nor *an* appropriate unit for collective bargaining, and denied enforcement of the

[17] *N.L.R.B* v. *Harry T Campbell Sons' Corp.*, 407 F.2d 969.

Board's order directing the employer to bargain in a unit limited to the calcite operation.

The Board's long-established policy of excluding regular part-time employees from a bargaining unit, because their special status as social security recipients precluded their having a sufficient community of interest to be included in a unit with full-time employees, was examined by the Sixth Circuit Court of Appeals in one case decided during the year.[18] In holding that the Board's policy could not be sustained, the court pointed out that most of the terms and conditions of employment of the excluded employees were identical to those of the full-time employees; they performed the same work under the same supervision, received the same rate of pay and the same benefits, and had the same working conditions. The only difference between them and the full-time employees was that the pensioners were over 65 years of age and worked part-time in order not to receive annual earnings in excess of the maximum allowed recipients of social security benefits. In effect, the court concluded, the Board was finding that these employees lacked a community of interest with full-time employees solely because of their age and their motive for working part time. It pointed out that under the Board's policy employees who worked part time for health reasons would be included in the unit initially, but would be excluded as soon as they became eligible for social security, and those presently excluded for receiving social security benefits would again be included in the unit when they reached the age of 72, when the Social Security Act would no longer impose a ceiling on their earnings, although there would be no change in the employees' work schedules or other terms and conditions of employment in either set of circumstances. It viewed this distinction as arbitrary; the employees could be excluded for failure to meet objective standards established by the Board for determining the existence of a community of interest, but they could not be denied their rights, guaranteed by section 7 of the NLRA, to select a bargaining representative and participate in collective bargaining with their employer, solely because they sought to enjoy to the fullest the rights granted them by the Social Security Act.[19]

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[18] *Indianapolis Glove Co.* v. *N.L.R.B.*, 400 F.2d 363.

[19] In *Holiday Inns of America*, 176 NLRB No. 124, *supra*, p. 64, the Board (Members Brown and Jenkins dissenting) acquiesced in the Sixth Circuit, decision and held that henceforth employees would not be excluded from a bargaining unit solely because they limited their working time and earnings in order not to decrease their social security annuity.

2. Circumstances Requiring an Evidentiary Hearing on Election Issues

Judicial decisions have long recognized that the Board is not required in every instance to hold an evidentiary hearing to resolve issues raised by objections to election conduct and challenges to ballots, albeit the standard as to when such a hearing is required is sometimes difficult to apply.[20] The Board's Rules and Regulations [21] authorize resolution of objections and challenges upon the basis of an administrative investigation unless "substantial and material factual issues exist which can be resolved only after a hearing." This standard was discussed by the Fifth Circuit in *Smith Industries*,[22] where the court equated the Board's administrative standard with the constitutional standard under the Due Process Clause: a hearing is required where it is necessary to preserve a party's rights, but if there is nothing to hear, then a hearing is a senseless and useless formality. The standard, in the court's view, is not unlike that applied by the court in determining whether summary judgment is appropriate in a case which would ordinarily go to the jury. Summary judgment should be granted, the court said, only when it is quite clear what the truth is; if an inquiry into the surrounding facts and circumstances is necessary, summary judgment should not be granted until the facts and circumstances have been sufficiently developed to enable the court to be reasonably certain that it is making a correct determination of the question of law. Even where the basic facts are not in dispute, summary judgment may be improper if the parties disagree as to the inferences to be drawn from these facts. Finally, the court noted summary judgment is improper when an issue requires determination of state of mind. Applying this definition of the standard to the case before it, the court concluded that the Board should have held a full hearing, since the employer's objections to the election raised issues of fact such that the truth was not clear, the proper conclusions of law were not obvious, and one issue to be resolved in deciding whether to set aside the election was the subjective effect of the union's alleged misrepresentations and threats on the minds of the voters.

Although most cases involve the right to a hearing of the

[20] See Thirty-second Annual Report (1967), p. 146, and Thirty-third Annual Report (1968), p. 140.

[21] Sec. 102.69(c).

[22] *N.L.R.B.* v. *Smith Industries*, 403 F.2d 889.

party against whom the regional director's decision falls, one case considered by the courts involved the circumstances under which the party prevailing before the regional director must be accorded a hearing before the Board may reverse the regional director. In that case [23] the regional director had overruled the union's objections to an election, based on alleged misrepresentations by the employer, after an administrative investigation and without a hearing. The union, in seeking review of this decision, alleged facts which the Board found required that the election be set aside. The Board rejected the employer's request for a hearing on the union's allegations on the ground that the employer, in opposing the union's request for review of the regional director's decision, had not substantially controverted them. Following the rerun election, which the union won, the employer filed objections on the ground that the Board's erroneous decision with respect to the first election had affected the outcome of the second. These objections were rejected without a hearing in the representation proceeding, nor was the employer permitted to litigate the issue in the subsequent unfair labor practice proceeding. The court, while recognized that a party seeking review of a regional director's adverse decision must offer specific evidence which *prima facie* would warrant setting aside that decision in order to obtain an evidentiary hearing, held that the same rule does not apply to the party in whose favor the regional director has ruled, especially where, as here, the regional director has not made findings of fact concerning the other party's allegations, but has merely found such allegations to be insufficient, as a matter of law, to warrant setting aside the election. In the customary situation, where the objecting party is challenging specific factual findings by the regional director, it is properly required to make a preliminary showing that a hearing will not be a waste of time. In the instant case, however, the Board simply accepted the union's allegations as true without requiring the union to present any evidence to support them. If the allegations were to be treated as competent and material evidence under such circumstances, the employer, in the court's view, should have had an opportunity to answer them at some point before the Board's final determination. The court remanded the case to the Board in order that such an opportunity could be provided.

The litigability of issues raised by challenges to ballots when the same issue could have been raised at the preelection hearing was passed upon by the Third Circuit in the *Howard Johnson*

[23] *Bausch & Lomb* v. *N.L.R.B.*, 404 F.2d 1222 (C.A. 2).

case.[24] The Board had directed an election in a bargaining unit composed of two employees and at the election the employer challenged both ballots, contending that one of the employees was a supervisor—an argument not raised at the preelection hearing— and that the other employee could not, alone, constitute an appropriate unit. The regional director, without an evidentiary hearing, rejected the challenges on the ground that the record could not be reopened on the basis of challenges turning on contentions which could have been, but were not, made at the preelection hearing. The Board denied review and in the subsequent unfair labor practice proceeding granted summary judgment on the ground that the supervisory status of the individual in question had been fully litigated in the representation proceeding. Contrary to the Board, the court held that the employer's allegations raised a substantial question as to the supervisory status of the individual in question, and that a hearing on this issue should have been held. In the court's view, the issue had not been fully litigated at the preelection hearing, even if some of the evidence introduced at that hearing was relevant to a determination of that issue; the entire thrust of that hearing was focused on other issues involving the appropriateness of the two-man unit rather than a larger unit. It found nothing in the Board's rules or decisions to support the regional director's conclusion that raising the issue by challenging the voter's ballot was untimely and, presumably, any delay which might result from allowing issues to be raised by way of challenges to ballots could be avoided by proper exercise of the regional director's discretion to proceed either by investigation or by hearing. The court noted that in this instance the employer's proffered evidence was never considered either at a hearing or in an investigation, and that the record did not show any unjustifiable delay on his part. Under these circumstances, it concluded that the Board's discretion did not allow it to avoid deciding the issue altogether; the statutory provisions excluding supervisors from the definition of "employee" could not be avoided on procedural grounds.

3. Election Conduct of Board Agent

Two cases decided by the Fifth Circuit during the report year involved challenges to elections based upon the allegedly irregular conduct of Board agents during the elections. In one case,[25]

[24] *N.L.R.B.* v. *Howard Johnson Co.*, 398 F.2d 435.
[25] *Delta Drilling Co.* v. *N.L.R.B.*, 406 F.2d 109.

where an election was conducted at several locations, a Board agent, after closing the polls at one location and taking the ballot box, stopped to wash up at the motel room of a union representative, where he was seen by a company supervisor. The sealed ballot box had been left in his locked car, and there was no evidence that anyone tampered with the ballot box. The court held that the Board should have set aside the election. It pointed out that Board policy clearly requires the setting aside of an election whenever a Board agent's conduct tends to destroy confidence in the Board's election process, or could reasonably be interpreted as impugning the election standards which the Board seeks to maintain, or where a situation exists which casts a doubt or cloud over the integrity of the ballot box.[26]

The court noted that the fact that no one could have tampered with the ballot box here did not excuse the conduct of the Board agent in holding a private meeting with a union representative while he had the ballot box in his physical possession. In its view, the employer, having entered into a consent agreement in reliance on the unflinching preservation of Board policy, was entitled to the benefit of that reliance, and if the advantages of consent elections are to be utilized, it is essential that the employer have the same degree of confidence in the election process as the employees were concededly entitled to have.

In the other case,[27] however, the court held that the alleged failure of a Board agent to seal the ballot box completely after the balloting was completed, with the result that there was enough space to insert or remove ballots, did not require that the election be set aside. It concluded that in the absence of any allegation that the ballot box was ever left unattended, that the Board agent otherwise acted improperly, or that any ballots were actually inserted or removed, the mere uncorroborated speculation that there might have been tampering with the ballot box did not require an evidentiary hearing or the setting aside of the election.

C. Unfair Labor Practices

1. Employer Interference With Employee Rights

A number of court decisions during fiscal 1969 involved issues as to whether certain employer actions constituted prohibited interference with employees' rights protected by section 7 of the

[26] Citing *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967), and fn. 27
[27] *N.L.R.B.* v. *Capitan Drilling Co.*, 408 F.2d 676.

Act. Of particular interest were decisions involving an employer's discrimination against employees on account of race or national origin, an agreement between an employer and the incumbent union prohibiting distribution of literature or solicitation on plant premises on behalf of other unions, and an employee's right to have a union representative present at an interview while disciplinary action against him was being considered.

The District of Columbia Circuit, in a case [28] in which it sustained the Board's findings that an employer had, *inter alia,* violated section 8(a)(5) by failing generally to bargain in good faith with the representative of his employees and by failing in particular to bargain concerning the elimination of its racially discriminatory employment practices, further held that the employer's policy of discrimination because of race or national origin was in itself a violation of section 8(a)(1). In the court's view as expressed in the principal opinion, discrimination of that nature interferes with the exercise by employees of their right to act concertedly for mutual aid and protection because it creates two conditions. Initially, discrimination creates an unjustified clash of interests between its victims and other workers benefiting from it, thereby making it difficult for either group to see that their interests might be better served by acting together. While discrimination on other grounds, such as seniority, might also have this effect, such discrimination would be otherwise justifiable, whereas discrimination on the basis of race or national origin is not only unjustified but illegal. The court emphasized that it was basing its finding of an unfair labor practice, not on unjustified discrimination alone, but on the conjunction of such discrimination with a second condition; namely, the docility which the discrimination creates in its victims. It noted that it has been widely recognized that racial discrimination creates fear, ignorance of rights, and a feeling of inferiority, all of which inhibit assertion of the right to act together to improve conditions. Indeed, it found considerable evidence on the record that such docility existed among the employees of the employer in this case. However, since the employer had not had notice that the legality of a racially discriminatory policy under section 8(a)(1) was specifically in issue in this case, as distinguished from his obligation to bargain concerning the elimination of discriminatory practices, the court remanded

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[28] *United Packinghouse Workers [Farmer's Cooperative Compress]* v. *N.L.R.B.*, 416 F.2d 1126, cert. denied 396 U.S. 903.

the case to the Board to determine whether the employer had such a policy, and, if so, to provide an appropriate remedy.[29]

In the *Mid-States Metal Products* case,[30] the Fifth Circuit sustained the Board's finding that an employer violated section 8(a)(1) of the Act by entering into an agreement with a union prohibiting distribution of literature or solicitation on behalf of any other union on company premises, even on nonworking time and in nonworking areas. The court agreed that, while a union may waive some section 7 rights of employees, it may not waive their right to change their bargaining representative or to have no bargaining representative at all. It noted that waiver of the employees' right to use specific economic weapons may contribute to the statutory policies of encouraging collective bargaining and relying on collective-bargaining agreements to maintain industrial peace, but would normally be made by the union only in return for concessions from the employer which would benefit the employees, for the union's interest in such cases would coincide with that of the employees. However, where distribution of literature or solicitation by employees seeking displacement of an incumbent union was involved, the union's interest would be wholly adverse to that of the employees, and the union might agree to bar such activities, not in return for securing other benefits for the employees, but solely to perpetuate itself as bargaining representative. A waiver of the right to solicit and distribute literature under these circumstances would not, in the court's view, hamper the union, which could communicate through bulletin boards and union meetings, as much as it would hamper the union's adversaries who would not have equal access to and communication with the employees. Accordingly, the court, declining to follow decisions to the contrary by other courts,[31] held that the organizational rights at

[29] One judge, concurring in the remand, was of the view that any act, policy, or program of an employer which interfered with employees' statutory rights would violate sec. 8(a)(1), and that the Board should receive evidence and make findings as to whether this employer had such a policy or program. In his opinion, the court should not evaluate the legality of such a program until the Board had made factual findings.

The employer's petition for rehearing was denied, 73 LRRM 2095. One judge, concurring in the denial of rehearing, stressed that the court had not held that a violation of sec 8(a)(1) had been demonstrated in this case, but only that a violation could be found if it were determined that the employer had actually evolved and put into practice a policy of invidious discrimination on account of race or natural origin, the ultimate conclusion would depend on the Board's findings with respect to these issues.

[30] *N.L.R.B.* v. *Mid-States Metal Products*, 403 F.2d 702.

[31] *N.L.R.B.* v. *Gale Prdoucts*, 337 F.2d 390 (C.A. 7), Thirtieth Annual Report, p. 131 (1965), denying enforcement of 142 NLRB 1246 (1963), *Armco Steel Corp* v. *N L.R.B*, 344 F.2d 621, Thirtieth Annual Report (1965), p 132, denying enforcement of 148 NLRB 1179 (1964), *General Motors Corp.* v. *N.L.R.B.*, 345 F 2d 516 (C.A. 6), Thirtieth Annual Report (1965), p. 132, denying enforcement of 147 NLRB 509 (1964).

issue were too fundamental to be contracted away by the union, and that the employer could no more prohibit the exercise of these rights by agreement with the union than it could so unilaterally.

Under its view of the circumstances in another case [32] the Fifth Circuit declined to adopt the Board's finding that an employer violated section 8(a)(5) and (1) of the Act by refusing to allow a union representative to be present at an interview with an employee suspected of theft. The court noted that the Board itself had recognized [33] that an employee's right to union representation does not apply to all dealings with his employer which may eventually affect the terms and conditions of his employment and had found no violation of the Act in the exclusion of union representatives from an employer-employee interview designed to gather information where the employer had not yet committed himself to disciplinary action. In the instant case, the Board had concluded that, because the employee had been suspended prior to the interview, the employer was committed to disciplinary action, and the interview constituted an attempt to deal with the employee concerning a term or condition of his employment. However, the court pointed out that the employer was not committed to disciplinary action, since the suspension of the employee was pursuant to a company policy which provided that the employee would suffer no loss of pay if the suspicion of theft proved unfounded. It further noted that in any event, since there was no evidence that the interview dealt with the consequences of the employee's misconduct, the fact that the employer was already committed to a course of action would not necessarily transform a factfinding interview into a collective-bargaining session at which union representation would be required.

2. Employer Discrimination Against Employees

Many of the cases reviewed by courts of appeals involved employer actions found to constitute discrimination motivated by employees' union membership or activity, or lack thereof, and therefore violative of section 8(a)(3) of the Act. Two such cases decided by the Second Circuit involved the legality of discharges, or threats thereof, pursuant to union-security clauses.

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[32] *Texaco, Inc.* v. *N.L.R.B*, 408 F.2d 142 See Thirty-third Annual Report (1968), p. 75.

[33] *Jacobe-Pearson Ford*, 172 NLRB No. 84, Thirty-third Annual Report (1968), p. 75; *Chevron Oil Co.*, 168 NLRB No. 84 (1967).

In one,[34] an international union set up a council for the sugar industry to coordinate and control the activities of the affiliated locals which represented employees in that industry. It also directed those locals to affiliate with the council which then obligated the employees to pay dues to the council. Under the council's constitution, the locals could not propose any item to employers in contract negotiations without advance approval from the council, or call a strike without the council's authorization, and the council was to be a party to all collective-bargaining agreements negotiated by the locals. The members of the local representing the employer's employees twice voted not to affiliate with the council, and paid their dues to the council only when the employer, at the council's insistence, threatened to discharge them. The court, in sustaining the Board's finding that the threats violated section 8(a)(3), pointed out that that section authorizes contracts requiring union membership as condition of employment only if the union is "the representative of the employees as provided in section 9(a)," and that, to safeguard employees' rights, such representative status must be deemed to exist only when the majority of employees in a unit have freely and unambiguously accepted a union as their representative. It found that the members of the local here clearly had not explicitly designated the council as their representative, nor could it be said that the rule of the council in contract negotiations amounted to an indirect designation of the council as the employees' bargaining representative. The contract was ambiguous as to whether the council could invoke the union-security clause, and it was not clear that the employees, in ratifying the agreement, were aware of the role played by the council during the negotiations. Viewing the council's role to be that of a servicing or coordinating body, representing the international union's interests rather than those of the local union's members, the court concluded that such a role could not be equated with that of the designated bargaining representative of the employees. Holding also that the employer's good-faith belief that the council had been properly designated as the employee's bargaining representative was not a defense when that was in fact not the case, the court sustained the Board's finding that the employer violated section 8(a)(3) by threatening to discharge the employees unless they paid their dues to the council.

[34] *N.L.R.B.* v. *SuCrest Corp.*, 409 F.2d 765.

In the other case,[35] in which the employer's reasonable grounds for belief was relevant, the court rejected the Board's conclusion that an employer had violated section 8(a)(3) by discharging employees for failure to pay dues where the employees had tendered their dues and initiation fees to the union, only to have the tender rejected because they refused to also sign union membership cards. The court pointed out that an employer is liable under section 8(a)(3) only if he discriminates against an employee for failure to pay dues when he has "reasonable grounds" to believe that the union has requested the employee's discharge for reasons other than failure to tender the uniformly required periodic dues and initiation fees. While this proviso clearly prohibits employers from meekly complying with union demands which are obviously illegal, the court concluded that it is not clear how much specific information as to the illegality of the union's request must be communicated to the employer in order to require him to make further inquiry. Under the circumstances of this case, however, the court found that the vague contentions of the employees that they had tendered the dues were insufficient to require the employer to suspect that the union's demands were illegal. The employer knew that the employees were hostile to the union and supported a rival union; when the union first requested their discharge, they indicated clearly that they were entirely unwilling to become members on any basis whatever; and the union's initial letter requesting discharge affirmatively stated that the membership requirement would be fully met if dues and initiation fees were paid. Moreover, the employer only discharged the employees 3 months after the union's request when a court order enforced an arbitrator's award requiring their discharge. There was no indication that the employer had been hostile to, or interfered with, the dissidents' rival union activity and the court considered the fact that other dissident employees had joined the union, as one which might well have strengthened the employer's belief that the remaining employees' troubles were due to their hostility to the union, rather than to its discrimination against them.

In concluding that, under the circumstances, the employer had no duty to investigate the situation further, the court observed that to determine whether a tender of dues had been made would have required an extensive investigation which might well have been fruitless, and even if it were clear that tender had been made, there remained complex legal issues, con-

[35] *N.L.R.B.* v. *Zoe Chemical Co.*, 406 F.2d 574.

cerning the validity of the tender, which an employer under these circumstances could not be required to resolve at his peril.

In the *White Motor* case,[36] the Sixth Circuit sustained the Board's finding that an employer violated section 8(a)(3) and (1) of the Act by subcontracting its guards' work and transferring the guards to other work because they joined a union which admitted to membership employees other than guards. The court pointed out that, while section 9(b)(3) of the Act[37] prohibits certification of a union representing nonguard employees as the bargaining agent for guards, it does not limit the right of guards, guaranteed by section 7 of the Act, to join such a union. Indeed, while the employer may not be compelled, directly or indirectly, to recognize a nonguard union as bargaining agent for the guards, it may, if it wishes, grant such recognition. Because the court felt that the Board's remedial order, requiring reinstatement of the guards, did not make it sufficiently clear that the guards' work could later be subcontracted for nondiscriminatory reasons, and that the guards' right to reinstatement was conditioned on the continued existence of the guard unit, the case was remanded to the Board for reconsideration of the remedial order.

3. The Bargaining Obligation

a. Duration of Recognition

A number of cases decided by courts of appeals during the past fiscal year involved the question of when an employer may withdraw recognition from a union which is certified as the bargaining representative of its employees, or which it has voluntarily recognized without a Board certification. In *Montgomery Ward*,[38] an employer who had voluntarily recognized a union on the basis of a card check refused to bargain 3 days later when an employee filed a decertification petition which was subsequently dismissed by the Board because the relationship established by the prior recognition had not yet had a reasonable time to function. Viewing the issue before it as essentially one of the propriety of the Board's refusal to hold a decertification

[36] *N.L.R.B.* v. *White Superior Div.*, White Motor Corp., 404 F.2d 1100.

[37] Sec. 9(b)(3) of the Act provides that "The Board shall . . . not . . . decide that any unit is appropriate for [collective bargaining] purposes if it includes, together with other employees, any individual employed as a guard" and that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

[38] *N.L.R.B.* v. *Montgomery Ward & Co.*, 399 F.2d 409 (C.A. 7).

election, the court sustained the Board's finding that the employer's withdrawal of recognition violated section 8(a)(5) and (1) of the Act. In reaching this conclusion, the court relied on the Supreme Court's decisions in *Franks Bros.* v. *N.L.R.B.*[39] and *Brooks* v. *N.L.R.B.*[40] It noted that under *Franks* a bargaining relationship, once established, must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed, notwithstanding the union's subsequent loss of majority status due to the employer's unfair labor practices. It considered this rationale as having recognized that the need for industrial stability may in some circumstances justify limiting employees' freedom of choice. The court also noted that under *Brooks* an employer is required to bargain with a certified union for 1 year after certification, even where the union has lost its majority status through no fault of the employer. This rule was justified on the grounds that making the choice of a bargaining agent binding for a fixed time would promote a sense of responsibility of choice and a needed coherence in administration; that a union needed time to carry out its mandate so that it was not forced to bargain in an atmosphere demanding immediate and highly successful results; that an employer should not be encouraged to try to undermine union strength by stalling the negotiation process; and that raiding and strife between competing unions should be minimized. In the court's opinion, these reasons also justified affording a union recognized without certification a reasonable time to succeed as bargaining agent; to give greater weight to certification would place a premium on resort to the administrative processes of the Act and would discourage the use of less formal procedures which might be more practical and convenient and more conducive to amicable industrial relations.[41] Accordingly, the court concluded that the Board should be left free to utilize its administrative expertise in striking the proper balance between the preservation of employees' freedom to choose their bargaining representative and the encouragement of the collective-bargaining process.

In *United Aircraft,*[42] the District of Columbia Circuit declined to enforce a bargaining order based upon the Board's finding

[39] 321 U.S. 702 (1944).

[40] 348 U.S. 96 (1954).

[41] In *N.L.R.B.* v. *San Clemente Publishing Corp.*, 408 F.2d 367, the Ninth Circuit, relying primarily on this ground, enforced a Board order based on a finding that the employer had violated sec 8(a)(5) and (1) of the Act by withdrawing recognition from a union less than 2 months after recognizing it on the basis of a poll of its employees by an impartial third party.

[42] *Lodges 1746 and 743, IAM* v. *N L.R.B.*, 416 F 2d 809, cert. denied 396 U.S. 1058.

that the employer had violated section 8(a)(5) and (1) of the Act by withdrawing recognition from unions which had been certified for many years. The court pointed out that, after a union has been certified for 1 year, the presumption that the union's majority status continues can be rebutted by showing sufficient evidence to cast serious doubt on such majority status. The "serious doubt" standard requires that the employer have a reasonable basis in fact for doubting the union's majority status and assert such doubt in good faith. In this case, a substantial decrease in the number of checkoff authorizations, a memorandum from the local unions' attorney to the international union's president (which had come into the employer's possession) admitting that the unions lacked a majority, and the unions' failure to respond when the employer challenged the unions' majority status were sufficient to give the employer a reasonable basis for doubting the unions' majority status. While the better time for withdrawing recognition would have been when the union demanded bargaining for a new contract, the fact that the employer withdrew recognition after bargaining had commenced did not automatically show bad faith, especially where, as here, the employer had questioned the unions' majority status from the start of negotiations. Indeed, the court pointed out that the Supreme Court had suggested in *Brooks*[43] that the employer in such a situation should continue to bargain while petitioning the Board for a new election or other relief. To require a withdrawal of recognition at the earliest feasible time might cause a premature rupture in the bargaining relationship by precluding an employer from entering into a new contract in the expectation that the union would soon regain majority status. The court also emphasized that the unions, by submitting clearly unacceptable demands, effectively nullified the prior negotiations, so that the employer could properly assert its doubt as to the unions' majority status just as if negotiations had never commenced. In the court's view, the employer showing of serious doubt was not negated by any evidence that the employer intended to avoid reaching final agreement with the unions, nor had the employer engaged in independent unfair labor practices or other conduct aimed at causing disaffection from the unions. Consequently, in the absence of evidence that the unions actually enjoyed majority status, the finding of an 8(a)(5) violation was not sustained.

[43] *Brooks* v. *N.L.R.B.*, 348 U.S. 96 (1954).

b. Coordination of Bargaining

In the *General Electric* case,[44] the Second Circuit sustained the Board's finding that the employer violated section 8(a)(5) and (1) of the Act by refusing to bargain with a union which represented some of its employees because the union's negotiating committee included members of other unions which represented other employees of the company in separate units. The court agreed with the Board that the right of employees under section 7 of the Act, and the corresponding right of employers, guaranteed by section 8(b)(1)(B), to choose their own representatives for collective-bargaining purposes, is fundamental to the statutory scheme; these rights, while not absolute, could be denied only when the selection of particular representatives created a clear and present danger to the collective-bargaining process. In the court's opinion, the mere presence of members of other unions on one union's negotiating committee did not inherently create such danger; not all cooperation between unions is improper, and the Board's refusal to hold that the mixed-union committee was inherently improper, as long as it sought to bargain solely on behalf of the employees in the bargaining unit, was reasonable.

In this case, the court held, the Board properly rejected the employer's contention that it was justified in refusing to meet with the mixed committee because the unions intended to bargain jointly and were locked into an agreement whereby the principal union would not accept any offer made by the employer until all unions accepted it. The employer, instead of testing the good faith of the unions, simply refused to bargain with the mixed committee until ordered to do so by a federal district court, despite the principal union's express disclaimer of any intention that the committee would bargain for employees outside the unit. When bargaining did commence, the committee did not attempt to bargain for employees represented by other unions, and the Board properly found that the employer had no sufficient basis for concluding that the committee planned to bargain improperly.[45]

However, the court rejected the Board's further finding that the employer's refusal to meet with the mixed committee 3 months before the period for reopening the contract to discuss preliminary matters was unlawful. In the court's opinion, since the company could have refused to agree to hold any preliminary meet-

[44] *General Electric Co.* v. *N.L.R.B.*, 412 F.2d 512.

[45] The Eighth Circuit, agreeing with this reasoning, enforced the Board's order in a similar case, *Minnesota Mining & Mfg. Co.* v. *N.L.R.B.*, 415 F.2d 174.

ings before the union gave notice of intent to reopen the contract, it could also impose conditions on its agreement to such meetings. Especially in view of the fact that permitting a mixed committee might present dangers to the good-faith bargaining process, the court was unwilling to hold that all acts which would be improper in the mandatory bargaining period are equally so during preliminary discussions.

c. Subjects for Bargaining

The subject matter embraced by the phrase "wages, hours, and other terms and conditions of employment," as it is set forth in section 8(d) of the Act to describe the matters concerning which the employer and the employee representative must bargain collectively, received further definition in some of the court decisions issued during the report year. In *Dixie Ohio Express*,[46] the Sixth Circuit rejected the Board's finding that an employer who operated a freight terminal violated section 8(a)(5) and (1) of the Act by unilaterally changing the procedure of loading and unloading merchandise at its terminal, thereby causing the layoff of a number of employees. In the court's opinion, the employer's action constituted merely a change in ordinary day-to-day operating procedures which did not directly involve wages, hours, and other terms and conditions of employment. Accordingly, the case was viewed as analogous to *Adams Dairy*,[47] where the Eighth Circuit held that an employer was not required to bargain about its decision to terminate a phase of its operations and distribute its products through independent contractors, since requiring bargaining about this decision would significantly abridge the employer's freedom to manage its own affairs, rather than to *Fibreboard*,[48] where the Supreme Court held, in a case where the contracting out involved the replacement of the employer's employees with those of an independent contractor under similar conditions of employment, that an employer was required to bargain about a decision to subcontract unit work. The court emphasized that *Fibreboard* had not held that an employer must bargain about every managerial decision which has the effect of terminating an individual's employment.

In *Star Expansion Industries*,[49] the District of Columbia Circuit

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[46] *N.L.R.B.* v. *Dixie Ohio Express Co.*, 409 F.2d 10.

[47] *N.L.R.B.* v. *Adams Dairy*, 350 F.2d 108, cert. denied 382 U.S. 1011, Thirtieth Annual Report (1965), p. 140.

[48] *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, 379 U.S. 203 (1964), Thirtieth Annual Report (1965), pp. 118–119.

[49] *U.E.* v. *N.L.R.B.*, 409 F.2d 150.

sustained the Board's dismissal of a charge that the employer had violated section 8(a)(5) and (1) of the Act by insisting on an arbitration clause providing for specific enforcement in a state court of an arbitrator's no-strike or no-lockout order and the waiving of the right of the parties to remove an action for such enforcement to a Federal court. Since the provisions in question merely described the way in which the proposed arbitration and no-strike clause would function, they were essentially components of the employer's arbitration proposals, bearing the same relationship to wages, hours, and working conditions as any typical arbitration and no-strike clauses, and hence were mandatory subjects for bargaining. In the court's view, the proposals were not so clearly inconsistent with national labor policy as to indicate the employer's bad faith in making them. The employer was not obliged to guess the ultimate resolution of the issues of law involved; as long as it reasonably believed, at the time the bargaining took place, that the proposals would prove legally enforceable, it could not be convicted of bad faith for making them. To require a party to guess at its peril how difficult questions of law would be resolved would discourage novel proposals responsive to important objectives of national labor policy, and would require the Board, and subsequently the court, to decide the legality of contract proposals not in the context of a specific dispute, but in the abstract. In the instant case, the court found the employer could reasonably have believed that such arbitrator's awards could be specifically enforced, at least in state courts, and, since the bargaining took place before the Supreme Court's decision in the *Avco* case,[50] that suits to enjoin strikes brought in state courts could not be removed to Federal courts. The court concluded that the employer's overall conduct did not indicate bad faith, and, under the circumstances of this case, the attempt to make the arbitration clause effective against a union which notoriously preferred strikes to arbitration could not, without more, show the absence of good faith.

d. Duty To Furnish Information

Several cases decided by courts of appeals during the year involved issues concerning the duty of an employer to supply to the bargaining representative information which is "relevant and necessary" to the intelligent performance of its collective-bargaining and contract administration functions. In two cases, courts

[50] *Avco Corp.* v. *Aero Lodge 735, IAM*, 390 U.S. 557 (1968), holding that the Federal courts did have removal jurisdiction over suits brought in state courts to enjoin strikes.

sustained Board findings that employers were required to give unions the names and addresses of all employees in their respective bargaining units. In the *Standard Oil* case,[51] almost half of the employees in the bargaining unit were not members of the union; their residences were scattered over an area of several counties and the union had no satisfactory way of communicating with them. Moreover, the employer used its facilities to inform new employees that it considered a union unnecessary and to tell all employees its position on matters at issue in collective bargaining. Under these circumstances, the court concluded that the Board properly held that the union needed the employees' addresses to determine their preferences and priorities in contract negotiations, their experience and recommendations with respect to the operation of the grievance arbitration machinery, and whether a majority favored acceptance of a particular contract term or were willing to strike over that term. In the court's view, the employer must have known that the union wanted the requested information for collective-bargaining purposes. Unless the bargaining was to be completely one-sided, the union had to know the persons for whom it was bargaining, so that it could present its arguments to them and learn their opinions.

In the *Prudential Insurance* case,[52] the bargaining unit contained over 16,000 employees scattered throughout most of the nation, almost half of whom were not members of the union, and many of whom worked in offices where there were no union members. Moreover, the rate of turnover, both among employees generally and among union members, was very high. The Second Circuit held that the union's need under these circumstances for the names and addresses of employees was far greater than that of the union in *Standard Oil,* and accordingly enforced the Board order directing production of the names and addresses. The court concluded that the alternative means of communication suggested by the employer—bulletin boards, grievance committees, hand distribution of messages, and union meetings—were inadequate, either separately or in combination, in light of the geographically scattered nature of the unit, the number of offices without any union members, contractual limitations on communication with employees in offices, and the employer's practice of not informing new employees about the union. It found the result to be that many employees were unaware that a union represented

[51] *Standard Oil Co of Calif.* v. *N L.R B.,* 399 F.2d 689 (C A. 9)
[52] *Prudential Insurance Co.* v. *N.L.R.B.,* 412 F.2d 77 (C.A. 2).

them, had negotiated a collective-bargaining agreement in their behalf, and would enforce their rights under it.

On the issue of relevance, the court pointed out that the union had a statutory duty to represent fairly all employees in the bargaining unit, including those who were not union members, and that this obligation applied both to the negotiation of new contracts and to the administration of collective agreements already adopted. Clearly, the union could not discharge this obligation unless it was able to communicate with those in whose behalf it acted. Thus, a union must be able to inform the employees of its negotiations with the employer and obtain their views as to bargaining priorities in order to take a position reflecting their wishes. Similarly, to administer an existing agreement effectively, a union must be able to inform employees of the benefits to which they are entitled under the contract and of its readiness to enforce compliance with the agreement for their protection. Indeed, in the court's opinion, the information sought by the union had an even more fundamental relevance than information such as wage data, which has been held to be presumptively relevant. The court pointed out that wage data is needed by the union to bargain intelligently on specific issues of concern to the employees, whereas, without the information sought here, the union could not even communicate with the employees whom it represented. Accordingly, the information was held to be necessary for the union to perform its entire range of statutory duties in a truly representative fashion and in harmony with the employees' desires and interests, and no special showing that the list of names and addresses was relevant to a specific bargaining function was necessary.

In another case,[53] the court sustained a Board finding that an employer violated the Act when, while furnishing the union with data concerning its parent company, it refused to furnish information concerning the division with which the union was bargaining. It explained that although the parent company was making money, the division was not, and the division had to stand on its own and could not remain competitive if it agreed to the union's economic demands. The District of Columbia Circuit sustained the Board's finding that the employer was, in effect, contending that the division was unable to pay for the increased economic benefits sought by the union; the claim of inability to compete was merely the explanation of the reason why the company could not afford the economic benefit. Accordingly, the court

[53] *United Steelworkers Loc. 5571 [Stanley-Artex Windows]* v. *N.L.R.B.*, 401 F.2d 434.

upheld the Board's finding that the employer violated section 8(a)(5) and (1) of the Act by refusing to supply the requested financial information, and the resulting strike was an unfair labor practice strike.

On the other hand, in the *Kroger* case,[54] the Sixth Circuit rejected the Board's finding of an unlawful refusal to bargain in the employer's refusal to disclose to the union its operating ratio program, which it used not only to estimate, and hence to schedule, total hours of work for a given week in each of its stores, but to make estimates for its whole marketing operation. The court pointed out that the union's request for information was very broad: the union had sought disclosure of the entire program, including many aspects which bore no relationship to the union's performance of its collective-bargaining function and which were of great commercial value and could not be disclosed without competitive damage. Moreover, in bargaining collectively, the employer had not relied on the program in question to deny benefits or refuse to adjust grievances. There were no pending negotiations or unsettled grievances to which the requested information was related. Consequently, the union's request for information was considerably broader than what the law required the employer to furnish it; the employer was not required to furnish all information which the union thought might conceivably be helpful to it in collective bargaining or in the processing of grievances. In view of these factors, and the long bargaining history without any current contract disputes or unresolved grievances, the court declined to find a violation of section 8(a)(5) and (1) of the Act.

In *Waycross Sportswear*,[55] the Fifth Circuit sustained the Board's finding that the employer, in addition to violating section 8(a)(1) of the Act in several respects and violating section 8(a)(5) and (1) by a general failure to bargain in good faith, further violated section 8(a)(5) and (1) by refusing to allow an in-plant study by an expert in piecework analysis to obtain information relevant to contract negotiations. The court pointed out that the nature of piecework as a means of wage determination inevitably involves the elements of incentive, fair compensation, and fair standards of output, which, in turn, require that operational methods be evaluated in the light of such factors as the level of human skills and the adequacy or inadequacy of machinery. Evaluation of these factors required opportunity for observation, sam-

[54] *Kroger Co.* v. *N.L.R.B.*, 399 F.2d 455.
[55] *Waycross Sportswear* v. *N.L.R.B.*, 403 F.2d 832.

pling, testing, and analysis of too sophisticated a nature to be left to the unskilled observation and recollection of the employees. The court notes that the Second Circuit had held that a union was entitled to make an independent piece-rate study in connection with evaluating the merits of a grievance;[56] if the information to be obtained from such a study was necessary for the union's performance of its duties under an existing contract, it could be of even more significance in negotiating a contract.

e. Successor Employer Obligation

Two cases decided by the District of Columbia Circuit during fiscal 1969 involved Board findings concerning whether one employer was a successor to another and was therefore required to bargain with the union which represented the former employer's employees. In one,[57] the court, while affirming the Board's finding that an employer which had been awarded a contract for maintenance of a Government building violated section 8(a)(3) and (1) of the Act by refusing to hire many of the former contractor's employees because of their union membership, rejected the Board's finding that the failure to hire these employees as a group was also unlawful. The court found no authority requiring an employer who contracts to service a building for 1 year to hire "en masse" the entire work force of the previous contractor. The court found that the new contractor was not a successor employer; it was not in privity of contract with the old contractor or its employees. The "industry custom" of automatically hiring all the employees of the previous contractor imposed no binding obligation on this employer, especially since the Government had expressed dissatisfaction with the work being done by the employees in question while working for the former contractor. To the court, the requirement that the former employees file individual applications seemed almost essential for the new contractor's bookkeeping process, and it accordingly rejected any absolute requirement that a new contractor hire his predecessor's employees as a group.

In the other case,[58] an automobile manufacturer which had owned and directly operated two factory-dealerships sold the outlets to two independent franchise dealers who had no business relationship with each other. The court sustained the Board's finding that the dealers were not successor employers, and hence

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[56] *Fafnir Bearing Co.* v. *N.L.R.B.*, 362 F.2d 716.
[57] *Tri State Maintenance Corp.* v. *N.L.R.B.*, 408 F.2d 171.
[58] *IAM, Dist. Lodge 94* [*Lou Ehlers Cadillac & Thomas Cadillac*] v. *N.L.R.B.*, 414 F.2d 1135.

were not required to bargain with the unions which had represented the former employees. It agreed that the mere fact that a majority of the new employees hired by the dealers were not members of the old bargaining unit was not controlling, since the purchaser of a business could not avoid application of the successorship principle simply by refusing to hire the seller's employees. Here, however, the hiring of new employees was clearly based on nondiscriminatory considerations, and there were considerable changes in operational structure, organization management, and the relationship of the two retail outlets to each other, to the manufacturer, and to the public. Under the prior factory management, both retail outlets were covered by a single contract which provided the same wages, grievance procedures, and other benefits and a common seniority list of all employees at both branches, and transferability of seniority and vacation and holiday pay at all of the manufacturer's plants. Under the independent dealers, no common seniority was feasible, and no transfers from one establishment to the other, or to another operation of the manufacturer, were available. Each dealer brought in new supervisors, and each was free to fix wages and working conditions, subject only to the normal competition for skilled service personnel in the local labor market. Management, accounting, and advertising, formerly centrally controlled, were now totally separate and independent. While directly operated by the manufacturer, the outlets did not compete aggressively with other dealers franchised by the manufacturer, whereas under the independent dealers, they were in direct competition for sales and service with each other and with all other dealers, including those franchised by the same manufacturer. In the court's opinion, these changes in operational format, and the nondiscriminatory personnel turnover, negated a finding of successorship and overcame the presumption that the union's majority status continued. To require the dealers to bargain with the union under these circumstances would, in the court's view, have deprived their new employees of their right, guaranteed by section 7 of the Act, to be represented by a bargaining agent of their own choice.

4. Discrimination Caused by Union

Several decisions by courts of appeals during the year involved contentions that unions had violated section 8(b)(2) of the Act, which makes it unlawful for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of section 8(a)(3)." In one, a company whose employees

were represented in two separate bargaining units by two different locals of the same international union merged with another company, almost all of whose employees were also members of one of these locals. That local, which had continually protested the assignment of employees represented by the other local to perform work which it contended was within its jurisdiction, forced some of those employees to transfer their membership to it and to go to the bottom of the seniority list in order to continue to perform such work. The Seventh Circuit [59] sustained the Board's finding that this denial of seniority did not violate the Act, since it was based, not on the employees' former membership in another union, but on their former membership in another bargaining unit. While the employees had been working for the same employer, and doing the same kind of work as those already in the bargaining unit, the local's constant protests against this infringement on its unit jurisdiction preserved the status of the two locals along unit lines.

The court pointed out that seniority rights are not vested, but derive their scope and significance from union contracts. In its view, a bargaining representative need not base seniority rights solely upon the relative lengths of employment of the respective employees; it may also consider such variables as the nature of the work or departmental membership. In any event, seniority is a valid subject matter for the collective-bargaining process, and a collective-bargaining representative should be given broad discretion to bargain with respect to seniority rights, subject only to complete good faith and honesty of purpose in the exercise of such discretion. The court noted that the existence of differences in the manner and degree to which the terms of a negotiated agreement affect individual employees or classes of employees is inevitable and should not invalidate the agreement in the absence of proof that the differences resulted from hostile discrimination. Finding that the record before it established that the denial of seniority resulted, not from arbitrary discrimination, but from the union's need to protect the integrity of the bargaining unit which it represented, the court affirmed the Board's order.

In another case,[60] a local union and an employer, parties to a contract which covered both carpenters and millwrights, executed a new contract after the international union chartered a new local to represent millwrights. In the new contract the trade

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[59] *Schick [Teamsters Locals 705 and 710]* v. *N.L.R.B.*, 409 F.2d 395, affg. *Transport Motor Express*, 162 NLRB 1023.

[60] *N.L.R.B.* v. *Consolidated Constructors & Builders*, 406 F.2d 1081.

autonomy of the international union continued to be described as including millwrights' work, but the local expressly disclaimed any trade autonomy or jurisdiction over millwrights, and the new contract, unlike prior contracts, did not mention a pay rate specifically for millwrights. Subsequently, however, the carpenters' local threatened a work stoppage if two millwrights hired by the employer continued on the job without joining the carpenters' local, and the employer discharged them notwithstanding they were members of the millwrights' local. The First Circuit sustained the Board's finding that the employer violated section 8(a)(3) and (1) of the Act by discharging the millwrights, and the union violated section 8(b)(2) and (1)(A) by causing their discharge. In agreement with the Board, it found that while the international union claimed jurisdiction over millwrights, the carpenters' local, although continuing to represent the millwrights, in fact, expressly disclaimed jurisdiction over them. Since the union-shop agreement, requiring membership in the carpenters' local, applied only to employees in the bargaining unit, and the parties intended to exclude millwrights from the unit, the court agreed that the millwrights were not covered by the terms of the union-security clause and could not be discharged for failing to satisfy its requirements.

5. Prohibited Boycotts and Boycott Agreements

A number of cases decided by courts during the year involved the question whether specific union conduct was secondary activity, proscribed by section 8(b)(4)(B) of the Act, or lawful primary activity. In one such case,[61] the District of Columbia Circuit sustained the Board's finding that a union violated section 8(b)(4)(i) and (ii)(B) by picketing at a common situs construction site, notwithstanding the fact that the union picketing complied with the criteria set forth in the Board's *Moore Dry Dock* decision,[62] since the purpose of the picketing was to force the general contractor to replace a nonunion subcontractor with one having a union contract, rather than, as asserted, to protest the nonunion subcontractor's failure to meet area standards. The court pointed out that the line between lawful primary and prohibited secondary activity is not always clear, and that the Board, in examining activity with both primary and secondary effects to determine whether the secondary effects were truly an objective of the activity, needs both general guidelines and flex-

[61] *IBEW, Loc. 480* v. *N.L.R.B.*, 413 F.2d 1085.

[62] *Sailors' Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547 (1950).

ible approach. Thus, the *Moore Dry Dock* standards are not a formula whereby picketing with a secondary object becomes lawful, but a rule of evidence creating a rebuttable presumption that picketing does not have a secondary object. While this presumption cannot be rebutted merely by showing that the picketing has had a secondary effect, the court found that there was considerable external evidence of a secondary object in this case. It noted that the union did not seriously attempt to determine whether the subcontractor was meeting area standards; it did not tell the subcontractor how it was failing to meet area standards, nor did it respond to an offer by the general contractor to pay the difference between the subcontractor's standards and the area standards. Moreover, the picketing was suspended for 1 day when the union thought that the subcontractor would be replaced by another subcontractor which had a contract with the union, only to resume when this plan was not carried out. Under these circumstances, the court agreed that the Board would properly find a secondary object despite the union's formal compliance with the *Moore Dry Dock* guidelines.

In another case,[63] the Third Circuit rejected the Board's finding that a union violated section 8(b)(4)(B) of the Act by coercive action against a general contractor and several subcontractors on a construction project where the union had a dispute with another subcontractor. The court pointed out that the union did not want the general contractor to stop using the services of, or to terminate its contract with, the subcontractor in question; it merely wanted the general contractor to induce the subcontractor to comply with the union's demands. In the court's view, the language of section 8(b)(4)(B) was limited to attempts to coerce the primary employer by forcing others to stop dealing with him. It held that the section did not apply to disruption of a business relationship aimed at causing a neutral employer to put pressure on the primary employer to modify in part the manner in which the subcontract is performed.[64]

In the *American Boiler Manufacturing* case,[65] the Eighth Circuit declined to accord determinative weight to the Board's "right of control" test, whereby in applicable situations the Board would find a union's strike to enforce a valid work-preservation clause violative of section 8(b)(4)(B) if the employer had no power to comply with the union's demand except by ceasing to do busi-

[63] *N.L.R.B.* v. *Loc 825, Operating Engineers* [*Burns & Roe*], 410 F.2d 5. The court's decision with respect to the Board's finding of a violation of sec. 8(b)(4)(D) is discussed *infra*, p. 152.

[64] The Board's petition to the Supreme Court for a writ of certiorari was granted 397 U.S. 905.

[65] *American Boiler Manufacturers Assn.* v. *N.L.R.B.*, 404 F.2d 556.

ness with another person, since, under such circumstances, it would be clear that the union's object was to induce this cessation of business. In the court's opinion, the Supreme Court's decision in the *National Woodwork* case [66] established that the test in each case is whether, under all the surrounding circumstances, the union's conduct has the object of preserving work for unit employees or is tactically calculated to satisfy the union's objectives elsewhere. It therefore held that, in determining whether the activity has an illegal objective, the presence or absence of a "right of control" is one factor to be considered, but is not, in and of itself, of decisive significance. Applying this standard to the facts of the case before it, the court, although disagreeing with the Board's finding that the employer had the "right of control," sustained its finding that the union's coercive conduct in this case was not violative of section 8(b)(4)(B) of the Act. It concluded that the union's conduct was addressed to the enforcement of its collective-bargaining agreement and related solely to the preservation of the traditional work of employees in the bargaining unit, and the Board was correct in specifically finding that the union did not have objectives elsewhere.

Two cases decided by the courts involved application of the Supreme Court's decision in the *Tree Fruits* case,[67] holding that secondary consumer picketing does not violate section 8(b)(4)(B) of the Act if the customers of a neutral employer are asked only to refrain from purchasing the primary employer's products, rather than to cease entirely their patronage of the secondary employer. This standard was applied to situations where the primary employer's product has become so integrated with the secondary employer's business that a product boycott would necessarily encompass the entire business of the secondary employer. In each case, the court sustained the Board's finding that the union's picketing was designed to bring about a total consumer boycott of the secondary employer and was therefore unlawful.

In one of the cases,[68] a union engaged in a labor dispute with the publisher of a newspaper picketed restaurants which advertised in the newspaper, urging customers not to "purchase their products advertised in the struck [newspaper]." The District of Columbia Circuit, stressing the distinction drawn in *Tree Fruits* between following a struck product, which was all that the union

[66] *Natl. Woodwork Manufacturers Assn.* v. *N.L.R.B.*, 386 U.S. 612 (1967), Thirty-second Annual Report (1967), p. 139.

[67] *N.L.R.B* v. *Fruit & Vegetable Packers, Loc 760*, 377 U.S. 58 (1964), Twenty-ninth Annual Report (1964), pp. 106–107

[68] *Honolulu Typographical Union No. 37, ITU* v *N.L.R.B.*, 401 F.2d 952 (C.A.D.C.).

did in that case, and disrupting a neutral employer's entire business, agreed with the Board that the picketing here clearly had the latter objective. The court recognized that such a holding would give broader immunity to those secondary sellers who sold struck primary products which were so merged into the seller's total business as to be inseparable therefrom, but concluded the distinction was justified since based on the tradition and economic realities of union economic pressure. It noted that Congress, in enacting the 1959 amendments to section 8(b)(4)(B), had concluded that the union's desire to maximize the pressure on the primary employer by cutting off its markets had to be subordinated to the neutral employer's desire to avoid a boycott of his entire business. Therefore, under the circumstances of the instant case, the *Tree Fruits* doctrine was held to be inapplicable.

The other case [69] also involved the picketing of restaurants by a union which had a labor dispute with an employer engaged in the baking, sale, and distribution of bread and other bakery products. The restaurants used bread supplies by the struck employer to make sandwiches and toast, and also in cooking, but did not sell it separately on a retail basis. The Sixth Circuit affirmed the Board's holding that, under these circumstances, the union's picketing was unlawful. It agreed that the bread was so integrated into the meals served by the restaurants that customers could not readily recognize a particular brand of bread. Thus, the customers would have to stop ordering sandwiches, baked goods, or any meal served or made with bread or bakery products. In effect, therefore, the union's appeal to customers not to purchase the primary employer's bread amounted to a request that the customers stop all trade with the restaurants.

6. Jurisdictional Disputes

Several court decisions were handed down during the report year in which the courts reviewed Board findings that unions had violated section 8(b)(4)(D) by picketing and threats with an object of requiring an employer to assign particular work to employees within its jurisdiction rather than to another group of employees. In one such case decided during the report year,[70] the Third Circuit held that the Board had properly found that a union, by inducing several work stoppages with an object of forcing a subcontractor on a construction project to assign cer-

[69] *American Bread Co.* v. *N.L.R.B.*, 411 F.2d 147 (C.A. 6).

[70] *N.L.R.B.* v. *Loc. 825, Operating Engineers* [*Burns and Roe*], 410 F.2d 5. For a discussion of the sec. 8(b)(4)(B) aspects of this case see *supra*, p. 150.

tain work to its members rather than to ironworkers represented by another union, violated section 8(b)(4)(D) of the Act, even though the Board had not previously specifically awarded the disputed work to the ironworkers in a proceeding under section 10(k) of the Act.[71] The court recognized that, in most cases, a Board award of disputed work under section 10(k) and a refusal to abide by that award are prerequisites to an unfair labor practice finding based on a jurisdictional dispute.[72] In this case, however, no such award was necessary, since all parties had previously agreed to be bound by the decision of the National Joint Board for the Settlement of Jurisdictional Disputes. Since the Act specifically provides for the discontinuance of a 10(k) proceeding where the parties have agreed upon methods of the voluntary adjustment of the dispute, the court concluded that Congress did not intend to require a 10(k) proceeding when a party, having agreed to utilize a method of voluntary adjustment, refuses to comply with the results of that method. In the court's view, a 10(k) proceeding in this case would be a pointless formality, since the union, having agreed to the settlement of jurisdictional disputes by the Joint Board, was in no position to challenge the Joint Board's adverse decision before another tribunal. Accordingly, the court sustained the Board's finding of a violation of section 8(b)(4)(D). However, the Board's broad order, prohibiting any coercive action designed to resolve a jurisdictional dispute on the project in question in the union's favor, was modified to permit coercive action to enforce a favorable Joint Board decision.

In another jurisdictional dispute case,[73] the Fifth Circuit sustained the Board's finding of a violation of section 8(b)(4)(D) after a union's failure to comply with the Board's award in a 10(k) proceeding. The court held that the Board properly treated its 10(k) decision as a controlling precedent in the unfair labor practice proceeding when the union failed to introduce new or previously undiscovered evidence to rebut the Board's determination in awarding the disputed work. The court considered the unfair labor practice proceeding as merely another stage of the

[71] Sec. 10(k) of the Act provides: "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

[72] *N.L.R.B.* v. *Radio & Television Broadcast Engineers, Loc. 1212* [*CBS*], 364 U.S. 573 (1961).

[73] *N.L.R.B.* v. *I.L.A., Loc. 1576* [*Texas Contracting Co.*], 409 F.2d 709.

same controversy which the Board had sought to resolve in the 10(k) proceeding; the issue and the evidence were identical in each proceeding, and the relevant law had not changed. The situation was viewed as analagous to a case involving a violation of section 8(a)(5) based on issues in a prior representation proceeding, where the Board would not be required to permit relitigation of the representation case issues in the unfair labor practice proceeding absent newly discovered evidence which was not merely cumulative.

In the *Local 25, IBEW* case,[74] the Second Circuit sustained the Board's finding of an 8(b)(4)(D) violation based on its decision in a 10(k) proceeding awarding disputed work to employees of a telephone company rather than to employees represented by the electrical workers union. The court rejected the contention of the electrical workers union that the Board had accorded unjustifiable weight to the factor of economy and efficiency in performance of the job and failed to give proper consideration to the parties' past practice. The past practice of having the electrical workers perform the disputed work had been followed when the telephone workers were either unorganized or members of an independent union; the building trades were unwilling to work on projects where nonunion employees were at work. The telephone workers, however, were now represented by an AFL-CIO union. Moreover, the past practice was inconsistent with the practice outside the metropolitan area; even in the metropolitan area, the electrical workers did the work in question only on new construction or major alterations, and then only where every employee working on the construction was a member of a building trades union. Finally, the work done by electrical workers was a comparatively brief interlude in a job, the rest of which was done by the telephone workers.

The union contended that the Board, in making a 10(k) determination, should apply the same standards used by the National Joint Board for the Settlement of Jurisdictional Disputes, which would give little weight to considerations of efficiency and economy and hold past practice determinative. However, the court pointed out that the Supreme Court, in the *CBS* case,[75] while mentioning joint boards as well as others, including employers, whose standards the Board might use in determining disputes under section 10(k), left it to the Board to decide on the basis of "experience and common sense" what standards to use. More-

[74] *N.L.R.B.* v. *Loc. 25, IBEW* [*N.Y. Telephone Co.*], 396 F.2d 591.
[75] *N.L.R.B.* v. *Radio & Television Broadcast Engineers, Loc. 1212* [*CBS*], 364 U.S. 573 (1961).

over, the court viewed as "startling" the proposition that the national labor policy, which the Board was created to further, required that considerations of efficiency and economy be completely disregarded in assigning disputed work. In the instant case, the factors of efficiency and economy clearly favored awarding the work to the telephone workers. The work did not require the skill possessed by the electrical workers; the telephone workers could be trained to do it in a few hours. The pay rate of the telephone workers was considerably lower than that of the electrical workers. Under these circumstances, the Board's order awarding the work to the telephone workers on the basis of efficiency and economy was found not to be arbitrary or capricious and the Board's order was enforced.

D. Remedial Order Provisions

1. Successor Employer's Obligation To Remedy Predecessor's Unfair Labor Practices

In the *U.S. Pipe & Foundry* case,[76] the Fifth Circuit upheld the Board's action in ordering an employer, which had purchased the assets of another company with notice that unfair labor practice proceedings were pending against the other company, and continued to operate the same business in the same manner and with substantially the same work force, to remedy its predecessor's unfair labor practices by reinstating employees discriminatorily discharged by the predecessor. In the court's view, this order properly balanced the equities in favor of effectuating the policy of the Act by protecting the employees. While the successor was a bona fide purchaser, it had purchased the business with notice of the pending proceedings, and it alone could reinstate the employees to their old jobs which still existed. The successor was not required to create jobs or to provide backpay to the employees. The court pointed out that the Board's action was supported by the Supreme Court's decision in *John Wiley & Sons* v. *Livingston*,[77] holding that an arbitration agreement was binding on a purchaser where a similarity and continuity of operation across the transfer of ownership were shown. While the Board's decision in the instant case, made in reliance on *Wiley*, represented a change in policy, the possibility of such a change was a risk entailed in the purchase of a business with notice of pending proceedings.

[76] *U.S. Pipe & Foundry Co.* v. *N.L.R.B.*, 398 F.2d 544.
[77] 376 U.S. 543 (1964).

2. Reading of Notices to Employees

In several cases decided during the year, courts considered the validity of Board orders requiring that notices to employees required as part of the remedy for unfair labor practices be read to the employees as well as posted. In the *J. P. Stevens* case,[78] the Fourth Circuit upheld a Board order requiring the employer to convene its employees in the plants where unfair labor practices had occurred and read, or allow a Board agent to read, the notice to the employees during working time.[79] The court regarded the unfair labor practices in the case before it as a continuation of the massive and deliberate unfair labor practices previously committed by the company as established by Board and court decisions. In view of the extended period of time during which the company had persistently violated the Act, the varied forms which the violations had taken, and the company's discrimination against more than 100 employees in about half its plants in North and South Carolina, the Board's order, although unusually broad, could not be regarded as an abuse of discretion.[80]

The Fifth Circuit, in a case [81] where the employer had successfully challenged the Board's bargaining order on the ground that the employees were illiterate and hence unable to understand the meaning of the authorization cards which they had signed, upheld the Board's requirement that the portions of the Board order which were enforced be read to the employees, pointing out that "obviously, if the employees are illiterate and thus not able to read the posted notice it is not unreasonable to require the company to have the notice read."

On similar grounds, the same court enforced a reading requirement in another case [82] where approximately one-fourth of the employees who testified at the hearing admitted that they could not read. Distinguishing its prior decision in *Laney & Duke*,[83] where it had rejected a reading requirement as "unnecessarily embarrassing and humiliating to management rather than effec-

[78] *J. P. Stevens & Co.* v. *N.L.R.B.*, 406 F.2d 1017.

[79] The reading requirement was based on the Second Circuit's decisions in the two previous *J P. Stevens* cases, 380 F 2d 292 and 388 F.2d 896, discussed in Thirty-third Annual Report (1968), p 173.

[80] The court also approved the Board's orders that the notice be posted in all of the company's plants and mailed to all employees, and that the union be granted reasonable access to the company's bulletin boards for a period of 1 year. A further requirement that the employer furnish the union with a list of the names and addresses of all its employees was enforced only with respect to the plants where unfair labor practices were found in this case.

[81] *N.L.R.B.* v. *Texas Electric Cooperatives*, 398 F.2d 722.

[82] *N.L.R B.* v. *Bush Hog*, 405 F.2d 755.

[83] *N.L.R.B.* v *Laney & Duke Storage Warehouse Co.*, 369 F.2d 859, Thirty-second Annual Report (1967), p. 174.

tuating the policies of the Act," the court noted that in *Laney & Duke* only a few employees were illiterate, whereas here the Board could reasonably infer that a significant number of employees were unable to read. Moreover, in *Laney & Duke,* the Board's order had required that the notice "be read to each of the respondent's employees, singly or collectively," whereas here the order left to the employer the selection of the officer or agent to read the notice and the calling of the "meeting or meetings of all the employees" at which it was to be read. In view of the Board's findings of numerous infringements of the employees' section 7 rights and of a low literacy level among the company employees, the court concluded that the requirement that the notice be read could not be regarded as an abuse of discretion.

3. Backpay Issues

Two cases decided by courts involved significant issues concerning the determination of the amount of backpay due to discriminatees. In one,[84] the Third Circuit sustained the Board's use of seniority to determine whether certain discriminatees would, absent the discrimination against them, have been discharged for economic reasons when the employer reduced his work force. The employer's evidence as to the criteria which it would have used to select employees for discharge was rejected by the Board as contrived for the purpose of denying the discriminates backpay. The court pointed out that the burden was on the employer to prove, in mitigation of its backpay liability, that the discriminatorily discharged employees would have been laid off even absent discrimination. Here, the employer, although given a full and fair opportunity to do so, failed to supply credible evidence to indicate what the situation would have been absent discrimination. However, it admittedly used length of service as one factor in determining which employees to retain. On this record, the result which would have been reached in the absence of discrimination could be determined only approximately, and the Board's use of the seniority standard, which represented normal industrial practice generally, could not automatically be deemed unreasonable merely because the employer had no formal seniority system.

In *Rutter-Rex,*[85] the Fifth Circuit found that the Board's delay in instituting a backpay specification until 4 years after the

[84] *Jack Buncher d/b/a The Buncher Co.* v. *N.L R.B.,* 405 F.2d 787, cert. denied 396 U.S. 828.
[85] *J. H. Rutter-Rex Mfg. Co.* v. *N.L.R.B.,* 399 F 2d 356, company petition for a writ of certiorari was denied 393 U.S. 1117.

court's decree enforcing the Board's order in the unfair labor practice case constituted inordinate delay which had "lulled" the company into the belief that the Board was satisfied and and that no further action was to be expected, and had made it difficult for the company, which had the burden of proving any facts which would mitigate backpay, to produce affirmative evidence in support of its defenses. The court recognized that the doctrine of laches was not applicable, since a backpay proceeding is designed to enforce public rights, by deterring unfair labor practices, rather than to enforce the private rights of the employees. However, the court was of the view that it should strike a balance between the interests of the Board, the union, and the employer in light of the provision in the Administrative Procedure Act requiring agencies to proceed with reasonable dispatch to conclude any matters presented to them. Accordingly, the court held that backpay awards should be limited to a period ending 2 years after the enforcement decree in the unfair labor practice case.[86]

4. Other Issues

In the *Kroger* case,[87] the Sixth Circuit, while sustaining the Board's finding that the company violated section 8(a)(1), (3), and (5) of the Act by excluding from participation in its pension and profit-sharing plans all employees covered under plans established as a result of collective bargaining through labor organizations, and refusing to discuss such exclusion with the unions, declined to enforce the Board's order requiring that employees forced to withdraw from the company's plan because of the illegal provision be restored to the status in the plan which they would have enjoyed absent their withdrawal. The court noted that the unlawful provision in the plan, while it might have had the effect of discouraging union membership, had not been deliberately designed for that purpose. The proposed remedy presented very complex problems with multiple ramifications; since the plan was voluntary as to the employees' participation, the amount of money invested by each employee, and the time of withdrawal, any attempt to determine the status in which the employees would have been had they not been forced to withdraw from the plan would be pure speculation. Accordingly, in

[86] The Board's petition to the Supreme Court for a writ of certiorari was granted 393 U.S. 1116.

[87] *Kroger Co.* v. *N.L.R.B.*, 401 F.2d 682.

the court's view, the proposed remedy should be rejected as a punitive order which provided the employees with a windfall.[88]

The Ninth Circuit also denied enforcement of Board orders in two cases, holding in one [89] that the holding of a valid representation election after the Board had petitioned for enforcement of its order based on findings of violations of section 8(a)(1) of the Act rendered the enforcement proceeding moot,[90] and in the other [91] that the company's maintenance and enforcement of an unlawful no-solicitation and no-distribution rule and assistance to employees in revoking their union authorization cards, which the Board found to be violations of the Act, were so "trivial" that enforcement of the Board's order would not serve the purposes of the Act.

[88] The Board's, union's, and company's petitions to the Supreme Court for a writ of certiorari were denied 395 U.S. 904.

[89] *N.L.R.B.* v. *Raytheon Co.*, 408 F.2d 681.

[90] The Board's petition to the Supreme Court for a writ of certiorari was granted 396 U.S. 900.

[91] *N L.R.B.* v. *Deutsch Co*, 408 F.2d 684.

IX
Injunction Litigation

Section 10(j) and (l) authorizes application to the U.S. District Courts, by petition on behalf of the Board, for injunctive relief pending hearing and adjudication of unfair labor practice charges by the Board.

A. Injunctive Litigation Under Section 10(j)

Section 10(j) empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organizaton, to petition a U.S. District Court for appropriate temporary relief or restraining order in aid of the unfair labor practice proceeding pending before the Board. In fiscal 1969, the Board filed 15 petitions for temporary relief under the discretionary provisions of section 10(j)—11 against employers, 2 against unions, and 2 against both employer and union. Injunctions were granted by the courts in six cases and denied in three. Of the remaining cases, three were settled prior to court action, four petitions were withdrawn, two were dismissed without prejudice, and one was pending at the close of the report period.[1]

Injunctions were obtained against employers in three cases, against unions in two, and in one case an injunction was entered against both an employer and a union. The cases against the employers variously involved alleged refusals to bargain with the labor organizations certified by the Board as representatives of the employers' employees, refusal to reinstate unfair labor practice strikers, and unlawful assistance and support to a union. The injunctions obtained against unions were based upon their alleged refusal to bargain by conditioning submission of an agreed contract for membership ratification upon consummation of agreements for other units of employees. In the instance where the injunction was obtained against both an employer and a

[1] See table 20 in appendix. Also four petitions filed during fiscal 1968 were pending at the beginning of fiscal 1969.

union, it was based upon allegations that the employer's recognition of the union, on grounds a new unit of employees was an accretion to an existing unit, was assistance in violation of the Act, and the union's acceptance of recognition interference with the employee's right to select their own representative.

1. Standards for Injunctive Relief

The standards under which a court will accord injunctive relief under section 10(j) in advance of the Board's own resolution of the issues continued to be [2] a matter of concern to the courts in cases decided this year. In the *Davis & Hemphill* case [3] the Fourth Circuit Court of Appeals affirmed the District Court's grant of a temporary injunction under section 10(j)[4] based upon that court's finding that there was reasonable cause to believe that the employer had unlawfully refused to bargain with the certified union. The employer had withdrawn recognition from the union at a time when it did not have a reasonable basis for a doubt of the union's majority status and had begun hiring replacements for his employees striking in protest of his action. The court of appeals, finding a close relationship between the standards for grant of an injunction under section 10(j) and that applicable to injunctions under section 10(e), held that, as under 10(e), relief under 10(j) required not only a finding of reasonable cause to believe that a violation of the Act had occurred, but also a finding that injunctive relief was just and proper because "under the circumstances the remedial purposes of the Act would be frustrated unless temporary relief was granted." In reference to the "reasonable cause" finding the court noted that "the standard on review is the usual one applicable to district court findings of fact: the finding will stand unless clearly erroneous. We inquire only whether there has been a sufficient showing by the Board to raise a substantial question of a violation of the Act." On the matter of "just and proper" relief, the court concluded that in view of the overriding importance of protecting the bargaining process and relationship, interim relief was required since the employer's coercive actions were diminishing union support, and if continued would cause its dissipation.

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[2] See Thirty-second Annual Report (1967), p. 176, for other decisions involving this issue. Also Thirty-third Annual Report (1968), p. 165.

[3] *Sachs* v. *Davis & Hemphill*, 71 LRRM 2126 (C.A. 4).

[4] *Sachs* v. *Davis & Hemphill*, 295 F.Supp. 142 (D.C.Md.).

2. Other Section 10(j) Litigation

Interim relief against violations of the bargaining obligation was most frequently sought in the application for injunctions. In one such case [5] the court found reasonable cause to believe that the employer had violated section 8(a)(5) of the Act by delaying holding negotiating sessions with the certified representative of its employees, providing a bargaining representative without knowledge of the employer's operations, refusing to furnish relevant information, and unilaterally granting wage increases to unit employees. The court further found interim relief to be appropriate, in that the employees, having struck in protest over the employer's unfair labor practices, had been denied reinstatement by the employer who was continuing to discriminate against them because of their protected activities. It therefore enjoined the employer from continuing to refuse to bargain and directed him to offer immediate and full reinstatement to the striking employees.

In two cases the court denied an injunction when it concluded that there was insufficient basis for a finding of reasonable cause to believe that a violation of the Act had occurred, and in one case because it concluded that interim relief was not required under the circumstances. In the *Royal* case [6] the court denied an application for injunctive relief under section 10(j) to require the employer to reinstate pending Board decision two employees allegedly discharged for having given testimony in a Board proceeding. The court noted that while the injunction application was pending before it a Board trial examiner had issued a decision finding the discharges were not unfair labor practices, wherefore the court concluded there was not a sufficient showing of probable cause that a violation of the Act had taken place. To similar effect in the *Economy Furniture* case,[7] the court concluded that there was not reasonable cause to believe the employer had violated the Act by refusing to recognize and bargain with the union certified by the Board following an election, where there was strong evidence in the record to support the employer's objections to the election based upon preelection conduct by the union and its representatives alleged to have destroyed the essential "Laboratory conditions" for the election. On the matter of appropriateness of interim relief the court noted that it was not established to be a proper case since the employer was in good

[5] *Siegel* v. *Architectural Fiberglass Co.*, 70 LRRM 2648, 59 LC ¶ 13,289 (D.C.Calif.).
[6] *Johnston* v. *Royal Mfg. Co.*, 70 LRRM 3354, 60 LC ¶ 10,063 (D.C.N.C.).
[7] *Potter* v. *Economy Furniture*, 71 LRRM 2120, 60 LC ¶ 10,067 (D.C.Tex.).

faith challenging the union's certification in the only possible manner. In another case [8] where the Board sought injunctive relief to require the reinstatement of employees allegedly discharged in violation of the Act because of their participation in organizational activities, it was denied by the court which found interim relief unnecessary to maintain the *status quo* pending Board resolution of the charges. It noted that 39 of the 41 employees involved had obtained gainful employment elsewhere, the employer had not sought to replace them, and to direct their reinstatement would only subject them to dismissal again should the Board find the discharges to be economically motivated as the employer contended and as was indicated by the lack of necessity to hire replacements.

The petition for injunctive relief in the *American Beef Packers* [9] case was granted upon the court's agreement that there was reasonable cause to believe that the employer had violated the Act in rendering unlawful assistance to a union by coercing its employees to sign authorization cards and dues checkoffs for the union and by entering into a collective-bargaining contract with it without prior negotiation at a time when it did not represent an uncoerced majority of the employees. To preserve the *status quo* the court, in addition to enjoining the unlawful acts of assistance, directed that all moneys collected pursuant to the checkoff be placed in escrow pending Board decision on the issues.

The actions of an employer and a union were enjoined by the court in the *Centac* case,[10] where the court found reasonable cause to believe they had violated the Act by extending their union-security contract applicable to employees in one unit to the employees in another unit which they contended was an accretion, notwithstanding that a majority of those employees had designated a rival union as their collective-bargaining agent and that union had demanded recognition from the employer. In addition, the employer had permitted the incumbent union to solicit employees to sign authorization cards during working hours, and discharged several employees for failure to join the assisted union. Finding that the actions were continuing ones which would be repeated if not enjoined, the court directed the employer to withdraw and withhold recognition from the union and withhold enforcement of the contract pending Board disposition.

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[8] *Johnston* v. *J A. Hackney & Sons*, 300 F.Supp. 375 (D.C.N.C.).

[9] *Waers* v. *American Beef Packers*, Civil No. C–1116 (D.C.Colo.) (unreported).

[10] *Kaynard* v. *Centac Corp., & Loc. 806, Teamsters*, 70 LRRM 3409, 60 LC ¶ 10,062 (D.C.N.Y.).

In two cases [11] injunctions under section 10(j) and 10(l) were sought against the International Longshoremen's Association and certain of its constituent locals to enjoin continuation of actions, alleged to be in violation of section 8(b)(3) and 8(b)(4)(i) and (ii)(B), serving to perpetuate a work stoppage immobilizing the major eastern and southern seaports. In entering temporary restraining orders under section 10(j) in each instance [12] the courts found reasonable cause to believe the unions in each instance were violating section 8(b)(3) by refusing to bargain in good faith in that they had (1) refused to submit an agreed contract to the unit membership, (2) recommended to the membership that the agreement be rejected because agreement had not been reached in other ports not within the bargaining unit, and (3) conditioned submission of the agreement for membership ratification upon the consummation of agreements at other ports. The courts ordered the unions to bargain in good faith and submit the agreements to their respective employee units for a ratification vote. The restraining orders were vacated and the petitions withdrawn when the unions complied with all its terms and provisions.

B. Injunction Litigation Under Section 10(l)

Section 10(l) imposes mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of section 8(b)(4)(A), (B), and (C),[13] or section 8(b)(7),[14] and against an employer or union charged with a violation of section (8)(e),[15] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under section 8(b)(7), however, a district court injunction may not be sought if a charge under section 8(a)(2)

[11] *Paschal* v. *General Longshore Workers (New Orleans Steamship Assn.)*; Civil No. 69–317 (D.C.La.) (unreported). *Danielson* v. *ILA (New York Shipping Assn.)*, 69 Civil 539 (D.C.N.Y.) (unreported).

[12] Ruling on the section 8(b)(4)(i)(ii)(B) allegations was reserved by the courts.

[13] Sec. 8(b)(4)(A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives. These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the incumbent of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employer for these objects, and to prohibit conduct of this nature where an object was to compel an employer to enter into a hot cargo agreement declared unlawful in another section of the Act, sec. 8(e).

[14] Sec. 8(b)(7), incorporated in the Act by the 1959 amendments, makes organizational or recognitional picketing under certain circumstances an unfair labor practice.

[15] Sec. 8(e), also incorporated in the Act by the 1959 amendments, makes hot cargo agreements unlawful, with certain exceptions for the construction and garment industries.

of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization, and after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provision shall be applicable, "where such relief is appropriate," to violations of section 8(b)(4)(D) of the Act, which prohibits strikes and other coercive conduct in support of jurisdictional disputes. In addition, under section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days.

In fiscal 1969, the Board filed 190 petitions for injunctions under section 10(l). Of the total caseload, comprised of this number together with the 20 cases pending at the beginning of the period, 57 cases were settled, 7 were dismissed, 13 were continued in an inactive status, 25 were withdrawn, and 23 were pending court action at the close of the report year. During this period 86 petitions went to final order, the courts granting injunctions in 78 cases and denying them in 8 cases. Injunctions were issued in 43 cases involving secondary boycott action proscribed by section 8(b)(4)(B) as well as violations of section 8(b)(4)(A) which proscribes certain conduct to obtain hot cargo agreements barred by section 8(e). One case involved violations of section 8(b)(4)(C) to require recognition where the Board had certified another union as representative. Injunctions were granted in 21 cases involving jurisdictional disputes in violation of section 8(b)(4)(D), of which also inolved proscribed activities under section 8(b)(4)(B). In two cases section 8(e) violations were involved. Injunctions were also obtained in 11 cases to proscribe alleged recognitional or organizational picketing in violation of section 8(b)(7).

Of the eight injunctions denied under section 10(l), six involved alleged secondary boycott situations under section 8(b)(4)(B), one involved alleged jurisdictional disputes under section 8(b)(4)(D), and one case arose out of charges involving alleged violations of section 8(e).

Almost without exception the cases going to final order were disposed of by the courts upon findings that the established facts under applicable legal principles either did or did not suffice to support a reasonable cause to believe" that the statute had

been violated. Such being the basis for their disposition, the precedence value of the case is limited primarily to a factual rather than a legal nature. The decisions are not *res judicata* and do not foreclose the subsequent proceedings on the merits before the Board.

Three of the cases decided during the year, however, are noteworthy. In the *Los Angeles Herald-Examiner* case,[16] the Ninth Circuit Court of Appeals affirmed the action of the District Court [17] in granting a temporary injunction under 10(l) against a group of unions representing the employees of a newspaper publisher, based upon a finding of reasonable cause to believe that they violated the secondary boycott provisions of the Act by picketing neutral employers. The employers whose premises had been picketed included the Examiner, another newspaper owned by the primary's parent corporation, an independent newspaper with whom the Examiner jointly published a Sunday edition, and an independently owned company which did the printing for the Examiner and the independent. The court affirmed findings that the primary employer Herald-Examiner was an independent division of the parent corporation operated as a separate autonomous enterprise, with independent operations and labor relations policies and practices which were not controlled by the parent corporation, so that in these respects it was independent of the Examiner, and in no wise related to the independent newspaper and the printing company. The fact that the Herald-Examiner and the Examiner were both under common ownership by their parent was not, in the court's view, such a relationship as to permit picketing of the Examiner and its business associates in furtherance of a dispute with the Herald-Examiner, since the two newspapers in fact operated independently without common control. The court also held that the district court did not abuse its discretion by refusing to permit extensive discovery which would have led to a full inquiry on the merits of the controversy, or in refusing to permit oral testimony on disputed facts, since the unions did present many affidavits to support their position, the court heard oral argument on the controversy, and the unions were given sufficient opportunity to present their case without oral testimony.

In another case [18] involving union secondary boycott activity,

[16] *San Francisco-Oakland Newspaper Guild (Los Angeles Herald-Examiner)* v. *Kennedy*, 412 F.2d 541 (C.A. 9).

[17] *Kennedy* v. *San Francisco-Oakland Newspaper Guild (Los Angeles Herald-Examiner)*, 69 LRRM 2301 (D.C.Calif.).

[18] *Penello* v *American Fed. of Television & Radio Artists*, 291 F.Supp. 409 (D.C.Md.).

the validity of which similarily turned upon a common ownership issue, a district court held that there was a reasonable cause to believe that a union violated the Act by picketing the premises of a newspaper owned by a corporation which also owned the radio and television broadcasting stations with which the union had a primary labor dispute. The court concluded that the broadcasting stations, not the corporation, were the primary employers, and while the stations and the newspaper were related through common ownership, they were independent in their operations and were not subject to such a degree of common control and adherence to common policies as to render the newspaper subject to picketing in furtherance of the dispute.

In the *Los Angeles Typographical* case,[19] where the unions picketed a number of retail stores with signs urging the public not to buy merchandise advertised by the retail stores in a newspaper with whom the unions had a primary labor dispute, the court denied injunctive relief on the ground that there was not reasonable cause to believe that an unfair labor practice had occured since the legal theory of the case was premised upon unsettled issues of law. The court did not view as controlling the precedent of *Honolulu Typographical Union 37*,[20] where the court of appeals held in substance that since the establishment picketed advertised its entire business in the struck newspaper rather than its separable products, the union's picketing constituted a request for a total boycott with a prohibited cease-doing-business object rather than the following of a struck product as permitted by the *Tree Fruits* doctrine.[21] The district court observed that the court of appeals in that case refrained from deciding the question of whether the picketing would have been illegal if it had been "limited to requesting a boycott of particular advertised products," and that the Board in that case had not discussed the question involved in the instant case. The court noted that while it appeared that the Board and the court recognized that a special problem arises where consumer picketing is limited to those products advertised in a struck newspaper by a neutral retailer, neither the Board nor the court found it necessary to decide the matter in the *Honolulu* case. Therefore,

[19] *Kennedy* v. *Los Angeles Typographical Union 174 (White Front Stores)*, 71 LRRM 2134 (D.C Calif.).

[20] *Honolulu Typographical Union 37, ITU (Hawaii Press Newspapers)* v. *N.L.R.B.*, 401 F.2d 952 (C.A.D.C., 1968).

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

as the controlling issues of law had not yet been resolved in their application to a situation as that presented, the court concluded that it would not be just and proper to issue an injunction.

X

Contempt Litigation-Fiscal 1969

During fiscal 1969, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 23 cases: 22 for civil contempt and 1 for both civil and criminal contempt. In two of these the petitions were granted and civil contempt adjudicated.[1] Three were discontinued, one upon an order accepting full compliance and awarding costs to the Board,[2] one upon full reimbursement of employees,[3] and the third upon the court's order compromising backpay and fixing a schedule of deferred payments.[4] In 11 cases, the courts referred the issues to Special Masters for trials and recommendations, 3 to United States district judges,[5] 6 to Trial Examiners furnished by the United States Civil Service Commission,[6] 1 to a former state court judge,[7] and the 11th to a law school dean.[8]

[1] *N.L.R.B.* v. *Truck Drivers & Helpers, Loc. 676, IBTCWH,* order of Mar. 25, 1969, No. 15,259 (C.A. 3), in civil contempt of 8(b)(4)(i)(ii)(B) decree of Mar. 30, 1965, *General Truckdrivers, Chauffeurs, Warehousemen & Helpers of America, Loc 5* v *N L R.B*, order of Oct 28, 1968, No. 24,363 (C.A. 5, in civil contempt of 389 F.2d 757.

[2] *N.L R.B.* v. *Teamsters Loc. 5 a/w IBTCWH, Ind.*, order of Oct. 10, 1968, No. 25,665 (C A. 5), in civil contempt of consent decree of Jan. 31, 1968.

[3] *N.L.R.B.* v. *Reliance Fuel Oil Corp.*, order of Apr. 8, 1969, No. 26,806 (C.A. 2). (See p. 173, fn. 16, 1968 report for earlier proceeding.)

[4] *N L R.B* v. *Rice Lake Creamery Co.*, in civil contempt of 365 F.2d 888 (C.A D.C.). The court approved a $165,000 settlement by order of Mar. 24, 1969, payment of which was guaranteed by the corporate stockholders.

[5] *N.L.R.B.* v. *Truck Drivers, Chauffeurs & Helpers Loc. 282, IBTCWH,* in civil contempt of 8(b)(4)(i)(ii)(B) decrees in 344 F.2d 649 (C A. 2) and the consent decree of Sept. 19, 1966 (C.A. 2), referred to United States District Judge Richard H. Levet who issued his report July 7, 1969, recommending contempt adjudication, *N.L.R.B.* v. *J. P. Stevens & Co.* in civil contempt of the 8(a)(1) and (3) decrees in 380 F.2d 292, cert. denied 389 U.S. 1005, and 388 F.2d 896, cert denied ---------- U.S. ----------, referred to United States District Judge Edwin M. Stanley of the Middle District of North Carolina, *N.L.R.B.* v. *Diversified Industries, a Div. of Independent Stave Co.*, in civil contempt of bargaining decree of Aug. 2, 1968, in No. 18,385 (C.A. 8), referred to United States District Judge William R. Collinson.

[6] *N.L.R.B.* v. *Chimes Brownie Co.* in civil contempt of the bargaining decree of May 10, 1967, in No. 6908 (C.A 1) ; *N.L.R.B.* v. *Alamo Express, Inc. & Alamo Cartage Co.* in violation of the 8(a)(3) purgation provisions of the contempt adjudication in 395 F.2d 481 (C.A. 5) ; *N.L.R.B.* v *Crown Laundry & Dry Cleaners* in civil contempt of the 8(a)(1) decree of Nov. 10, 1967, in No. 24,535 (C.A. 5) , *N.L.R.B.* v. *Johnson Mfg. Co. of Lubbock* in civil contempt of the 8(a)(1) and (5) decree of Apr. 15, 1967, in No 24,511 (C.A. 5) ; *N.L.R.B.* v *Laney & Duke Storage Warehouse Co* in civil contempt of the bargaining decree in 369 F.2d 859 (C.A. 51), *N.L.R.B.* v. *National Federation of Labor* in civil and criminal contempt of the 8(b)(1)(A) and (2) decrees in 387 F.2d 352 (C.A. 5).

[7] *N.L.R.B.* v. *Southwestern Colo. Contractors Assn.* in civil contempt of the bargaining decree in 379 F.2d 360 (C.A. 10).

[8] *N.L.R.B.* v. *Dixie Color Printing Corp.* in civil contempt of the 8(a)(3) and (1) order in 371 F.2d 347 (C.A.D.C.).

Two cases await referral to a Special Master.[9] Of the remaining five cases four remain before the courts for disposition on the merits [10] while the other awaits the results of pending discovery proceedings.[11] Contempt was adjudicated in five civil proceedings which were commenced prior to fiscal 1969; of these two civil contempt adjudications resulted from adoption of the recommendations of United States district judges who had been designated as Special Masters,[12] one civil contempt adjudication followed the recommendation of a Federal examiner who had been appointed Special Master,[13] and two civil contempt adjudications resulted from proceedings before the courts themselves.[14] Four additional pending cases were disposed of during fiscal 1969; in one the Board's petition was withdrawn upon full payment of the backpay sums involved; [15] another was discontinued upon payment of $116,000 in full settlement of the Company's backpay obligation; [16] in the third an order was entered ordering withdrawal of recognition from the unlawfully assisted union and other relief; [17] and the fourth was terminated after the Company executive and gave effect to a collective-bargaining agreement.[18] In one case, the Board's petition was dismissed, the court adopting the Master's report which had found hard rather than surface bargaining, as alleged by the Board.[19]

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[9] *N L.R.B.* v. *Amalgamated Local Union 355* in civil contempt of the 8(b) (1) (A) and (2) (union "sweetheart") decrees of Jan. 6, 1964, and Jan. 11 and Mar. 28, 1966 (C.A. 2) ; *N.L.R.B.* v. *Intl. Auto Sales & Service* in civil contempt of the 8(a) (1) and (3) decree of Sept. 30, 1963, in No. 20,857 (C.A. 5).

[10] *N L.R.B.* v. *Intl. Telephone & Telegraph Corp.* in civil contempt of the bargaining decree in 382 F 2d 366 (C A. 3) ; *N.L.R.B.* v. *C. W. Brooks* in civil contempt of the backpay judgment of Mar 17, 1969, in No. 21,903 (C.A. 9) , *N.L.R.B.* v. *E. E. Hubbard* in civil contempt of the backpay judgment of Nov. 29, 1968, in No 22,520 (C.A 9) ; *N.L R.B.* v. *Marcellus S. Merrill d/b/a Merrill Axle & Wheel Service* in civil contempt of the bargaining decree in 388 F.2d 514.

[11] *N.L.R.B.* v. *Charles T. Reynolds* in civil contempt of the backpay decree in 399 F.2d 668 (C.A. 6).

[12] *N.L R.B.* v. *Loc. 553 United Assn. of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada,* 8(b) (1) (D). Civil Contempt adjudicated against the Union and its agent, Frank Harrelson, by order of Sept 18, 1968, in No. 13,237 (C.A 7) , *N.L.R B* v. *Moore's Seafood Products,* civil contempt of 369 F.2d 488, adjudicated by order of Feb. 4, 1969, in No. 15,510 (C.A. 7).

[13] *N.L.R.B.* v. *Town & Country Mfg. Co.,* civil contempt of 316 F.2d 846, adjudicated by order of Oct 21, 1968, in No. 19,679 (C.A. 5).

[14] *N.L.R.B.* v. *Volk's Express,* civil contempt of backpay order adjudged Mar. 20, 1968, in No. 30,459 (C.A. 2) ; *N.L.R.B.* v. *Arthur R. Blase* in civil contempt of backpay order adjudged by order of Nov. 4, 1968, in No. 19,180 (C.A. 9).

[15] *N.L.R.B.* v. *Loc. 1474-1 Pipe Coverers, ILA,* petition withdrawn by order of Oct. 29, 1968 (C.A. 2).

[16] *N.L.R.B.* v. *Mastro Industries,* No. 22,905 (C.A. 2). The settlement was approved by United States District Judge Richard H. Levet, as Special Master by report of Jan. 7, 1969.

[17] *N.L.R.B.* v. *I. Posner, Inc.,* order of Aug. 20, 1968, in Nos. 27,342, 29,047 (C.A. 2).

[18] *N.L.R.B.* v. *Boat Serafina II,* order of Apr. 29, 1968, by United States District Judge Andrew A. Caffrey, as Special Master in No. 6811 (C.A. 2).

[19] *W. B. Johnson Grain Co.* v. *N.L.R.B.,* 411 F.2d 1215 (C.A. 10).

XI

Special and Miscellaneous Litigation

Miscellaneous court litigation during fiscal 1969 included cases involving the Board's authority to decline to assert jurisdiction over a category of employers; the scope of the obligation of the Board to investigate petitions for a representation election; the rights of private parties to the issuance of subpenas during the investigative stage of a representation or unfair labor practice case; the power of a court to enforce a Board subpena at the request of a private party; the issuance on the petition of the Board of injunctions against State court proceedings; and the status of a collective-bargaining agreement and of a backpay order by the Board, in bankruptcy proceedings instituted against the employer involved.

A. Judicial Review of Board Proceedings

Petitions filed during the past year by parties to Board proceedings seeking to invoke the equity powers of a Federal district court to restrain or compel Board action at various stages of representation or unfair labor practice proceedings were opposed by the Board primarily on the ground that the court was without jurisdiction to grant the relief sought. The plaintiffs' efforts were usually directed to establishing that the Board action was within the doctrine of *Leedom* v. *Kyne*,[1] pursuant to which the court may intervene when the Board has violated an express mandate of the Act, or that of *Fay* v. *Douds*,[2] permitting intervention upon a showing that the Board action has deprived the plaintiff of a constitutional right.

1. Board Discretion in Exercise of Jurisdiction

In one case,[3] the district court held that it had jurisdiction to hear and determine complaint allegations that the Board, by

[1] 358 U.S. 184 (1958).

[2] 172 F.2d 720 (C.A. 2, 1949).

[3] *Council 19, American Fed. of State, County, & Municipal Employees* v. *N L.R.B.*, 296 F.Supp. 1100 (D.C.Ill.)

declining to assert jurisdiction in a representation case and an unfair labor practice case involving a nonproprietary or nonprofit nursing home, had violated the constitutional rights of a union seeking to represent the employees of the nursing home. The court reasoned that the rationale of *Fay* v. *Douds* extends to all constitutional deprivations, whether or not they involve a deprivation of property rights. It concluded that the union's contention, that the distinction made by the Board between the impact upon commerce of proprietary nursing homes, over which it asserted jurisdiction,[4] and that of nonprofit nursing homes, over which it declined to assert jurisdiction, was so arbitrary as to amount to a denial of due process, was not transparently frivolous. Since nonprofit nursing homes, unlike nonprofit hospitals, are not expressly excluded by section 2(2) of the Act, the court was of the view that the Board's refusal to assert jurisdiction over them as a category was contrary to a Supreme Court decision [5] holding that the Board may not renounce jurisdiction over an entire category of employers otherwise subject to the Act, if those employers exert a substantial impact on commerce. It therefore denied the Board's motion to dismiss the complaint.[6]

2. Investigation of Representation Petition

Three cases during the year involved challenges to the Board's compliance with the provision of section 9(c)(1) of the Act requiring it to conduct an investigation of a representation petition to determine if there is reasonable cause to believe that a question of representation affecting commerce exists. In all three cases, employers contended that the Board should have dismissed the petitions for want of a sufficient showing of interest on the part of the employees in an election. In each case, the court ruled in favor of the Board. In the *Modern Plastics* case,[7] the Sixth Circuit, reversing a district court and vacating and injunction issued by it prohibiting the Board from conducting a representation election, concluded that the Board's investigation satisfied the statutory requirement. The court pointed out that the investigation need only be sufficient to establish a reasonable cause to believe that a question of representation affecting commerce exists, and that the nature

[4] *University Nursing Home*, 168 NLRB No. 53 (1967).

[5] *Office Employees* v. *N.L.R.B.*, 353 U.S. 313 (1957).

[6] The Board subsequently set the case for hearing in order to develop a record to assist it in resolving the issues on remand.

[7] *Modern Plastics Corp.* v. *McCulloch*, 400 F.2d 14.

and quality of the investigation required will vary from case to case. The district court had found that the Regional Director had violated section 101.18 of the Board's Statements of Procedure [8] by refusing to check the union's authorization cards against a list of the company's employees to determine whether the union had made a sufficient showing of interest. However, the court of appeals emphasized that a showing of interest is not a jurisdictional prerequisite to the Board's direction of an election, and that the statement of procedure is simply a guideline for Board personnel, rather than a set of formal rules and regulations binding the Board to a particular form of prehearing investigation in every case. Whether there is reasonable cause to believe that a question of representation exists is essentially a factual issue to be resolved for each case. In this case, the court held, the facts before the regional director were not so plainly insubstantial that he could not reasonably conclude that further inquiry through an adversary hearing into the issues posed by the petition was warranted, and his action in ordering such a hearing was not clearly in defiance of the Act.

In the other two cases,[9] employers sought to enjoin the Board from conducting hearings on representation petitions on the ground that the unions lacked a valid showing of interest because their authorization cards had been solicited by supervisors. The court in each case found that any issues of fact relevant to the issue of whether a question of representation existed could be raised at the hearing; and that no purpose would be served by allowing the parties to obtain review of the Board's decision to hold a hearing, since the expenses incident to the hearing did not constitute irreparable injury. In dismissing the complaints, the courts pointed out that the requirement of investigation was designed to limit the Board's power to reject petitions rather than to give opponents of petitions a right to have them rejected.

B. Subpena Rights of Private Parties

1. Availability of Investigatory Subpenas

In the *GEICO* and *Royal Insurance* cases,[10] the employers also sought to compel the Board to issue subpenas so that it could

[8] 29 C.F.R. §101.18.

[9] *Government Employees Insurance Co.* v. *McLeod*, 69 LRRM 2186, 58 LC ¶12,872 (D.C.N.Y.); *Royal Insurance Co., Ltd* v. *Kaynard*, 69 LRRM 2430, 58 LC ¶12,968 (D.C.N.Y.).

[10] *Id.*

obtain additional evidence relevant to the issue of the validity of the union's showing of interest. The employers relied on section 11(1) of the Act, which provides that, upon application by any party, the Board shall forthwith issue supenas requiring the attendance and testimony of witnesses or the production of any evidence in the proceeding or investigation requested in the application. However, the courts held that the employer could not be considered a party for purposes of the investigation required by section 9(c)(1) of the Act; the employer could participate only as a source of relevant information. Only when an adversary hearing was held would the employer have a right to participate. Moreover, the courts pointed out, requiring the Board to issue subpenas directed to employees, as the employer sought in *GEICO,* might have the effect of depriving the employees of the secrecy of their choice and subject them to possible intimidation in violation of their rights guaranteed under section 7 of the Act.[11]

In another case,[12] an employer against whom unfair labor practice charges had been filed sought review of the Board's refusal to issue it subpenas during the precomplaint investigatory stage of the proceedings. The court held that the case did not fall within the doctrine of *Leedom* v. *Kyne,*[13] since the employer would have ample opportunity to obtain judicial review of the Board's refusal to grant subpenas if a complaint was issued. Moreover, the Board's action was consistent with section 11(1) of the Act, since that section entitles only a party to "proceedings" to subpena witnesses and evidence, and there are no "proceedings" until a formal complaint has issued. The court based this interpretation of section 11(1) on the legislative history of the Taft-Hartley Act, which indicated that Congress approved the Board's prior practice of not allowing private subpenas during investigations, and on the general statutory scheme, under which the General Counsel's responsibility for investigating unfair labor practice charges, and his decision whether to issue a complaint, are unreviewable, but once a complaint is issued, the respondent may, under appropriate circumstances, require a bill of particulars, compel the production of witnesses

[11] In *GEICO,* the employer also sought certain information under the Freedom of Information Act (5 U.S.C. §552(a)(3)). The court held that the employer was not yet entitled to judicial enforcement of whatever rights it had, since it had not requested the information in question from the Board's Executive Secretary or General Counsel, as required by the Board's Rules and Regulations, 29 C F R. §102.117(c).

[12] *Schrementi Bros.* v. *McCulloch,* 69 LRRM 2233, 58 LC ¶12,928 (D.C.Ill.).

[13] See fn. 1, *supra,* and accompanying text.

or evidence, and have access to prehearing statements given to a Board investigator by witnesses who have testified.[14]

2. Enforcement of Subpenas

In *Wilmot* v. *Doyle*,[15] a union and an employer against whom unfair labor practice charges were pending secured a subpena ordering a Board agent to produce certain information. When the Board agent refused to obey the subpena on grounds that the Board's rules prohibited his production of the information, a petition to enforce it was filed in the district court in the name of the trial examiner "on relation of" the union and the employer. The district court enforced the subpena and, when the Board agent refused to comply therewith, adjudged him in contempt. On appeal, the Ninth Circuit reversed both the order enforcing the subpena and the order adjudging the Board agent in contempt, on the ground that the district court had no jurisdiction to enforce the subpena. The court pointed out that section 11(2) of the Act gives district courts jurisdiction to enforce subpenas only "upon application by the Board" and not on application by private litigants. The fact that the petition was in the name of the trial examiner was insufficient, since the Board's Rules and Regulations give only the General Counsel, not the trial examiner, authority to institute suits in the district court on relation of private parties. The court noted that if private litigants were free to petition district courts for enforcement of subpenas, the courts might be flooded with such applications, since neither the Board nor the courts would have any control over such filings, which would be used as delaying tactics. In its view, whether to produce the documents sought by the subpena and whether to petition for enforcement of the subpena were matters within the General Counsel's discretion; if that discretion was abused, the private litigant had an adequate remedy in the review which would be provided on a petition to enforce or set aside the Board's final order under section 10(e) and (f) of the Act.

C. Enjoining State Action

In two court cases decided during the year, injunctions against proceedings in State courts were sought. In one case,[16] the Board

[14] The employer's request for a temporary injunction pending appeal was denied, since there was no showing of irreparable harm nor a significant likelihood that the employer would prevail on appeal.

[15] 403 F.2d 811 (C.A. 9).

[16] *Tyree* v. *Edwards*, 287 F.Supp. 589 (D.C Alaska).

intervened as a plaintiff in a suit to enjoin the enforcement of a State statute requiring national and international labor organizations to have chartered locals in the State if they had 100 or more members in good standing who lived or worked in the State. A three-judge district court held that the statute was unconstitutional under the Supremacy Clause, because it conflicted with the National Labor Relations Act by interfering with the full freedom of workers to choose a bargaining agent and by interfering in the collective-bargaining process. The court also enjoined enforcement of a State court injunction issued upon the authority of the State statute prohibiting the union from operating a hiring hall in a discriminatory manner. It found that the discrimination enjoined, which would be in violation of section 8(b)(1)(A) of the National Labor Relations Act, was within the exclusive jurisdiction of the Board to remedy. Distinguishing *Vaca* v. *Sipes*,[17] in which the Supreme Court held that State courts have jurisdiction over suits by employees against unions alleging breaches of the union's statutory duty of fair representation, the court pointed out that *Vaca* involved a type of discrimination Congress could not reasonably be assumed to have intended to leave to the exclusive jurisdiction of the Board. While *Vaca* did not make clear the standard for determining when the Board has exclusive jurisdiction, it clearly did not hold that State courts would henceforth have concurrent jurisdiction with the Board in all unfair labor practice proceedings in which discriminatory conduct was alleged.[18]

In the other case,[19] an employer had filed unfair labor practice charges against a union. Prior to issuance of a complaint, the regional director and the union entered into an informal settlement agreement in which the union agreed to cease and desist from its unfair labor practices. The employer, who was not a party to the settlement agreement, sought and obtained additional injunctive relief in a State court based upon the same union conduct covered by the settlement agreement. The Board filed suit in a Federal district court, seeking to enjoin enforcement of the State court injunction on the ground that the controversy was within the exclusive jurisdiction of the Board and that the State court injunction would interfere with the Board's jurisdiction and its disposition of the controversy. The district court recognized that the Federal statute prohibiting injunctions

[17] 386 U.S. 171 (1967).

[18] On appeal, the Supreme Court summarily affirmed the judgment of the district court *Alaska* v. *Operating Engineers, Local 302*, 393 U.S. 405.

[19] *N.L.R.B.* v. *Roywood Corp.*, 71 LRRM 2806 (D.C.Ala.)

against State court proceedings [20] is not applicable when suit is brought by the United States. However, the court concluded that, since no formal complaint had been issued, the jurisdiction of the Board had not been invoked, and no injunction was necessary to protect the Board's jurisdiction. Accordingly, the Board's suit was dismissed.[21]

D. Status of Collective-Bargaining Agreement in Bankruptcy

In one case,[22] the trustee in bankruptcy of a bankrupt company sought to enjoin the Board from proceeding further with a complaint alleging that he had engaged in unfair labor practices by unilaterally reducing wages and the work force and recalling employees without regard to seniority. The Board, on the other hand, sought to compel the trustee to impound enough funds to satisfy any backpay awards which the Board might make in the unfair labor practice proceeding. The district court denied relief to both sides. The trustee's contentions in his suit were that the administration of the backrupt company was within the exclusive jurisdiction of the bankruptcy court, and that the Board was attempting to relitigate an issue which the court had already decided when it held, in a suit by the union for breach of contract,[23] that the trustee was entitled to treat the employer's collective-bargaining agreement with the union as an executory contract which could be rejected as provided by section 70b of the Bankruptcy Act. The court, however, held that it had no jurisdiction to enjoin the Board from proceeding, even where the Board was alleged to be acting in excess of its jurisdiction. It recognized that the Board has exclusive jurisdiction over unfair labor practices, and that trustees in bankruptcy and receivers are expressly included in the definition of "person" in section 2(1) of the Act, and hence are subject to the Board's jurisdiction, notwithstanding the fact that they are officers of the bankruptcy court. A finding by the Board that the trustee's actions constituted unfair labor practices would not necessarily conflict with the court's prior decision; the court had held only that the trustee's rejection of the contract was not a breach thereof. The union's complaint had not alleged

[20] 28 U S.C. §2283 provides: "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction or to protect or effectuate its judgments"

[21] The Board has appealed this decision to the Fifth Circuit.

[22] *Durand (Turney Wood Products)* v. *N.L.R.B.*, 70 LRRM 2651 (D.C.Ark.).

[23] *Carpenters Local 2746* v. *Turney Wood Products*, 289 F.Supp. 143 (D.C.Ark.).

that the trustee had engaged in unfair labor practices, and the court would not have had jurisdiction to pass upon such allegations.

With respect to the backpay claims of the company's employees, the court assumed that such claims could be regarded as claims for wages, which would be treated as expenses of administration for purposes of the Bankruptcy Act. However, expenses of administration do not take precedence in bankruptcy over liens of secured creditors, unless they actually benefit the lien interest. Taking money out of the bankruptcy estate to pay the employees backpay would not, in the court's view, benefit the estate or secured creditors, but would be highly detrimental to both. Moreover, since the secured creditors were not responsible for the trustee's rejection of the collective-bargaining agreement, or for his unfair labor practices, if any, the court concluded that it would be inequitable to subordinate their claims to the backpay claims. It found that since the assets of the estate were insufficient to pay the actual expenses of administration and to satisfy in full the claims of the secured creditors, no estate money would be available to satisfy any backpay award which might be made, and no purpose would be served by requiring the trustee to withhold or earmark for that purpose funds belonging to the secured creditors.

Index of Cases Discussed

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APPENDIX A

Statistical Tables for Fiscal Year 1969

Readers are encouraged to communicate with the Agency as to questions on the tables by writing to the Office of Statistical Reports and Evaluations, National Labor Relations Board, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

The definition of terms contained in this glossary are not intended for general application but are specifically directed toward increasing comprehension of the statistical tables that follow. Thus the definitions are keyed directly to the terms used in such tables.

Adjusted Cases

Cases are closed as "adjusted" when an informal settlement agreement is executed and compliance with its terms is secured. (See "Informal Agreement," this glossary.) In some instances, a written agreement is not secured but appropriate remedial action is taken so as to render further proceeding unnecessary. A central element in an "adjusted" case is the agreement of the parties to settle differences without recourse to litigation.

Advisory Opinion Cases

See "Other cases—AO" under "Types of Cases."

Agreement of Parties

See "Informal Agreement" and "Formal Agreement," this glossary. The term "agreement" includes both types.

Amendment of Certification Cases

See "Other Cases—AC" under "Types of Cases."

Backpay

Amounts of money paid or to be paid employees as reimbursement for wages lost because they were discriminatorily discharged or unlawfully denied employment, plus interest on such money. Also included is payment for bonuses, vacations, other fringe benefits, etc., lost because of the discriminatory acts, as well as interest thereon. All moneys noted in table 4 have been reported as paid or owing in cases closed during the fiscal year. (Installment payments may protract some payments beyond this year and some payments may have actually been made at times considerably in advance of the date a case was closed; i.e., in a prior fiscal year.)

Backpay Hearing

A supplementary hearing to receive evidence and testimony as to the amounts of backpay due discriminatees under a prior Board order or court decree.

Backpay Specification

The formal document, a "pleading," which is served on the parties when the regional director and the respondent are unable to agree as to the amounts of backpay due discriminatees pursuant to a Board order or court decree requiring payment of such backpay. It sets forth in detail the amounts held by the regional director to be owing each discriminatee and the method of computation employed. The specification is accompanied by a notice of hearing setting a date for a backpay hearing.

Case

A "case" is the general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case. See "Types of Cases."

Certification

A certification of the results of an election is issued by the regional director or the Board. If a union has been designated as the exclusive bargaining representative by a majority of the employees, a certification of representatives is issued. If no union has received a majority vote, a certification of results of election is issued.

Challenges

The parties to an NLRB election are entitled to challenge any voter. At the election site, the challenged ballots are segregated and not counted when the other ballots are tallied. Most frequently, the tally of unchallenged ballots determines the election and the challenged ballots are insufficient in number to affect the result of the election. The challenges in such a case are never resolved, and the certification is based upon the tally of (unchallenged) ballots.

When challenged ballots are determinative of the result, a determination as to whether or not they are to be counted rests with the regional director in the first instance, subject to possible appeal to the Board. Often, however, the "determinative" challenges are resolved informally by the parties by mutual agreement. No record is kept of nondeterminative challenges or determinative challenges which are resolved by agreement prior to issuance of the first tally of ballots.

Charge

A document filed by an employee, an employer, a union, or an individual alleging that an unfair labor practice has been committed. See "C Cases" under "Types of Cases."

Complaint

The document which initiates "formal" proceedings in an unfair labor practice case. It is issued by the regional director when he concludes on the basis of a completed investigation that any of the allegations con-

tained in the charge have merit and an adjustment or settlement has not been achieved by the parties. The complaint sets forth all allegations and information necessary to bring a case to hearing before a trial examiner pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of hearing.

Compliance

The carrying out of remedial action as agreed upon by the parties in writing (see "Formal Agreement," "Informal Agreement"); as recommended by the trial examiner in his decision; as ordered by the Board in its Decision and Order; or as decreed by the court.

Dismissed Cases

Cases may be dismissed at any stage. They are dismissed informally when, following investigation, the regional director concludes that there has been no violation of the law, that there is sufficient evidence to support further action, or for a variety of other reasons. Before the charge is dismissed, however, the charging party is given the opportunity to withdraw the charge voluntarily. (See also "Withdrawn Cases.") Cases may also be dismissed by the trial examiner, by the Board, or by the courts through their refusal to enforce orders of the Board.

Dues

See "Fees, Dues, and Fines."

Election, Consent

An election conducted by the regional director pursuant to an agreement signed by all parties concerned. The agreement provides for the waiving of a hearing, the establishment of the appropriate unit by mutual consent, and the final determination of all postelection issues by the regional director.

Election Directed

Board-Directed

An election conducted by the regional director pursuant to a decision and direction of election by the Board. Postelection rulings are made by the regional director or by the Board.

Regional Director-Directed

An election conducted by the regional director pursuant to a decision and direction of election issued by the regional director after a hearing. Postelection rulings are made by the regional director or by the Board.

Election, Expedited

An election conducted by the regional director pursuant to a petition filed within 30 days of the commencement of picketing in a situation in which a meritorious 8(b)(7)(C) charge has been filed. The election is conducted under priority conditions and without a hearing unless the regional director believes the proceeding raises question which cannot be decided without a hearing.

Postelection rulings on objections and/or challenges are made by the

regional director and are final and binding unless the Board grants an appeal on application by one of the parties.

Election, Rerun

An election held after an initial election has been set aside either by the regional director or by the Board.

Election, Runoff

An election conducted by the regional director after an initial election, having three or more choices on the ballot, has turned out to be inconclusive (none of the choices receiving a majority of the valid votes cast). The regional director conducts the runoff election between the choices on the regional ballot which received the highest and the next highest number of votes.

Election, Stipulated

An election held by the regional director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

Eligible Voters

Employees within an appropriate bargaining unit who were employed as of a fixed date prior to an election, or are otherwise qualified to vote under the Board's eligibility rules.

Fees, Dues, and Fines

The collection by a union or an employer of dues, fines, and referral fees from employees may be found to be an unfair labor practice under section 8(b) (1)(A) or (2) or 8(a) (1) and (2) or (3), where for instance, such moneys were collected pursuant to an illegal hiring hall arrangement or an invalid or unlawfully applied union-security agreement; where dues were deducted from employees' pay without their authorization; or, in the case of fines, where such fines restrained or coerced employees in the exercise of their rights. The remedy for such unfair labor practices usually requires the reimbursements of such moneys to the employees.

Fines

See "Fees, Dues, and Fines."

Formal Action

Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions are, further, those in which the decision-making authority of the Board (the regional director in representation cases), as provided in sections 9 and 10 of the Act, must be exercised in order to achieve the disposition of a case or the resolution of any issue raised in a case. Thus, formal action takes place when a Board decision and consent order is issued pursuant to a stipulation, even though the stipulation constitutes a voluntary agreement.

Formal Agreement (in unfair labor practice cases)

A written agreement between the Board and the other parties to a case in which hearing is waived and the specific terms of a Board order agreed upon. The agreement may also provide for the entry of a consent court decree enforcing the Board order.

Informal Agreement (in unfair labor practice cases)

A written agreement entered into between the party charged with committing an unfair labor practice, the regional director, and (in most cases) the charging party requiring the charged party to take certain specific remedial action as a basis for the closing of the case. Cases closed in this manner are included in "adjusted" cases.

Injunction Petitions

Petitions filed by the Board with respective U.S. district courts for injunctive relief under section 10(j) or section 10(l) of the Act pending hearing and adjudication of unfair labor practice charges before the Board. Also, petitions filed with a U.S. court of appeals under section 10(e) of the Act.

Jurisdictional Disputes

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of section 8(b)(4)(D). They are initially processed under section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Thereafter, the failure of a party to comply with the Board's determination of dispute is the basis for the issuance of an unfair labor practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

Any party to an election may file objections alleging that either the conduct of the election or the conduct of a party to the election failed to meet the Board's standards. An election will be set aside if eligible employee-voters have not been given an adequate opportunity to cast their ballots, in secrecy and without hindrance from fear or other interference with the expression of their free choice.

Petition

See "Representation Case." Also see "Other Cases—AC, UC, and UD" under "Types of Cases."

Proceeding

One or more cases included in a single litigated action. A "proceeding" may be a combination of C and R cases consolidated for the purposes of hearing.

Representative Cases

This term applies to cases bearing the alphabetical designations RC, RM, or RD. (See "R Cases" under "Types of Cases," this glossary, for specific definitions of these terms.) All three types of cases are included in the term "representation" which deals generally with the problem of which union, if any, shall represent employees in negotiations with their employer. The cases are initiated by the filing of a petition by a union, an employer, or a group of employees.

Representative Election

An election by secret ballot conducted by the Board among the employees in an appropriate collective-bargaining unit to determine whether the employees wish to be represented by a particular labor organization for purposes of collective bargaining. The tables herein reflect only final elections which result in the issuance of a certification of representatives if a union is chosen, or a certification of results if the majority has voted for "no union."

Situation

One or more unfair labor practice cases involving the same factual situation. These cases are processed as a single unit of work. A situation may include one or more CA cases, a combination of CA and CB cases, or a combination of other types of C cases. It does not include representation cases.

Types of Cases

General: Letter designations are given to all cases depending upon the subsection of the Act allegedly violated or otherwise describing the general nature of each case. Each of the letter designations appearing below is descriptive of the case it is associated with.

C Cases (unfair labor practice cases)

A case number which contains the first letter designation C, in combination with another letter, i.e., CA, CB, etc., indicates that it involves a charge that an unfair labor practice has been committed in violation of one or more subsections of section 8.

CA: A charge that an employer has committed unfair labor practices in violation of section 8(a) (1), (2), (3), (4), or (5), or any combination thereof.

CB: A charge that a labor organization has committed unfair labor practices in violation of section 8(b) (1), (2), (3), (5), or (6), or any combination thereof.

CC: A charge that a labor organization has committed unfair labor practices under section 8(b) (4) (i) and/or (ii), (A), (B), or (C), or any combination thereof.

CD: A charge that a labor organization has committed an unfair labor practice in violation of section 8(b) (4) (i) or (ii)(D). Preliminary actions under section 10(k) for the determination of jurisdictional disputes are processed as CD cases. (See "Jurisdictional Disputes" in this glossary.)

CE: A charge that either a labor organization or an employer, or both jointly, have committed an unfair labor practice in violation of section 8(e).

CP: A charge that a labor organization has committed unfair labor practices in violation of section 8(b)(7) (A), (B), or (C), or any combination thereof.

R Cases (representation cases)

A case number which contains the first letter designation R, in combination with another letter, i.e., RC, RD, RM, indicates that it is a petition for investigation and determination of a question concerning representation of employees, filed under section 9(c) of the Act.

RC: A petition filed by a labor organization or an employee alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

RM: A petition filed by an employer alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

RD: A petition filed by employees alleging that the union previously certified or currently recognized by the employer as their collective-bargaining representative no longer represents a majority of the employees in the appropriate unit and seeking an election to determine this.

Other Cases

AC: (Amendment of Certification cases): A petition filed by a labor organization or an employer for amendment of an existing certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved.

AO: (Advisory Opinion cases): As distinguished from the other types of cases described above, which are filed in and processed by regional offices of the Board, AO or "advisory opinion" cases are filed directly with the Board in Washington and seek a determination as to whether the Board would or would not assert jurisdiction in any given situation on the basis of its current standards, over the party or parties to a proceeding pending before a State or territorial agency or a court. (See subpart H of the Board's Rules and Regulations, Series 8, as amended.)

UC: (Unit Clarification cases): A petition filed by a labor organization or an employer seeking a determination as to whether certain classifications of employees should or should not be included within a presently existing bargaining unit.

UD: (Union Deauthorization cases): A petition filed by employees pursuant to section 9(e)(1) requesting that the Board conduct a referendum to determine whether a union's authority to enter into a union-shop contract should be rescinded.

UD Cases

See "Other Cases—UD" under "Types of Cases."

Unfair Labor Practice Cases

See "C Cases" under "Types of Cases."

Union Deauthorization Cases

See "Other Cases—UD" under "Types of Cases."

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its regional director, as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as "withdrawn" when the charging party or petitioner, for whatever reasons, requests withdrawal of the charge or the petition and such request is approved.

SUBJECT INDEX TO ANNUAL REPORT TABLES

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1969 [1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	All cases						
Pending July 1, 1968	10,286	4,772	1,229	323	309	2,573	1,080
Received fiscal 1969	31,303	11,420	4,708	1,411	993	8,476	4,295
On docket fiscal 1969	41,589	16,192	5,937	1,734	1,302	11,049	5,375
Closed fiscal 1969	31,597	11,739	4,718	1,247	866	8,812	4,215
Pending June 30, 1969	9,992	4,453	1,219	487	436	2,237	1,160
	Unfair labor practice cases [2]						
Pending July 1, 1968	7,377	3,115	627	207	186	2,388	854
Received fiscal 1969	18,651	5,333	1,580	570	463	7,508	3,197
On docket fiscal 1969	26,028	8,448	2,207	777	649	9,896	4,051
Closed fiscal 1969	18,939	5,560	1,576	465	402	7,847	3,089
Pending June 30, 1969	7,089	2,888	631	312	247	2,049	962
	Representation cases [3]						
Pending July 1, 1968	2,790	1,604	596	112	120	148	210
Received fiscal 1969	12,107	5,870	3,109	822	493	783	1,030
On docket fiscal 1969	14,897	7,474	3,705	934	613	931	1,240
Closed fiscal 1969	12,116	5,955	3,120	764	433	786	1,058
Pending June 30, 1969	2,781	1,519	585	170	180	145	182
	Union-shop deauthorization cases						
Pending July 1, 1968	37	-------	-------	-------	-------	37	-------
Received fiscal 1969	173	-------	-------	-------	-------	173	-------
On docket fiscal 1969	210	-------	-------	-------	-------	210	-------
Closed fiscal 1969	170	-------	-------	-------	-------	170	-------
Pending June 30, 1969	40	-------	-------	-------	-------	40	-------
	Amendment of certification cases						
Pending July 1, 1968	27	20	3	0	2	0	2
Received fiscal 1969	134	79	7	6	21	3	18
On docket fiscal 1969	161	99	10	6	23	3	20
Closed fiscal 1969	143	91	10	5	18	2	17
Pending June 30, 1969	18	8	0	1	5	1	3
	Unit clarification cases						
Pending July 1, 1968	55	33	3	4	1	0	14
Received fiscal 1969	238	138	12	13	16	9	50
On docket fiscal 1969	293	171	15	17	17	9	64
Closed fiscal 1969	229	133	12	13	13	7	51
Pending June 30, 1969	64	38	3	4	4	2	13

[1] See "Glossary" for definitions of terms Advisory opinion (AO) cases not included. See table 22

[2] See table 1A for totals by types of cases.

[3] See table 1B for totals by types of cases.

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1969 [1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	CA Cases						
Pending July 1, 1968	5,537	3,048	598	193	145	1,540	13
Received fiscal 1969	12,022	5,234	1,557	529	317	4,375	10
On docket fiscal 1969	17,559	8,282	2,155	722	462	5,915	23
Closed fiscal 1969	12,404	5,453	1,541	423	283	4,692	12
Pending June 30, 1969	5,155	2,829	614	299	179	1,223	11
	CB Cases						
Pending July 1, 1968	1,101	47	13	6	25	815	195
Received fiscal 1969	3,973	72	16	10	39	3,023	813
On docket fiscal 1969	5,074	119	29	16	64	3,838	1,008
Closed fiscal 1969	3,909	69	16	10	47	3,033	734
Pending June 30, 1969	1,165	50	13	6	17	805	274
	CC Cases						
Pending July 1, 1968	380	3	2	7	10	22	336
Received fiscal 1969	1,536	3	1	17	28	71	1,416
On docket fiscal 1969	1,916	6	3	24	38	93	1,752
Closed fiscal 1969	1,505	5	1	19	27	82	1,371
Pending June 30, 1969	411	1	2	5	11	11	381
	CD Cases						
Pending July 1, 1968	154	4	2	0	1	2	145
Received fiscal 1969	579	13	4	3	8	16	535
On docket fiscal 1969	733	17	6	3	9	18	680
Closed fiscal 1969	545	12	5	2	6	16	504
Pending June 30, 1969	188	5	1	1	3	2	176
	CE Cases						
Pending July 1, 1968	76	10	12	0	2	2	50
Received fiscal 1969	52	8	1	2	2	4	35
On docket fiscal 1969	128	18	13	2	4	6	85
Closed fiscal 1969	98	18	13	2	3	3	59
Pending June 30, 1969	30	0	0	0	1	3	26
	CP Cases						
Pending July 1, 1968	129	3	0	1	3	7	115
Received fiscal 1969	489	3	1	9	69	19	388
On docket fiscal 1969	618	6	1	10	72	26	503
Closed fiscal 1969	478	3	0	9	36	21	409
Pending June 30, 1969	140	3	1	1	36	5	94

[1] See "Glossary" for definitions of terms

Table 1B.—Representation Cases, Received, Closed, and Pending, Fiscal Year 1969 [1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	RC Cases						
Pending July 1, 1968	2,436	1,602	595	112	120	7	-------
Received fiscal 1969	10,308	5,866	3,107	821	485	29	-------
On docket fiscal 1969	12,744	7,468	3,702	933	605	36	-------
Closed fiscal 1969	10,292	5,951	3,117	763	429	32	-------
Pending June 30, 1969	2,452	1,517	585	170	176	4	-------
	RM Cases						
Pending July 1, 1968	210	-------	-------	-------	-------	-------	210
Received fiscal 1969	1,030	-------	-------	-------	-------	-------	1,030
On docket fiscal 1969	1,240	-------	-------	-------	-------	-------	1,240
Closed fiscal 1969	1,058	-------	-------	-------	-------	-------	1,058
Pending June 30, 1969	182	-------	-------	-------	-------	-------	182
	RD Cases						
Pending July 1, 1968	144	2	1	0	0	141	-------
Received fiscal 1969	769	4	2	1	8	754	-------
On docket 1969	913	6	3	1	8	895	-------
Closed fiscal 1969	766	4	3	1	4	754	-------
Pending June 30, 1969	147	2	0	0	4	141	-------

[1] See "Glossary" for definitions of terms.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1969

	Number of cases showing specific allegations	Percent of total cases
A. CHARGES FILED AGAINST EMPLOYEES UNDER SEC. 8(a)		
Subsections of Sec. 8(a): Total cases	12,002	100.0
8(a)(1)	947	7 9
8(a)(1)(2)	236	2.0
8(a)(1)(3)	6,410	53.3
8(a)(1)(4)	36	0.3
8(a)(1)(5)	2,572	21.4
8(a)(1)(2)(3)	188	1.6
8(a)(1)(2)(4)	1	0.0
8(a)(1)(2)(5)	104	0.9
8(a)(1)(3)(4)	220	1.8
8(a)(1)(3)(5)	1,193	9 9
8(a)(1)(4)(5)	4	0.0
8(a)(1)(2)(3)(4)	17	0.1
8(a)(1)(2)(3)(5)	69	0.6
8(a)(1)(3)(4)(5)	18	0.1
8(a)(1)(2)(3)(4)(5)	7	0.1
RECAPULATION [1]		
8(a)(1) [2]	12,022	100 0
8(a)(2)	622	5.2
8(a)(3)	8,122	67.6
8(a)(4)	303	2.5
8(a)(5)	3,967	33.0
B. CHARGES FILED AGAINST UNIONS UNDER SEC. 8(b)		
Subsections of Sec. 8(b): Total cases	6,577	100.0
8(b)(1)	1,900	28.9
8(b)(2)	144	2.2
8(b)(3)	310	4.7
8(b)(4)	2,115	32.2
8(b)(5)	2	0.0
8(b)(6)	15	0.2
8(b)(7)	489	7.5
8(b)(1)(2)	1,376	20.9
8(b)(1)(3)	143	2.2
8(b)(1)(5)	6	0.1
8(b)(1)(6)	1	0.0
8(b)(2)(3)	5	0.1
8(b)(2)(5)	3	0.0
8(b)(3)(5)	1	0.0
8(b)(3)(6)	5	0.1
8(b)(1)(2)(3)	48	0.7
8(b)(1)(2)(5)	13	0.2
8(b)(1)(2)(6)	1	0.0
RECAPULATION [1]		
8(b)(1)	3,488	53.0
8(b)(2)	1,590	24.2
8(b)(3)	512	7.8
8(b)(4)	2,115	32.2
8(b)(5)	25	0.4
8(b)(6)	22	0.3
8(b)(7)	489	7.5
B1 ANALYSIS OF 8(b)(4)		
Total cases 8(b)(4)	2,115	100 0
8(b)(4)(A)	57	2.7
8(b)(4)(B)	1,370	64.8
8(b)(4)(C)	20	0.9
8(b)(4)(D)	579	27.4
8(b)(4)(A)(B)	76	3.6
8(b)(4)(A)(C)	1	0.1
8(b)(4)(B)(C)	9	0.4
8(b)(4)(A)(B)(C)	3	0.1
RECAPULATION [1]		
8(b)(4)(A)	137	6.5
8(b)(4)(B)	1,458	68.9
8(b)(4)(C)	33	1.6
8(b)(4)(D)	579	27.4
B2. ANALYSIS OF 8(b)(7)		
Total cases 8(b)(7)	489	100.0
8(b)(7)(A)	136	27.8
8(b)(7)(B)	62	12.7
8(b)(7)(C)	273	55.8
8(b)(7)(A)(B)	8	1.6
8(b)(7)(A)(C)	9	1.9
8(b)(7)(A)(B)(C)	1	0.2
RECAPULATION [1]		
8(b)(7)(A)	154	31.5
8(b)(7)(B)	71	14.5
8(b)(7)(C)	283	57.9
C. CHARGES FILED UNDER SEC. 8(e)		
Total cases 8(e)	52	100.0
Against unions alone	35	67.3
Against employers alone	0	0.0
Against union and employers	17	32 7

[1] A single case may include allegations of violations of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases.
[2] Subsec. 8(a)(1) is a general provision forbidding any type of employer interference with the rights of the employees guaranteed by the Act, and therefore is included in all charges of employer unfair labor practices.

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1969 [1]

	Cases in which formal actions taken	Formal actions taken by type of case										
		Total formal actions taken	CA	CB	CC	CD		CE	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional dispute	Unfair labor practices					
10(k) notices of hearings issued	99	86	----	----	----	86	----	----	----	----	----	----
Complaints issued	2,599	2,061	1,493	171	139	----	9	2	17	84	117	29
Backpay specifications issued	73	52	41	4	0	----	0	0	0	3	4	0
Hearings completed, total	1,491	1,047	713	85	56	47	3	2	9	34	83	15
Initial ULP hearings	1,419	998	679	79	54	47	3	2	9	34	78	13
Backpay hearings	36	27	17	5	0	----	0	0	0	2	3	0
Other hearings	36	22	17	1	2	----	0	0	0	0	2	0
Decisions by trial examiners, total	1,363	967	690	77	50	----	2	1	9	34	89	15
Initial ULP decisions	1,303	929	663	74	49	----	2	1	9	32	84	15
Backpay decisions	33	22	16	3	0	----	0	0	0	0	3	0
Supplemental decisions	27	16	11	0	1	----	0	0	0	2	2	0
Decisions and orders by the Board, total	1,553	1,063	727	73	70	47	2	3	12	38	77	14
Upon consent of the parties:												
Initial decisions	179	100	51	12	20	----	1	0	4	5	3	4
Supplemental decisions	3	3	3	0	0	----	0	0	0	0	0	0
Adopting trial examiner's decisions (no exceptions filed):												
Initial ULP decisions	170	136	102	12	6	----	1	0	3	6	6	0
Backpay decisions	16	11	11	0	0	----	0	0	0	0	0	0
Contested:												
Initial ULP decisions	1,108	763	520	46	40	47	0	3	4	26	68	9
Decisions based upon stipulated record	23	16	10	2	2	----	0	0	1	0	0	1
Supplemental ULP decisions	41	23	20	0	2	----	0	0	0	1	0	0
Backpay decisions	17	11	10	1	0	----	0	0	0	0	0	0

[1] See "Glossary" for definitions of terms.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1969 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken	RC	RM	RD	UD
Hearings completed, total	2,458	2,287	2,082	97	108	2
Initial hearings	2,203	2,036	1,848	83	105	2
Hearings on objections and/or challenges	255	251	234	14	3	0
Decisions issued, total	2,144	1,999	1,819	85	95	4
By regional directors	1,983	1,872	1,702	78	92	4
Elections directed	1,752	1,670	1,524	67	79	3
Dismissals on record	231	202	178	11	13	1
By Board	161	127	117	7	3	0
After transfer by regional directors for initial decision	132	100	91	6	3	0
Elections directed	95	74	68	3	3	0
Dismissals on record	37	26	23	3	0	0
After review of regional directors' decisions	29	27	26	1	0	0
Elections directed	21	19	18	1	0	0
Dismissals on record	8	8	8	0	0	0
Decisions on objectives and/or challenges, total	1,093	1,065	984	59	22	10
By regional directors	411	397	369	17	11	8
By Board	724	712	654	47	11	2
In stipulated elections	668	659	610	38	11	1
No exceptions to regional directors' reports	436	428	391	32	5	0
Exceptions to regional directors' reports	232	231	219	6	6	1
In directed elections (after transfer by regional directors)	39	36	29	7	0	1
In directed elections after review of regional directors' supplemental decisions	17	17	15	2	0	0

[1] See "Glossary" for definitions of terms.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1969 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	108	16	60
Decisions issued after hearing	129	18	80
By regional directors	107	14	67
By Board	22	4	13
After transfer by regional directors for initial decision	20	4	11
After review of regional directors' decisions	2	0	2

[1] See "Glossary" for definitions of terms.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1969 [1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
			Pursuant to—						Pursuant to—				
			Agreement of parties		Recommendation of trial examiner	Order of—			Agreement of parties		Recommendation of trial examiner	Order of—	
		Total	Informal settlement	Formal settlement		Board	Court	Total	Informal settlement	Formal settlement		Board	Court
A By number of cases involved	[2] 5,719												
Notice posted	2,363	1,732	992	103	83	249	305	631	405	73	17	82	54
Recognition or other assistance withdrawn	62	62	31	7	3	16	5						
Employer-dominated union disestablished	27	27	8	6	2	6	5						
Employees offered reinstatement	1,405	1,405	866	85	49	183	222						
Employees placed on preferential hiring list	131	131	76	35	2	10	8						
Hiring hall rights restored	38							38	32	4	0	0	2
Objections to employment withdrawn	118							118	82	22	1	5	8
Picketing ended	733							733	654	28	6	33	12
Work stoppage ended	270							270	248	11	0	6	5
Collective bargaining begun	1,388	1,244	981	36	18	90	119	144	132	4	2	5	1
Backpay distributed	1,679	1,514	991	85	51	196	191	165	104	24	3	11	23
Reimbursement of fees, dues, and fines	91	45	24	2	2	9	8	46	29	2	6	8	1
Other conditions of employment improved	561	262	261	0	0	0	1	299	294	0	0	5	0
Other remedies	31	14	11	0	1	2	0	17	16	0	1	0	0

B. By number of employees affected: Employees offered reinstatement, total	3,748	3,748	2,515	171	148	245	669	------	------	------	----	------	------
Accepted	2,726	2,726	1,980	121	103	117	405	------	------	------	----	------	------
Declined	1,022	1,022	535	50	45	128	264	------	------	------	----	------	------
Employees placed on preferential hiring list	618	618	533	62	2	13	8	------	------	------	----	------	------
Hiring hall rights restored	42	-------	-------	----	----	----	-------						
Objections to employment withdrawn	1,193	-------	-------	----	----	----	-------	1,193	99	24	1	1,063	6
Employees receiving backpay.													
From either employer or union	6,213	6,166	3,506	362	213	526	1,559	42	35	4	0	0	3
From both employer and union	12	12	9	0	0	0	3	12	9	0	0	0	3
Employees reimbursed for fees, dues, and fines:													
From either employer or union	4,699	4,507	787	133	52	538	2,997	192	184	0	0	8	0
From both employer and union	271	271	4	48	0	134	85	271	4	48	0	134	85
C. By amounts of monetary recovery, total	$4,527,320	$4,378,330	$1,234,610	$125,660	$172,770	$519,170	$2,326,120	$148,990	$60,420	$31,060	$8,160	$11,210	$38,140
Backpay (includes all monetary payments except fees, dues, and fines)	4,370,430	4,239,410	1,221,020	123,600	172,010	506,040	2,216,740	131,020	52,230	30,520	4,130	6,000	38,140
Reimbursement of fees, dues, and fines	156,890	138,920	13,590	2,060	760	13,130	109,380	17,970	8,190	540	4,030	5,210	0

[1] See "Glossary" for definitions of terms. Data in this table are based upon unfair labor practice cases that were closed during fiscal year 1969 after the company and/or union had satisfied all remedial action requirements.

[2] A single case usually results in more than one remedial action, therefore, the total number of actions exceeds the number of cases involved.

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1969 [1]

Industrial group [2]	All cases	Unfair labor practice cases						Representation cases					Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD	AC	UC
Ordnance and accessories	221	183	151	30	2	0	0	0	34	32	0	2	1	0	3
Food and kindred products	1,718	942	665	214	45	7	3	8	742	637	64	41	8	14	12
Tobacco manufacturers	14	8	8	0	0	0	0	0	6	6	0	0	0	0	0
Textile mill products	383	229	201	22	1	1	0	4	150	128	16	6	3	0	1
Apparel and other finished products made from fabric and similar materials	449	290	236	40	3	0	0	11	158	126	17	15	1	0	0
Lumber and wood products (except furniture)	444	198	164	22	5	2	0	5	241	206	17	18	1	2	2
Furniture and fixtures	396	223	179	31	7	4	0	2	165	143	11	11	6	0	2
Paper and allied products	630	341	248	68	14	6	0	5	275	241	21	13	4	1	9
Printing, publishing, and allied industries	1,076	615	399	150	29	22	4	11	436	358	31	47	9	6	10
Chemicals and allied products	904	490	367	90	28	1	0	4	376	331	22	23	8	10	20
Products of petroleum and coal	318	197	131	30	32	2	0	2	104	82	10	12	0	3	14
Rubber and plastic products	656	308	231	56	13	1	0	7	334	298	20	16	8	2	4
Leather and leather products	201	130	112	17	1	0	0	0	69	64	1	4	1	0	1
Stone, clay, and glass products	800	515	338	97	59	12	1	8	278	235	25	18	2	0	5
Primary metal industries	1,321	906	541	299	50	11	1	4	388	333	28	27	7	5	15
Fabricated metal products (except machinery and transportation equipment)	1,427	761	554	157	24	11	2	13	643	551	44	48	9	1	13
Machinery (except electrical)	1,501	766	595	143	20	4	1	3	701	611	52	38	16	6	12
Electrical machinery, equipment, and supplies	1,173	726	526	179	12	6	0	3	408	365	21	22	9	6	24
Aircraft and parts	323	235	137	90	6	0	0	2	84	75	5	4	0	3	1
Ship and boat building and repairing	126	93	67	22	2	1	0	1	32	27	3	2	0	0	1
Automotive and other transportation equipment	837	550	397	139	7	5	0	2	272	247	15	10	6	6	3
Professional, scientific, and controlling in-															

struments	215	119	90	21	4	2	1	1	88	76	8	4	1	2	5
Miscellaneous Manufacturing	561	341	229	94	13	2	1	2	210	181	13	16	5	2	3
Manufacturing	15,694	9,166	6,566	2,011	377	100	14	98	6,194	5,353	444	397	105	69	160
Metal mining	73	48	33	10	3	1	0	1	21	20	1	0	0	3	1
Coal mining	272	225	72	40	34	0	0	79	47	39	5	3	0	0	0
Crude petroleum and natural gas production	47	28	26	2	0	0	0	0	19	19	0	0	0	0	0
Nonmetallic mining and quarrying	113	56	38	11	3	2	0	2	55	41	9	5	0	0	2
Mining	505	357	169	63	40	3	0	82	142	119	15	8	0	3	3
Construction	3,386	2,977	870	791	723	380	22	191	396	311	72	13	3	7	3
Wholesale trade	1,918	817	614	128	48	6	4	17	1,077	897	93	87	15	4	5
Retail trade	3,432	1,686	1,325	211	81	10	5	54	1,673	1,324	224	125	27	26	20
Finance, insurance, and real estate	310	131	101	15	9	3	1	2	176	159	6	11	1	0	2
Local passenger transportation	317	200	157	37	5	0	0	1	111	98	5	8	1	2	3
Motor freight, warehousing, and transportation services	2,015	1,262	851	291	73	21	5	21	740	642	62	36	2	1	10
Water transportation	245	184	64	76	28	14	0	2	59	50	8	1	0	0	2
Other transportation	95	42	25	10	6	1	0	0	53	45	5	3	0	0	0
Communications	509	278	186	78	9	4	0	1	220	186	17	17	1	1	9
Heat, light, power, water, and sanitary services	399	209	131	31	34	13	0	0	176	158	5	13	1	3	10
Transportation, communication, and other utilities	3,580	2,175	1,414	523	155	53	5	25	1,359	1,179	102	78	5	7	34
Hotels and other lodging places	327	192	160	25	4	1	0	2	132	115	15	2	1	1	1
Personal services	187	104	87	10	7	0	0	0	81	74	5	2	2	0	0
Automobile repairs, garages, and other miscellaneous repair services	358	149	116	25	5	0	0	3	205	182	13	10	4	0	0
Motion pictures and other amusement and recreation services	246	152	88	44	17	3	0	0	86	81	1	4	0	7	1
Medical and other health services	449	204	152	21	23	4	0	4	231	215	9	7	4	9	1
Educational services	40	31	10	7	10	3	0	1	9	8	1	0	0	0	0
Nonprofit membership organizations	98	73	49	22	2	0	0	0	24	20	1	3	0	0	1
Miscellaneous services	773	437	301	77	35	13	1	10	322	271	29	22	6	1	7
Services	2,478	1,342	963	231	103	24	1	20	1,090	966	74	50	17	18	11
Total, all industrial groups	31,303	18,651	12,022	3,973	1,536	579	52	489	12,107	10,308	1,030	769	173	134	238

[1] See "Glossary" for definitions of terms.
[2] Source: Standard Industrial Classification, Division of Statistical Standards, U.S. Bureau of the Budget, Washington, 1957.

Table 6.—Geographic Distribution of Cases Received, Fiscal Year 1969 [1]

Division and State [2]	All cases	Unfair labor practice cases						Representation cases					Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD	AC	UC
Maine	84	34	19	3	7	3	0	2	49	41	3	5	0	0	1
New Hampshire	81	31	20	7	4	0	0	0	49	46	1	2	1	0	0
Vermont	38	20	8	6	1	0	0	5	18	11	5	2	0	0	0
Massachusetts	726	370	222	83	43	4	0	18	339	294	22	23	2	2	13
Rhode Island	107	39	27	4	6	0	0	2	67	65	2	0	0	0	1
Connecticut	329	168	109	24	13	19	2	1	153	132	12	9	2	1	5
New England	1,365	662	405	127	74	26	2	28	675	589	45	41	5	3	20
New York	2,496	1,599	898	399	149	80	10	63	851	709	97	45	24	4	18
New Jersey	1,175	657	420	178	31	11	3	14	497	447	31	19	12	7	2
Pennsylvania	1,916	1,177	596	373	129	44	2	33	713	633	45	35	7	5	14
Middle Atlantic	5,587	3,433	1,914	950	309	135	15	110	2,061	1,789	173	99	43	16	34
Ohio	1,924	1,162	761	236	65	72	1	17	704	605	53	46	11	32	25
Indiana	848	480	333	124	15	6	1	1	355	314	26	15	5	1	7
Illinois	2,137	1 533	933	445	92	35	1	27	575	497	42	36	11	4	14
Michigan	1,682	1,033	660	239	92	26	1	15	622	500	57	65	13	5	9
Wisconsin	612	330	220	62	32	9	2	5	261	206	37	18	2	3	16
East North Central	7,203	4,528	2,907	1,106	296	148	6	65	2,517	2,122	215	180	42	45	71
Iowa	285	117	81	12	10	6	1	7	161	132	22	7	0	5	2
Minnesota	322	99	62	12	15	8	2	0	216	189	15	12	3	2	2
Missouri	1,291	856	585	174	45	29	2	21	413	348	29	36	10	6	6
North Dakota	56	22	19	0	1	1	0	1	34	30	2	2	0	0	0
South Dakota	54	16	14	0	1	0	0	1	38	33	5	0	0	0	0
Nebraska	188	90	76	8	1	5	0	0	97	86	7	4	0	1	0
Kansas	272	164	107	34	14	2	1	6	106	91	10	5	2	0	0
West North Central	2,468	1,364	944	240	87	51	6	36	1,065	909	90	66	15	14	10
Delaware	42	18	13	3	2	0	0	0	24	22	2	0	0	0	0
Maryland	403	187	114	39	22	11	0	1	209	195	2	12	5	0	2

District of Columbia	153	68	43	15	8	1	0	1	83	74	4	5	2	0	0
Virginia	335	188	150	25	7	5	0	1	146	129	14	3	0	0	1
West Virginia	407	320	137	62	37	7	0	77	81	74	6	1	1	1	4
North Carolina	388	247	224	20	2	0	0	1	139	126	9	4	0	0	2
South Carolina	140	91	85	5	1	0	0	0	49	47	0	2	0	0	0
Georgia	424	216	176	25	14	1	0	0	208	185	13	10	0	0	0
Florida	849	560	378	72	79	13	4	14	282	238	15	29	1	2	4
South Atlantic	3,141	1,895	1,320	266	172	38	4	95	1,221	1,090	65	66	9	3	13
Kentucky	420	246	173	39	13	11	0	10	168	149	14	5	5	0	1
Tennessee	737	421	308	65	35	4	0	9	313	279	21	13	0	0	3
Alabama	472	301	242	32	16	7	0	4	164	146	9	9	0	1	6
Mississippi	180	94	78	10	2	3	0	1	83	74	6	3	0	1	2
East South Central	1,809	1,062	801	146	66	25	0	24	728	648	50	30	5	2	12
Arkansas	229	127	98	18	5	3	0	3	97	86	5	6	0	3	2
Louisiana	578	385	200	110	46	19	0	10	183	161	14	8	0	3	7
Oklahoma	220	103	78	13	8	2	0	2	116	104	9	3	1	0	0
Texas	1,520	1,060	737	176	99	33	0	15	444	355	41	48	0	3	13
West South Central	2,547	1,675	1,113	317	158	57	0	30	840	706	69	65	1	9	22
Montana	110	54	41	7	2	2	0	2	52	32	13	7	1	0	3
Idaho	111	58	47	6	4	1	0	0	48	40	4	4	3	0	2
Wyoming	32	21	15	1	5	0	0	0	11	10	1	0	0	0	0
Colorado	480	272	179	39	39	8	0	7	201	166	23	12	1	3	3
New Mexico	239	178	116	29	15	3	2	13	55	39	10	6	0	2	4
Arizona	196	120	83	13	15	3	0	6	73	62	7	4	0	2	1
Utah	95	45	30	6	6	0	0	3	49	44	3	2	0	1	0
Nevada	157	104	77	19	1	4	0	3	52	46	3	3	0	1	0
Mountain	1,420	852	588	120	87	21	2	34	541	439	64	38	5	9	13
Washington	617	351	230	79	32	3	1	6	252	199	31	22	5	1	8
Oregon	417	218	144	20	32	19	0	3	184	117	38	29	10	1	4
California	3,953	2,297	1,429	536	214	51	14	53	1,591	1,306	171	114	28	8	29
Alaska	111	78	55	17	2	2	0	2	33	16	6	11	0	0	0
Hawaii	103	48	33	9	3	1	0	2	55	52	3	0	0	0	0
Pacific	5,201	2,992	1,891	661	283	76	15	66	2,115	1,690	249	176	43	10	41
Puerto Rico	555	186	137	40	4	2	2	1	339	323	8	8	5	23	2
Virgin Islands	7	2	2	0	0	0	0	0	5	3	2	0	0	0	0
Outlying Areas	562	188	139	40	4	2	2	1	344	326	10	8	5	23	2
Total, all States and areas	31,303	18,651	12,022	3,973	1,536	579	52	489	12,107	10,308	1,030	769	173	134	238

[1] See "Glossary" for definitions of terms.
[2] The States are grouped according to the method used by the Bureau of the Census, U S Department of Commerce.

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1969 [1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number	Percent of total cases	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	18,939	100.0	-------	12,404	100.0	3,909	100.0	1,505	100.0	545	100.0	98	100.0	478	100.0
Agreement of the parties	4,453	23.5	100.0	2,942	23.7	721	18.4	635	42.2	6	1.2	12	12.2	137	28.7
Informal settlement:	4,242	22.4	95.3	2,818	22 7	675	17.3	605	40 2	2	0.4	12	12.2	130	27.2
Before issuance of complaint	3,187	16.8	71.6	1,996	16 1	533	13.6	523	35.4	(2)	---	11	11.2	115	24.1
After issuance of complaint, before opening of hearing	968	5.1	21.7	749	6.0	132	3.4	71	4.7	0	---	1	1.0	15	3.1
After hearing opened, before issuance of trial examiner's decision	87	0.5	2 0	73	0.6	10	0.3	2	0.1	2	0 4	0	---	0	---
Formal settlement	211	1.1	4.7	124	1.0	46	1.2	30	2.0	4	0.8	0	---	7	1.5
After issuance of complaint, before opening of hearing	154	0.8	3.5	100	0.8	20	0.5	26	1.7	2	0.4	0	---	6	1.3
Stipulated decision	8	0.0	0.2	1	0.0	2	0.1	3	0.2	2	0 4	0	---	0	---
Consent decree	146	0.8	3.3	99	0.8	18	0.5	23	1.5	0	---	0	---	6	1.3
After hearing opened	57	0.3	1.2	24	0.2	26	0.7	4	0.3	2	0 4	0	---	1	0.2
Stipulated decision	6	0.0	0.1	6	0.1	0	---	0	---	0	---	0	---	0	---
Consent decree	51	0.3	1.1	18	0.1	26	0.7	4	0.3	2	0.4	0	---	1	0.2
Compliance with	1,002	5.3	100.0	805	6.5	77	2.0	70	4.7	11	2.0	6	6.1	33	6.9

Trial examiner's decision	119	0.6	11.8	96	0.8	14	0.4	6	0.4	0	---	0	---	3	0.6
Board decision	459	2 4	45.9	348	2.8	34	0.9	48	3 2	4	0.8	4	4.1	21	4.4
Adopting trial examiner's decision (no exceptions filed)	72	0 4	7.2	50	0 4	7	0.2	9	0.6	0	---	0	---	6	1.3
Contested	387	2.0	38 7	298	2.4	27	0.7	39	2.6	4	0 8	4	4.1	15	3.1
Circuit court of appeals decree	357	1.9	35 7	302	2.4	24	0.6	13	0 9	7	1.2	2	2.0	9	1.9
Supreme Court action	67	0.4	6 6	57	0.5	5	0.1	3	0.2	0	---	0	---	0	---
Withdrawal	6,787	35.8	100.0	4,534	36.6	1,450	37.1	551	36.6	1	0.2	36	368	215	45.0
Before issuance of complaint	6,625	35.0	97.6	4,398	35.5	1,435	36.7	542	36.0	(2)	---	36	36.8	214	44.8
After issuance of complaint, before opening of hearing	117	0.6	1.7	95	0.8	11	0.3	9	0 6	1	0.2	0	---	1	0.2
After hearing opened, before trial examiner's decis on	28	0.1	0.4	25	0.2	3	0.1	0	---	0	---	0	---	0	---
After trial examiner's decision, before Board decision	12	0.1	0.2	11	0.1	1	0.0	0	---	0	---	0	---	0	---
After Board or court decision	5	0.0	0 1	5	0.0	0	---	0	---	0	---	0	---	0	---
Dismissal	6,157	32.5	100 0	4,110	33 1	1,611	42.5	249	16.5	0	---	44	44.9	93	19.4
Before issuance of complaint	5,796	30.6	94.1	3,866	31.1	1,604	41.0	226	15.0	(2)	---	10	10.2	90	18 8
After issuance of complaint, before opening of hearing	12	0 1	0.2	7	0.1	4	0.1	1	0.1	0	---	0	---	0	---
After hearing opened, before trial examiner's decision	14	0.1	0.2	11	0 1	3	0.1	0	---	0	---	0	---	0	---
By Trial examiner's decision	3	0 0	0.1	3	0.0	0	---	0	---	0	---	0	---	0	---
By Board decision	260	1 3	4.3	168	1.4	36	1.0	20	1 3	0	---	33	33.7	3	0.6
Adopting trial examiner's decision (no exceptions filed)	59	0 3	1.0	48	0.4	10	0.3	0	---	0	---	0	---	1	0.2

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number	Percent of total cases	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Contested	201	1 0	3.3	120	1.0	26	0.7	20	1.3	0	---	33	33.7	2	0.4
By circuit court of appeals decree	70	0 4	1.1	54	0.4	13	0.3	2	0 1	0	---	1	1.0	0	---
By Supreme Court action	2	0.0	0.0	1	0 0	1	0.0	0	---	0	---	0	---	0	---
10(k) actions (see table 7A for details of dispositions)	527	2.8	-------	---	---	---	---	---	---	527	96.6	--	---	---	---
Otherwise (compliance with order of trial examiner or Board not achieved—firms went out of business)	13	0.1	-------	13	0 1	0	---	0	---	0	---	0	---	0	---

[1] See table 8 for summary of disposition by stage. See "Glossary" for definitions of terms.
[2] CD cased closed in this stage are processed as juriedictional dispute under Sec. 10(k) of the Act. See table 7A.

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1969 [1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	527	100.0
Agreement of the parties—Informal settlement	238	45 2
Before 10(k) notice	213	40 4
After 10(k) notice, before opening of 10(k) hearing	25	4.8
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	----
Compliance with Board decision and determination of dispute	26	4 9
Withdrawal	191	36.2
Before 10(k) notice	174	33.0
After 10(k) notice, before opening of 10(k) hearing	8	1.5
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	----
After Board decision and determination of dispute	9	1.7
Dismissal	72	13.7
Before 10(k) notice	61	11.6
After 10(k) notice, before opening of 10(k) hearing	2	.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	----
By Board decision and determination of dispute	9	1.7

[1] See "Glossary" for definitions of terms.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1969 [1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	18,939	100.0	12,404	100.0	3,909	100.0	1,505	100.0	545	100.0	8	100.0	478	100.0
Before issuance of complaint	16,135	85.2	10,260	82.7	3,572	91.4	1,300	86.4	527	96.7	57	58.2	419	87.7
After issuance of complaint, before opening of hearing	1,251	6.6	951	7.6	167	4.3	170	7.1	3	0.6	1	1.0	22	4.6
After hearing opened, before issuance of trial examiner's decision	186	1.0	133	1.1	42	1.1	6	0.4	4	0.7	0	---	1	0.2
After trial examiner's decision, before issuance of Board decision	134	0.7	110	0.9	15	0.4	6	0.4	0	---	0	---	3	0.6
After Board order adopting trial examiner's decision in absence of exceptions	131	0.7	98	0.8	17	0.4	9	0.6	0	---	0	---	7	1.5
After Board decision, before circuit court decree	606	3.1	436	3.5	53	1.4	59	3.9	4	0.7	37	37.7	17	3.5
After circuit court decree, before Supreme Court action	427	2.3	356	2.9	37	0.9	15	1.0	7	1.3	3	3.1	9	1.9
After Supreme Court action	69	0.4	60	0.5	6	0.1	3	0.2	0	---	0	---	0	---

[1] See "Glossary" for definitions of terms.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1969 [1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	12,116	100.0	10,292	100.0	1,058	100.0	766	100 0	170	100.0
Before issuance of notice of hearing	6,057	50.0	4,831	46.9	724	68.4	502	65.5	107	62.9
After issuance of notice of hearing, before close of hearing	3,803	31.4	3,433	33.4	198	18.7	172	22.5	0	---
After hearing closed, before issuance of decision	134	1.1	113	1.1	12	1.1	9	1.2	0	---
After issuance of regional director's decision	1,985	16.4	1,805	17.5	99	9.4	81	10.6	60	35.3
After issuance of Board decision	137	1.1	110	1.1	25	2.4	2	0.2	3	1.8

[1] See "Glossary" for definitions of terms.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1969 [1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	12,116	100 0	10,292	100.0	1,058	100 0	766	100.0	170	100.0
Certification issued, total	8,202	67.7	7,387	71.8	535	50 6	280	36.6	91	53.5
After:										
Consent election	2,289	18.9	2,042	19.8	152	14.4	95	12.4	19	11.2
Before notice of hearing	1,520	12 5	1,357	13.1	114	10.8	49	6.4	19	11.2
After notice of hearing, before hearing closed	758	6 3	676	6.6	37	3.5	45	5.9	0	---
After hearing closed, before decision	11	0.1	9	0.1	1	0.1	1	0.1	0	---
Stipulated election	4,261	35 2	3,857	37.5	279	26 4	125	16 3	10	5.9
Before notice of hearing	2,224	18.4	1,959	19.0	191	18.1	74	9.7	10	5.9
After notice of hearing, before hearing closed	1,992	16.4	1,857	18.1	85	8.0	50	6 5	0	---
After hearing closed, before decision	45	0.4	41	0.4	3	0 3	1	0.1	0	---
Expedited election	39	0 3	12	0.1	27	2 6	0	---	---	---
Regional director-directed election	1,528	12 6	1,399	13.6	70	6.6	59	7.8	59	34.7
Board-directed election	85	0 7	77	0.8	7	0.6	1	0.1	3	1.7
By withdrawal, total	2,906	24 0	2,285	22.2	346	32.7	275	35.9	62	36.5
Before notice of hearing	1,678	13 9	1,198	11.6	273	25.8	207	27.0	62	36 5
After notice of hearing, before hearing closed	959	7.9	844	8.2	59	5.6	56	7 3	0	---
After hearing closed, before decision	64	0 5	54	0.5	5	0 5	5	0.7	0	---
After regional director's decision and direction of election	198	1.6	183	1.8	9	0 8	6	0.8	0	---
After Board decision and direction of election	7	0.1	6	0.1	0		1	0.1	0	---
By dismissal, total	1,008	8 3	620	6.0	177	16 7	211	27 5	17	10.0
Before notice of hearing	596	4.9	305	3.0	119	11.2	172	22.4	16	9.4
After notice of hearing, before hearing closed	94	0 8	56	0.5	17	1.6	21	2.7	0	---
After hearing closed, before decision	14	0 1	9	0.1	3	0.3	2	0.3	0	---
By regional director's decision	259	2 1	223	2.1	20	1 9	16	2 1	1	0.6
By Board decision	45	0 4	27	0.3	18	1.7	0	---	0	---

[1] See "Glossary" for definitions of terms.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1969 [1]

	AC	UC
Total, all	143	229
Certification amended or unit clarified	76	67
Before hearing	53	22
By regional director's decision	53	21
By Board decision	0	1
After hearing	23	45
By regional director's decision	21	37
By Board decision	2	8
Dismissed	17	74
Before hearing	5	25
By regional director's decision	5	25
By Board decision	0	0
After hearing	12	49
By regional director's decision	5	44
By Board decision	7	5
Withdrawn	50	88
Before hearing	50	85
After hearing	0	3

[1] See "Glossary" for definitions of terms.

Table 11.Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1969 [1]

Type of case	Total	Type of election				
		Consent	Stipulated	Board-directed	Regional director-directed	Expedited elections under 8(b) (7)
All types, total:						
Elections	8,083	2,263	4,142	79	1,571	28
Eligible voters	597,286	105,185	332,980	27,400	130,862	859
Valid votes	529,970	92,482	297,951	24,430	114,426	681
RC cases						
Elections	7,319	2,027	3,825	73	1,387	7
Eligible voters	552,037	96,589	307,666	26,178	121,238	366
Valid votes	491,279	85,049	276,010	23,243	106,689	288
RM cases:						
Elections	381	125	178	5	52	21
Eligible voters	18,953	4,363	10,825	143	3,129	493
Valid votes	16,299	3,726	9,554	108	2,518	393
RD cases:						
Elections	293	93	126	1	73	0
Eligible voters	21,771	3,369	13,543	1,079	3,780	0
Valid votes	18,841	3,008	11,607	1,079	3,147	0
UD cases:						
Elections	90	18	13	0	59	--
Eligible voters	4,525	864	946	0	2,715	--
Valid votes	3,551	699	780	0	2,072	--

[1] See "Glossary" for definitions of terms.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1969

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All types	8,416	126	297	7,993	7,727	121	287	7,319	391	4	6	381	298	1	4	293
Rerun required	---	--	220	---	---	--	210	---	--	--	0	--	--	--	4	--
Runoff required	---	--	77	---	---	--	77	---	--	--	0	--	--	--	0	--
Consent elections	2,336	24	67	2,245	2,118	24	67	2,027	125	0	0	125	93	0	0	93
Rerun required	---	--	42	---	---	--	42	---	--	--	0	--	--	--	0	--
Runoff required	---	--	25	---	---	--	25	---	--	--	0	--	--	--	0	--
Stipulated elections	4,330	51	150	4,129	4,014	47	142	3,825	186	3	5	178	130	1	3	126
Rerun required	---	--	113	---	---	--	105	---	--	--	5	--	--	--	3	--
Runoff required	---	--	37	---	---	--	37	---	--	--	0	--	--	--	0	--
Regional director-directed	1,637	49	76	1,512	1,510	49	74	1,387	53	0	1	52	74	0	1	73
Rerun required	---	--	62	---	---	--	60	---	--	--	1	--	--	--	1	--
Runoff required	---	--	14	---	---	--	14	---	--	--	0	--	--	--	0	--
Board-directed	85	2	4	79	78	1	4	73	6	1	0	5	1	0	0	1
Rerun required	---	--	3	---	---	--	3	---	--	--	0	--	--	--	0	--
Runoff required	---	--	1	---	---	--	1	---	--	--	0	--	--	--	0	--
Expedited—Sec. 8(b)(7)(C)	28	0	0	28	7	0	0	7	21	0	0	21	0	0	0	0
Rerun required	---	--	0	---	---	--	0	---	--	--	0	--	--	--	0	--
Runoff required	---	--	0	---	---	--	0	---	--	--	0	--	--	--	0	--

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled Upon in Cases Closed, Fiscal Year 1969

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections		Total challenges	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	8,416	819	9.7	304	3 6	182	2.2	1,001	11.9	486	5.8
By type of case:											
In RC cases	7,727	770	10 0	285	3.7	169	2.2	939	12.2	454	5 9
In RM cases	391	31	7 9	12	3 1	11	2.8	42	10.7	23	5.9
In RD cases	298	18	6 0	7	2.3	2	0 7	20	6.7	9	3.0
By type of election:											
Consent elections	2,336	118	5 1	74	3.2	33	1.4	151	6.5	107	4.6
Stipulated elections	4,330	411	9 5	152	3.5	86	2.0	497	11.5	238	5.5
Expedited elections	28	4	14 3	0	----	0	----	4	14.3	0	----
Regional director-directed elections	1,637	273	16.7	75	4 6	59	3.6	332	20.3	134	8 2
Board-directed elections	85	13	15 3	3	3.5	4	4 7	17	20 0	7	8.2

Table 11C.—Objections Filed in Representation Cases Closed, By Party Filing, Fiscal Year 1969 [1]

	Total		By employer		By union		By both parties [2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representations elections	1,322	100 0	366	27 7	920	69.6	36	2.7
By type of case								
RC cases	1,246	100.0	357	28.7	860	69 0	29	2.3
RM cases	49	100 0	7	14 3	36	73 5	6	12.2
RD cases	27	100 0	2	7.4	24	88.9	1	3.7
By type of election								
Consent elections	224	100.0	51	22 8	170	75.9	3	1 3
Stipulated elections	662	100 0	204	30.8	439	66 3	19	2.9
Expedited elections	4	100.0	0	---	4	100.0	0	---
Regional director-directed elections	411	100.0	108	26.3	290	70.5	13	3.2
Board-directed elections	21	100 0	3	14 3	17	81 0	1	4 7

[1] See "Glossary" for definitions of terms.
[2] Objections filed by more than one party in the same case are counted as one.

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1969 [1]

	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained [2]	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	1,322	321	1,001	722	72 1	279	27.9
By type of case:							
RC cases	1,246	307	939	675	71.9	264	28.1
RM cases	49	7	42	31	73.8	11	26.2
RD cases	27	7	20	16	80 0	4	20.0
By type of election:							
Consent elections	224	73	151	88	58.3	63	41 7
Stipulated elections	662	165	497	376	75.7	121	24.3
Expedited elections	4	0	4	4	100 0	0	---
Regional director-directed elections	411	79	332	241	72 6	91	27.4
Board-directed elections	21	4	17	13	76.5	4	23.5

[1] See "Glossary" for definitions of terms

[2] See table 11E for rerun elections held after objections were sustained In 69 elections in which objections were sustained, the cases were subsequently withdrawn; therefore, in these cases no return elections were conducted.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1969 [1]

	Total rerun elections [2]		Union certified		No union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	198	100.0	75	37 9	123	62.1	60	30.3
By type of case.								
RC cases	188	100.0	71	37.8	117	62.2	58	30.9
RM cases	6	100.0	1	16.7	5	83.3	0	---
RD cases	4	100.0	3	75.0	1	25 0	2	50.0
By type of election·								
Consent elections	42	100.0	15	35 7	27	64 3	15	35.7
Stipulated elections	96	100.0	47	49.0	49	51.0	32	33 3
Expedited elections	0	----	0	---	0	---	0	---
Regional director-directed elections	58	100.0	12	20 7	46	79.3	13	22 4
Board-directed elections	2	100 0	1	50.0	1	50.0	0	---

[1] See "Glossary" for definitions of terms.

[2] Includes only final rerun elections, i e., those resulting in certification Excluded from the table are 12 rerun elections which were conducted and subsequently set aside pursuant to sustained objections. The 12 invalid rerun elections were followed by valid rerun elections which are included in the table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1969

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)[1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	90	54	60 0	36	40.0	4,525	1,590	35.1	2,935	64.9	3,551	78.5	1,273	28.1
AFL–CIO unions	58	34	58 6	24	41.4	2,680	1,031	38.5	1,649	61 5	2,173	81.1	849	31.7
Teamsters	23	13	56.5	10	43.5	1,356	295	21.8	1,061	78 2	1,040	76.7	262	19.3
Other national unions	8	6	75.0	2	25.0	477	252	52.8	225	47.2	327	68.6	151	31.7
Other local unions	1	1	100 0	0	---	12	12	100.0	0	---	11	91.7	11	91.7

[1] Sec. 8(a)(3) of the Act requires that to revoke a union-shop agreement, a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1969 [1]

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL–CIO unions	Teamsters	Other national unions	Other local unions	
A. ALL REPRESENTATION ELECTIONS															
AFL–CIO	4,230	50 9	2,153	2,153	---	---	---	2,077	299,807	114,132	114,132	----	----	----	185,675
Teamsters	2,133	51.2	1,092	---	1,092	---	---	1,041	65,640	25,899	----	25,899	----	----	39,741
Other national unions	585	52 8	309	---	---	309	---	276	56,391	21,450	----	----	21,450	----	34,941
Other local unions	224	59 4	133	---	---	---	133	91	8,206	4,695	----	----	----	4,695	3,511
1-union elections	7,172	51.4	3,687	2,153	1,092	309	133	3,485	430,044	166,176	114,132	25,899	21,450	4,695	263,868
AFL–CIO v. AFL–CIO	167	65.3	109	109	---	---	---	58	23,006	9,909	9,909	----	----	----	13,097
AFL–CIO v Teamsters	222	80.6	179	79	100	---	---	43	24.061	18,191	8,566	9,625	----	----	5,870
AFL–CIO v. Natl	152	86.8	132	68	---	64	---	20	30,086	22,719	12,292	----	10,427	----	7,367
AFL–CIO v. Local	118	94.1	111	48	---	---	63	7	62,257	61,814	28,291	----	----	33,523	443
Teamsters v. Teamsters	2	100 0	2	---	2	---	---	0	46	46	----	46	----	----	0
Teamsters v. Natl	25	84.0	21	---	13	8	---	4	1,394	1,042	----	638	404	----	352
Teamsters v. Local	40	92 5	37	---	20	---	17	3	4,144	3,858	----	1,669	----	2,189	286
Natl. v Natl	11	90 9	10	---	---	10	---	1	1,039	996	----	----	996	----	43
Natl v. Local	19	94.7	18	---	---	10	8	1	3,722	3,285	----	----	2,386	899	437
Local v Local	10	100 0	10	---	---	---	10	0	1,097	1,097	----	----	----	1,097	0
2-union elections	766	82 1	629	304	135	92	98	137	150,852	122,957	59,058	11,978	14,213	37,708	27,895
AFL–CIO v. AFL–CIO v. AFL–CIO	7	100 0	7	7	---	---	---	0	690	690	690	----	----	----	0
AFL–CIO v. AFL–CIO v. Teamsters	6	100.0	6	3	3	---	---	0	827	827	627	200	----	----	0
AFL–CIO v. AFL–CIO v. Natl	7	71.4	5	4	---	1	---	2	1,320	466	461	----	5	----	854
AFL–CIO v. AFL–CIO v. Local	6	83.3	5	3	---	---	2	1	614	564	389	----	----	175	50
AFL–CIO v. Teamsters v. Natl	3	100 0	3	3	0	0	---	0	690	690	690	0	0	----	0
AFL–CIO v. Teamsters v. Local	7	85.7	6	2	3	---	1	1	955	840	215	325	----	300	115
AFL–CIO v. Natl v. Natl	8	100.0	8	3	---	5	---	0	907	907	190	----	717	----	0
AFL–CIO v. Natl v. Local	1	100.0	1	0	---	0	1	0	1,376	1,376	0	----	0	1,376	0
Natl. v. Natl. v. Local	3	100.0	3	---	---	0	3	0	2,367	2,367	----	----	0	2,367	0
AFL–CIO v. AFL–CIO v. AFL–CIO v. AFL–CIO	2	100.0	2	2	---	---	---	0	40	40	40	----	----	----	0
AFL–CIO v. AFL–CIO v. Teamsters v. Natl	2	100.0	2	1	0	1	---	0	202	202	30	0	172	----	0
AFL–CIO v. AFL–CIO v. Natl. v. Local	1	100.0	1	0	---	1	0	0	1,323	1,323	0	----	1,323	0	0

AFL–CIO v. Natl. v. Local v. Local	1	100 0	1	1	---	0	0	0	388	388	388	----	0	0	0
AFL–CIO v. AFL–CIO v. AFL–CIO v Teamsters v. Local	1	100.0	1	0	1	---	0	0	166	166	0	166	----	0	0
3 (or more)-union elections	55	92 7	51	29	7	8	7	4	11,865	10,846	3,720	691	2,217	4,218	1,019
Total representation elections	7,993	54.6	4,367	2,486	1,234	409	238	3,626	592,761	299,979	176,910	38,568	37,880	46,621	292,782

B. ELECTIONS IN RC CASES

AFL–CIO	3,845	52 6	2,021	2,021	---	---	---	1,824	277,370	103,952	103,952	----	----	----	173,418
Teamsters	1,949	52.5	1,023	---	1,023	---	---	926	60,366	22,986	----	22,986	----	----	37,380
Other national unions	545	53 9	294	---	---	294	---	251	51,790	20,015	----	----	20,015	----	31,775
Other local unions	212	60 4	128	---	---	---	128	84	7,971	4,570	----	----	----	4,570	3,401
1-union elections	6,551	52.9	3,466	2,021	1,023	294	128	3,085	397,497	151,523	103,952	22,986	20,015	4,570	245,974
AFL–CIO v. AFL–CIO	161	64 6	104	104	---	---	---	57	20,636	8,869	8,869	---	----	----	11,767
AFL–CIO v Teamsters	207	81 2	168	75	93	---	---	39	20,636	15,739	7,598	8,141	----	----	4,924
AFL–CIO v. Natl	146	86.3	126	65	---	61	---	20	29,115	21,748	11,411	----	10,337	----	7,367
AFL–CIO v. Local	96	92 7	89	45	---	---	44	7	61,122	60,679	28,161	----	----	32,518	445
Teamsters v. Teamsters	2	100 0	2	---	2	---	---	0	46	46	----	46	----	----	0
Teamsters v Natl	25	84 0	21	---	13	8	---	4	1,394	1,042	----	638	404	----	352
Teamsters v Local	40	92.5	37	---	20	---	17	3	4,144	3,858	----	1,669	----	2,189	286
Natl v. Natl	11	90 9	10	---	---	10	---	1	1,039	996	----	----	996	----	43
Natl v Local	17	94.1	16	---	---	10	6	1	3,544	3,107	----	----	2,386	721	437
Local v Local	9	100 0	9	---	---	---	9	0	1,048	1,048	----	----	----	1,048	0
2-union elections	714	81 5	582	289	128	89	76	132	142,751	117,132	56,039	10,494	14,123	36,476	25,619
AFL–CIO v. AFL–CIO v. AFL–CIO	7	100 0	7	7	---	---	---	0	690	690	690	----	----	----	0
AFL–CIO v. AFL–CIO v. Teamsters	5	100 0	5	2	3	---	---	0	751	751	551	200	----	----	0
AFL–CIO v. AFL–CIO v Natl	7	71.4	5	4	---	1	---	2	1,320	466	461	----	5	----	854
AFL–CIO v. AFL–CIO v. Local	6	83 3	5	3	---	---	2	1	614	564	389	----	----	175	50
AFL–CIO v. Teamsters v. Natl	3	100 0	3	3	0	0	---	0	690	690	690	0	0	----	0
AFL–CIO v. Teamsters v. Local	7	85 7	6	2	3	---	1	1	955	840	215	325	----	300	115
AFL–CIO v. Natl. v Natl	8	100 0	8	3	---	5	---	0	907	907	190	----	717	----	0
AFL–CIO v. Natl v Local	1	100 0	1	0	---	0	1	0	1,376	1,376	0	----	0	1,376	0
Natl v Natl. v Local	3	100 0	3	---	---	0	3	0	2,367	2,367	----	----	0	2,367	0
AFL–CIO v. AFL–CIO v. AFL–CIO v AFL–CIO	2	100 0	2	2	---	---	---	0	40	40	40	----	----	----	0
AFL–CIO v. AFL–CIO v. Teamsters v Natl	2	100 0	2	1	0	1	---	0	202	202	30	0	172	----	0
AFL–CIO v. AFL–CIO v. Natl. v. Local	1	100.0	1	0	---	1	0	0	1,323	1,323	0	----	1,323	0	0
AFL–CIO v. Natl v Local v. Local	1	100.0	1	1	---	0	0	0	388	388	388	----	0	0	0

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL–CIO unions	Teamsters	Other national unions	Other local unions	
AFL–CIO v. AFL–CIO v. AFL–CIO v. Teamsters v. Local	1	100 0	1	0	1	---	0	0	166	166	0	166	----	0	0
3 (or more)-union elections	54	92 6	50	28	7	8	7	4	11,789	10,770	3,644	691	2,217	4,218	1,019
Total RC elections	7,319	56 0	4,098	2,338	1,158	391	211	3,221	552,037	279,425	163,635	34,171	36,355	45,264	272,612
C ELECTIONS IN RM CASES															
AFL–CIO	215	39.5	85	85	---	---	---	130	9,550	3,688	3,688	----	----	----	5,862
Teamsters	120	45.0	54	---	54	---	---	66	3,141	1,703	----	1,703	----	----	1,438
Other national unions	16	43.8	7	---	---	7	---	9	2,074	598	----	----	598	----	1,476
Other local unions	8	62 5	5	---	---	---	---	3	156	125	----	----	----	125	31
1-union elections	359	42 1	151	85	54	7	5	208	14,921	6,114	3,688	1,703	598	125	8,807
AFL–CIO v. AFL–CIO	5	80 0	4	4	---	---	---	1	2,250	920	920	----	----	----	1,330
AFL–CIO v. Teamsters	9	77 8	7	3	4	---	---	2	1,342	658	233	425	----	----	684
AFL–CIO v. Natl	3	100 0	3	2	---	1	---	0	72	72	70	----	2	----	0
AFL–CIO v. Local	3	100.0	3	1	---	---	2	0	165	165	116	----	----	49	0
Natl. v. Local	1	100 0	1	---	---	0	1	0	154	154	----	----	0	154	0
Local v. Local	1	100 0	1	---	---	---	1	0	49	49	----	----	----	49	0
2-union leections	22	86 4	19	10	4	1	4	3	4,032	2,018	1,339	425	2	252	2,014
Total RM elections	381	44.6	170	95	58	8	9	211	18,953	8,132	5,027	2,128	600	377	10,821
D. ELECTIONS IN RD CASES															
AFL–CIO	170	27 6	47	47	---	---	---	123	12,887	6,492	6,492	----	----	----	6,395
Teamsters	64	23 4	15	---	15	---	---	49	2,133	1,210	----	1,210	----	----	923
Other national unions	24	33 3	8	---	---	8	---	16	2,527	837	----	----	837	----	1,690
Other local unions	4	0 0	0	---	---	---	0	4	79	0	----	----	----	0	79
1-union elections	262	26.7	70	47	15	8	0	192	17,626	8,539	6,492	1,210	837	0	9,087
AFL–CIO v. AFL–CIO	1	100.0	1	1	---	---	---	0	120	120	120	----	----	----	0
AFL–CIO v. Teamsters	6	66.7	4	1	3	---	---	2	2,056	1,794	735	1,059	----	----	262

AFL–CIO v. Natl	3	100.0	3	1	---	2	---	0	899	899	811	----	88	----	0
AFL–CIO v. Local	19	100.0	19	2	---	---	17	0	970	970	14	----	----	956	0
Natl. v. Local	1	100.0	1	---	---	0	1	0	24	24	----	----	0	24	0
2-union elections	30	93.3	28	5	3	2	18	2	4,069	3,807	1,680	1,059	88	980	262
AFL–CIO v. AFL–CIO v. Teamsters	1	100.0	1	1	0	---	---	0	76	76	76	0	----	----	0
3 (or more)-union elections	1	100.0	1	1	0	0	0	0	76	76	76	0	0	0	0
Total RD elections	293	33 8	99	53	18	10	18	194	21,771	12,422	8,248	2,269	925	980	9,349

[1] See "Glossary" for definitions of terms.
[2] Includes each unit in which a choice as to collective-bargaining agent was made; for example, there may have been more than one election in a single case, or several cases may have been involved in one election unit.

Table 14.—Valid Votes Cast in Representation Elections, By Final Results of Election, in Cases Closed, Fiscal Year 1969 [1]

Participating unions	Total valid votes cast	Valid votes cast in election won						Valid votes cast in election lost					
		Votes for unions					Total votes for no Union	Votes for unions					Total votes for no union
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions	
A. ALL REPRESENTATION ELECTIONS													
AFL–CIO	267,798	68,604	68,604	----	----	----	32,487	58,083	58,083	----	----	----	108,624
Teamsters	58,786	16,534	----	16,534	----	----	6,664	11,938	----	11,938	----	----	23,650
Other national unions	50,621	12,645	----	----	12,645	----	6,700	11,707	----	----	11,707	----	19,569
Other local unions	7,073	3,199	----	----	----	3,199	814	982	----	----	----	982	2,078
1-union elections	384,278	100,982	68,604	16,534	12,645	3,199	46,665	82,710	58,083	11,938	11,707	982	153,921
AFL–CIO v. AFL–CIO	20,041	7,452	7,452	----	----	----	798	4,360	4,360	----	----	----	7,431
AFL–CIO v. Teamsters	21,231	15,045	7,051	7,994	----	----	872	1,831	643	1,188	----	----	3,483
AFL–CIO v. Natl	27,015	19,943	10,349	----	9,594	----	589	2,351	736	----	1,615	----	4,132
AFL–CIO v. Local	53,267	52,211	24,202	----	----	28,009	663	151	46	----	----	105	242
Teamsters v. Teamsters	37	33	----	33	----	----	4	0	----	0	----	----	0
Teamsters v. Natl	1,194	770	----	441	329	----	93	155	----	40	115	----	176
Teamsters v. Local	3,678	3,264	----	1,632	----	1,632	174	104	----	98	----	6	136
Natl v. Natl	957	910	----	----	910	----	8	17	----	----	17	----	22
Natl v. Local	3,455	3,009	----	----	1,566	1,443	36	187	----	----	160	27	223
Local v. Local	957	930	----	----	----	930	27	0	----	----	----	0	0
2-union elections	131,832	103,567	49,054	10,100	12,399	32,014	3,264	9,156	5,785	1,326	1,907	138	15,845
AFL–CIO v. AFL–CIO v. AFL–CIO	561	531	531	----	----	----	30	0	0	----	----	----	0
AFL–CIO v. AFL–CIO v. Teamsters	680	663	426	237	----	----	17	0	0	0	----	----	0
AFL–CIO v. AFL–CIO v. Natl	1,119	352	301	----	51	----	46	299	270	----	29	----	422
AFL CIO v. AFL–CIO v. Local	554	475	335	----	----	140	31	16	16	----	----	0	32
AFL–CIO v. Teamsters v. Natl	629	624	326	221	77	----	5	0	0	0	0	----	0
AFL–CIO v. Teamsters v. Local	853	743	219	299	----	225	7	45	0	45	----	0	58
AFL–CIO v. Natl. v. Natl	789	777	308	----	469	----	12	0	0	----	0	----	0
AFL–CIO v. Natl. v. Local	1,144	1,144	93	----	146	905	0	0	0	----	0	0	0
Natl. v. Natl. v. Local	2,049	1,999	----	----	432	1,567	50	0	----	----	0	0	0
AFL–CIO v. AFL–CIO v. AFL–CIO v. AFL–CIO	33	31	31	----	----	----	2	0	0	----	----	----	0

AFL–CIO v. AFL–CIO v. Teamsters v. Natl	181	181	53	24	104	----	0	0	0	0	0	----	0
AFL–CIO v. AFL–CIO v. Natl. v. Local	1,203	1,203	423	----	780	0	0	0	0	----	0	0	0
AFL–CIO v Natl. v. Local v. Local	359	358	242	----	104	12	1	0	0	----	0	0	0
AFL–CIO v AFL–CIO v. AFL–CIO v Teams. v. Local	155	154	46	108	----	0	1	0	0	0	----	0	0
3 (or more)-union elections	10,309	9,235	3,334	889	2,163	2,849	202	360	286	45	29	0	512
Total representation elections	526,419	213,784	120,992	27,523	27,207	38,062	50,131	92,226	64,154	13,309	13,643	1,120	170,278

B ELECTIONS IN RC CASES

AFL–CIO	248,071	62,571	62,571	----	----	----	29,411	54,612	54,612	----	----	----	101,477
Teamsters	54,158	14,748	----	14,748	----	----	5,819	11,385	----	11,385	----	----	22,206
Other national unions	46,861	11,876	----	----	11,876	----	6,205	10,912	----	----	10,912	----	17,868
Other local unions	6,887	3,121	----	----	----	3,121	805	961	----	----	----	961	2,000
1-union elections	355,977	92,316	62,571	14,748	11,876	3,121	42,240	77,870	54,612	11,385	10,912	961	143,551
AFL–CIO v. AFL–CIO	17,990	6,637	6,637	----	----	----	767	3,783	3,783	----	----	----	6,803
AFL–CIO v. Teamsters	18,249	12,972	6,197	6,775	----	----	841	1,627	601	1,026	----	----	2,809
AFL–CIO v Natl	26,300	19,253	9,967	----	9,286	----	564	2,351	736	----	1,615	----	4,132
AFL–CIO v. Local	52,387	51,344	24,092	----	----	27,252	650	151	46	----	----	105	242
Teamsters v. Teamsters	37	33	----	33	----	----	4	0	----	0	----	----	0
Teamsters v Natl	1,194	770	----	441	329	----	93	155	----	40	115	----	176
Teamsters v. Local	3,678	3,264	----	1,632	----	1,632	174	104	----	98	----	6	136
Natl v. Natl	957	910	----	----	910	----	8	17	----	----	17	----	22
Natl v. Local	3,361	2,923	----	----	1,551	1,372	28	187	----	----	160	27	223
Local v. Local	910	886	----	----	----	886	24	0	----	----	----	0	0
2-union elections	125,063	98,992	46,893	8,881	12,076	31,142	3,153	8,375	5,166	1,164	1,907	138	14,543
AFL–CIO v AFL–CIO v. Teamsters	561	531	531	----	----	----	30	0	0	----	----	----	0
AFL–CIO v. AFL–CIO v. Natl	610	593	388	205	----	----	17	0	0	0	----	----	0
AFL–CIO v. AFL–CIO v. Local	1,119	352	301	----	51	----	46	299	270	----	29	----	422
AFL–CIO v. Teamsters v. Natl	554	475	335	----	----	140	31	16	16	----	----	0	32
AFL–CIO v Teamsters v Local	629	624	326	221	77	----	5	0	0	0	0	----	0
AFL–CIO v Natl. v. Natl	853	743	219	299	----	225	7	45	0	45	----	0	58
AFL–CIO v. Natl. v. Local	789	777	208	----	469	----	12	0	0	----	0	----	0
Natl. v. Natl v. Local	1,144	1,144	93	----	146	905	0	0	0	----	0	0	0
AFL–CIO v. AFL–CIO v. AFL–CIO v. AFL–CIO	2,049	1,999	----	----	432	1,567	50	0	----	----	0	0	0
AFL–CIO v. AFL–CIO v. Teamsters v. Natl	33	31	31	----	----	----	2	0	0	----	----	----	0
AFL–CIO v. AFL–CIO v. Natl. v. Local	181	181	53	24	104	----	0	0	0	0	0	----	0
AFL–CIO v Natl. v. Local v. Local	1,203	1,203	423	----	780	0	0	0	0	----	0	0	0
	359	358	242	----	104	12	1	0	0	----	0	0	0

Participating unions	Total valid votes cast	Valid votes cast in election won						Valid votes cast in election lost					
		Votes for unions					Total votes for no Union	Votes for unions					Total votes for no union
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions	
AFL–CIO v. AFL–CIO v. AFL–CIO v. Teams. v. Local	155	154	46	108	----	0	1	0	0	0	----	0	0
3(or more)-union elections	10,239	9,165	3,296	857	2,163	2,849	202	360	286	45	29	0	512
Total RC elections	491,279	200,473	112,760	24,486	26,115	37,112	45,595	86,605	60,064	12,594	12,848	1,099	158,606
C. ELECTIONS IN RM CASES													
AFL–CIO	8,358	2,178	2,178	----	----	----	1,061	1,757	1,757	----	----	----	3,362
Teamsters	2,702	1,162	----	1,162	----	----	374	331	----	331	----	----	835
Other national unions	1,787	297	----	----	297	----	226	439	----	----	439	----	825
Other local unions	115	78	----	----	----	78	9	5	----	----	----	5	23
1-union elections	12,962	3,715	2,178	1,162	297	78	1,670	2,532	1,757	331	439	5	5,045
AFL–CIO v. AFL–CIO	1,954	718	718	----	----	----	31	577	577	----	----	----	628
AFL–CIO v. Teamsters	1,126	486	216	270	----	----	13	127	12	115	----	----	500
AFL–CIO v. Natl	64	64	52	----	12	----	0	0	0	----	0	----	0
AFL–CIO v. Local	70	70	30	----	----	40	0	0	0	----	----	0	0
Natl v. Local	76	74	----	----	15	59	2	0	----	----	0	0	0
Natl. v. Local	47	44	----	----	----	44	3	0	----	----	----	0	0
2-union elections	3,337	1,456	1,016	270	27	143	49	704	589	115	0	0	1,128
Total RM elections	16,299	5,171	3,194	1,432	324	221	1,719	3,236	2,346	446	439	5	6,173

D. ELECTIONS IN RD CASES

AFL–CIO	11,369	3,855	3,855	----	----	----	2,015	1,714	1,714	----	----	----	3,785
Teamsters	1,926	624	----	624	----	----	471	222	----	222	----	----	609
Other national unions	1,973	472	----	----	472	----	269	356	----	----	356	----	876
Other local unions	71	0	----	----	----	0	0	16	----	----	----	16	55
1-union elections	15,339	4,951	3,855	624	472	0	2,755	2,308	1,714	222	356	16	5,325
AFL–CIO v AFL–CIO	97	97	97	----	----	----	0	0	0	----	----	----	0
AFL–CIO v. Teamsters	1,856	1,587	638	949	----	----	18	77	30	47	----	----	174
AFL–CIO v. Natl	651	626	330	----	296	----	25	0	0	----	0	----	0
AFL–CIO v. Local	810	797	80	----	----	717	13	0	0	----	----	0	0
Natl. v. Local	18	12	----	----	0	12	6	0	----	----	0	0	0
2-union elections	3,432	3,119	1,145	949	296	729	62	77	30	47	0	0	174
AFL–CIO v. AFL–CIO v. Teamsters	70	70	38	32	----	----	0	0	0	0	----	----	0
3 (or more)-union elections	70	70	38	32	0	0	0	0	0	0	0	0	0
Total RD elections	18,841	8,140	5,038	1,605	768	729	2,817	2,385	1,744	269	356	16	5,499

[1] See "Glossary" for definitions of terms.

Table 15.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1969

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employee in units choosing representation
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Maine	35	17	10	7	0	0	18	3,497	3,165	1,520	1,174	346	0	0	1,645	1,560
New Hampshire	46	26	14	8	4	0	20	2,674	2,452	942	671	207	64	0	1,510	648
Vermont	5	4	0	2	2	0	1	1,002	968	589	4	77	508	0	379	989
Massachusetts	210	109	56	46	5	2	101	15,071	13,527	6,841	4,478	1,599	591	173	6,686	4,670
Rhode Island	39	21	8	4	9	0	18	2,570	2,269	1,490	816	105	564	5	779	1,324
Connecticut	106	58	30	11	8	9	48	7,903	6,966	3,630	2,751	193	563	123	3,336	2,997
New England	441	235	118	78	28	11	206	32,717	29,347	15,012	9,894	2,527	2,290	301	14,335	12,188
New York	436	248	114	68	30	36	188	24,600	21,716	13,472	6,968	2,059	1,509	2,936	8,244	13,044
New Jersey	311	162	75	69	10	8	149	18,017	16,411	9,504	4,557	2,660	1,430	857	6,907	8,818
Pennsylvania	507	295	164	78	37	16	212	35,861	32,735	19,170	12,130	2,039	2,808	2,193	13,565	18,069
Middle Atlantic	1,254	705	353	215	77	60	549	78,478	70,862	42,146	23,655	6,758	5,747	5,986	28,716	39,931
Ohio	495	279	163	71	36	10	216	54,972	49,806	32,392	16,748	2,288	3,446	9,910	17,414	30,287
Indiana	289	161	77	38	23	23	128	23,854	21,638	12,176	5,165	962	3,966	2,083	9,462	10,318
Illinois	416	210	129	42	24	15	206	38,276	32,361	22,006	11,928	1,977	3,274	4,827	10,355	23,953
Michigan	436	240	111	52	64	13	196	28,368	24,804	14,775	6,747	2,206	4,764	1,058	10,029	14,838
Wisconsin	199	111	69	35	5	2	88	8,352	7,446	4,581	2,373	994	749	465	2,865	4,895
East North Central	1,835	1,001	548	238	152	63	834	153,822	136,055	85,930	42,961	8,427	16,199	18,343	50,125	84,291
Iowa	106	62	33	21	6	2	44	6,151	5,634	3,092	1,723	848	456	65	2,542	3,023
Minnesota	102	58	39	16	3	0	44	6,732	5,784	3,134	2,055	497	440	142	2,650	3,114
Missouri	236	126	72	41	11	2	110	33,365	28,832	24,262	12,907	1,532	691	9,132	4,570	27,084
North Dakota	15	12	4	7	1	0	3	569	484	287	95	176	16	0	197	401
South Dakota	27	17	15	2	0	0	10	1,060	999	482	455	27	0	0	517	410
Nebraska	62	35	24	11	0	0	27	3,218	2,766	1,439	1,335	94	0	10	1,327	1,498
Kansas	74	31	21	9	0	1	43	4,438	3,873	1,871	1,527	234	85	25	2,002	1,999
West North Central	622	341	208	107	21	5	281	55,533	48,372	34,567	20,097	3,408	1,688	9,374	13,805	37,529

Delaware	17	10	4	2	3	1	1	1,888	1,652	836	476	92	253	15	816	648
Maryland	147	75	41	29	3	2	72	10,815	9,517	4,084	2,629	606	677	172	5,433	2,257
District of Columbia	58	29	23	6	0	0	29	1,699	1,475	684	535	149	0	0	791	748
Virginia	103	59	45	9	4	1	44	11,746	10,356	4,638	3,352	520	755	11	5,718	4,747
West Virginia	60	34	21	6	4	3	26	2,972	2,443	1,762	1,056	128	349	229	681	2,145
North Carolina	134	64	51	12	1	0	70	17,592	16,108	8,226	6,910	1,119	197	0	7,882	8,288
South Carolina	38	14	13	1	0	0	24	8,844	7,936	3,026	2,906	95	25	0	4,910	2,529
Georgia	116	58	48	9	1	0	58	10,437	9,232	4,950	4,143	772	35	0	4,282	4,349
Florida	184	89	55	30	2	2	95	15,902	13,676	6,923	4,313	1,418	679	513	6,753	6,046
South Atlantic	857	432	301	104	18	9	425	81,895	72,395	35,129	26,320	4,899	2,970	940	37,266	31,757
Kentucky	121	70	30	30	8	2	51	12,542	11,422	6,078	2,700	1,414	1,685	275	5,344	5,682
Tennessee	216	117	71	39	6	1	99	21,658	19,713	9,778	7,864	1,212	673	29	9,935	7,555
Alabama	114	56	39	12	3	2	58	11,506	10,375	5,066	4,151	445	457	13	5,309	4,339
Mississippi	55	35	28	5	2	0	20	7,678	7,142	3,841	3,432	94	315	0	3,301	3,798
East South Central	506	278	168	86	19	5	228	53,384	48,652	24,763	18,147	3,165	3,134	317	23,889	21,374
Arkansas	92	48	40	5	3	0	44	8,218	7,465	3,933	3,236	398	299	0	3,532	4,567
Louisiana	116	66	39	20	4	3	50	11,097	10,155	6,964	5,414	349	1,119	82	3,191	6,878
Oklahoma	91	39	33	4	2	0	52	7,067	6,234	3,355	2,154	250	947	4	2,879	3,266
Texas	327	185	134	31	14	6	142	25,065	22,304	13,194	9,301	1,160	2,325	408	9,110	15,804
West South Central	626	338	248	60	23	9	288	51,447	46,158	27,446	20,105	2,157	4,690	494	18,712	30,515
Montana	32	16	5	10	0	1	16	694	549	290	149	110	0	31	259	249
Idaho	45	17	8	9	0	0	28	2,471	2,189	1,124	458	666	0	0	1,065	1,150
Wyoming	12	6	5	1	0	0	6	336	297	153	104	48	0	1	144	172
Colorado	105	61	41	13	6	1	44	4,685	4,216	2,203	1,539	260	355	49	2,013	1,586
New Mexico	36	21	15	5	0	1	15	1,308	1,142	516	355	146	0	15	626	506
Arizona	60	34	20	13	0	1	26	2,570	2,105	1,215	772	394	4	45	890	1,558
Utah	33	18	12	3	3	0	15	1,248	1,090	519	324	120	64	11	571	555
Nevada	24	9	3	6	0	0	15	480	400	195	57	138	0	0	205	167
Mountain	347	182	109	60	9	4	165	13,792	11,988	6,215	3,758	1,882	423	152	5,773	5,943
Washington	148	75	51	23	0	1	73	3,756	3,313	1,699	1,238	410	8	43	1,614	1,419
Oregon	115	48	37	11	0	0	67	5,259	4,646	2,338	1,746	325	130	137	2,308	2,321
California	1,007	570	289	214	49	18	437	47,415	41,604	23,682	13,773	5,778	3,152	979	17,922	25,032
Alaska	12	8	4	4	0	0	4	265	188	92	75	16	0	1	96	163
Hawaii	36	25	12	4	8	1	11	1,344	1,157	750	308	211	197	34	407	811
Pacific	1,318	726	393	256	57	20	592	58,039	50,908	28,561	17,140	6,740	3,487	1,194	22,347	29,746
Puerto Rico	182	125	38	30	5	52	57	13,400	11,529	6,106	2,939	869	222	2,076	5,423	6,463
Virgin Islands	5	4	4	0	0	0	1	254	153	135	130	0	0	5	18	242
Outlying Areas	187	129	42	30	5	52	58	13,654	11,682	6,241	3,069	869	222	2,081	5,441	6,705
Total, all States and areas	7,993	4,367	2,486	1,234	409	238	3,626	592,761	526,419	306,010	185,146	40,832	40,850	39,182	220,409	299,979

[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 Representation Elections Held in Cases Closed, Fiscal Year 1969

Industrial group [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employee in units choosing representation
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Ordnance and accessories	26	15	9	0	6	0	11	3,912	3,448	1,909	1,019	250	498	142	1,539	1,811
Food and kindred products	555	308	161	117	17	13	247	39,606	34,818	19,956	12,533	5,664	1,195	564	14,862	21,335
Tobacco manufacturers	7	2	2	0	0	0	5	1,851	1,766	712	457	253	0	2	1,054	641
Textile mill products	86	40	25	5	9	1	46	13,837	12,370	5,835	4,802	257	755	21	6,535	3,814
Apparel and other finished products, made from fabric and similar materials	77	40	33	4	2	1	37	10,936	9,620	5,301	4,195	360	229	517	4,319	5,220
Lumber and wood products (except furniture)	173	90	66	14	6	4	83	12,286	11,205	5,897	4,005	973	771	148	5,308	5,745
Furniture and fixtures	103	54	41	8	4	1	49	7,945	7,102	3,836	2,837	714	201	84	3,266	3,835
Paper and allied products	213	129	90	24	7	8	84	20,252	18,465	11,733	7,499	1,898	1,112	1,224	6,732	11,356
Printing, publishing, and allied industries	292	155	134	11	3	7	137	12,849	11,704	7,183	5,737	1,140	123	183	4,521	6,966
Chemicals and allied products	276	143	66	53	20	4	133	19,884	18,317	9,685	5,602	1,915	2,085	83	8,632	8,767
Products of petroleum and coal	91	44	17	19	2	6	47	3,471	3,080	2,014	758	350	106	800	1,066	2,054
Rubber and plastic products	214	111	67	22	17	5	103	22,448	20,023	10,183	7,004	1,130	1,660	389	9,840	8,614
Leather and leather products	55	21	16	2	1	2	34	15,809	14,189	6,010	5,130	524	270	86	8,179	4,696
Stone, clay, and glass products	218	145	83	35	7	20	73	15,004	13,443	7,901	5,422	980	361	1,138	5,542	7,387
Primary metal industries	304	187	117	28	36	6	117	29,393	26,459	16,723	10,288	874	3,952	1,609	9,736	16,294
Fabricated metal products (except machinery and transportation equipment)	456	262	161	44	44	13	194	35,555	31,926	17,907	10,608	2,283	3,836	1,180	14,019	18,470
Machinery (except electrical)	522	260	159	30	46	25	262	68,205	61,892	39,317	20,688	1,418	5,828	11,383	22,575	38,770
Electrical machinery, equipment, and supplies	282	119	84	16	15	4	163	61,961	54,646	29,788	19,159	1,444	4,622	4,563	24,858	23,826
Aircraft and parts	56	25	18	1	4	2	31	31,736	27,558	23,401	11,700	117	1,735	9,849	4,157	25,094
Ship and boat building and repairing	23	11	5	4	1	1	12	2,500	2,226	1,070	530	428	44	68	1,156	1,005
Miscellaneous transportation equipment	204	96	36	16	41	3	108	23,444	21,123	11,262	3,672	1,023	5,569	998	9,861	10,852

Professional, scientific, and controlling instruments	62	26	14	7	4	1	36	6,927	6,413	2,911	1,883	619	364	45	3,502	1,392
Miscellaneous manufacturing	132	68	46	12	7	3	64	11,367	10,198	5,876	3,973	1,204	557	142	4,322	5,973
Manufacturing	4,427	2,351	1,450	472	299	130	2,076	471,178	421,991	246,410	149,501	25,818	35,873	35,218	175,581	233,917
Metal mining	14	10	5	4	1	0	4	789	736	525	275	126	124	0	211	643
Coal mining	21	13	1	0	7	5	8	1,379	1,158	871	19	2	446	404	287	883
Crude petroleum and natural gas production	17	13	10	1	0	2	4	948	649	415	322	6	0	87	234	731
Nonmetallic mining and quarrying	28	19	9	7	2	1	9	1,293	1,181	645	323	152	162	8	536	518
Mining	80	55	25	12	10	8	25	4,409	3,724	2,456	939	286	732	499	1,268	2,775
Construction	190	98	63	10	12	13	92	6,504	5,294	2,885	2,071	211	200	403	2,409	3,363
Wholesale trade	718	424	116	271	24	13	294	16,094	14,619	8,707	3,316	4,428	558	405	5,912	9,298
Retail trade	1,029	533	327	156	27	23	496	29,858	25,448	13,848	9,140	3,254	812	642	11,600	15,270
Finance, insurance, and real estate	119	69	51	7	1	10	50	4,197	3,734	1,719	1,204	220	124	171	2,015	1,755
Local passenger transportation	44	31	18	8	0	5	13	3,525	2,770	1,863	948	655	0	260	907	2,599
Motor freight, warehousing, and transportation services	429	240	41	185	8	6	189	9,681	8,403	4,693	897	3,464	127	205	3,710	4,737
Water transportation	25	18	11	5	1	1	7	666	576	370	258	34	62	16	206	385
Other transportation	19	11	7	4	0	0	8	1,747	1,369	653	445	72	136	0	716	405
Communications	145	80	74	4	1	1	65	6,515	5,948	3,346	3,190	57	95	4	2,602	4,358
Heat, light, power, water, and sanitary services	138	93	68	14	9	2	45	10,106	9,620	6,442	4,547	237	1,523	135	3,178	6,749
Transportation, communication, and other utilities	800	473	219	220	19	15	327	32,240	28,686	17,367	10,285	4,519	1,943	620	11,319	19,233
Hotels and other lodging places	71	41	32	6	1	2	30	4,779	3,539	1,915	1,688	124	77	26	1,624	2,515
Personal services	54	31	14	15	0	2	23	2,492	2,191	1,181	744	410	0	27	1,010	1,022
Automobile repairs, garages, and other miscellaneous repair services	143	82	34	42	5	1	61	3,550	3,178	1,627	953	516	70	88	1,551	1,396
Motion pictures and other amusement and recreation services	30	18	13	1	2	2	12	1,849	1,160	915	580	169	25	141	245	1,565
Medical and other health services	135	84	72	1	0	11	51	5,919	4,714	2,668	2,312	48	0	308	2,046	3,178
Educational services	6	4	3	0	1	0	2	180	166	93	80	0	13	0	73	66
Nonprofit membership organizations	6	4	3	0	0	1	2	430	388	216	165	0	0	51	172	163
Miscellaneous services	185	100	64	21	8	7	85	9,082	7,587	4,003	2,168	829	423	583	3,584	4,463
Services	630	364	235	86	17	26	266	28,281	22,923	12,618	8,690	2,096	608	1,224	10,305	14,368
Total, all industrial groups	7,993	4,367	2,486	1,234	409	238	3,626	592,761	526,419	306,010	185,146	40,832	40,850	39,182	220,402	299,979

[1] Source: Standard Industrial Classification, Division of Statistical Standards, U.S. Bureau of the Budget, Washington, 1957.

Table 17.—Size of Units in Representation Election Cases Closed, Fiscal Year 1969 [1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by								Elections in which no representative was chosen	
					AFL–CIO unions		Teamsters		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
A. CERTIFICATION ELECTIONS (RC & RM)														
Total RC and RM elections	570,990	7,700	100.0	----	2,432	100.0	1,216	100.0	399	100 0	221	100.0	3,432	100.0
Under 10	10,189	1,781	23.1	23.1	527	21.7	493	40.5	57	14 3	46	20 8	658	19.2
10 to 19	22,687	1,628	21.1	44.2	506	20.8	322	26.5	74	18.5	36	16.3	690	20.1
20 to 29	22,723	945	12.3	56.5	306	12.6	142	11 7	55	13 8	28	12.7	414	12.1
30 to 39	20,092	588	7.6	64.1	201	8.3	60	4.9	40	10.0	13	5.9	274	8.0
40 to 49	17,705	400	5.2	69 3	146	6.0	38	3.1	15	3.8	14	6.3	187	5.4
50 to 59	16,757	309	4.0	73.3	124	5.1	27	2.2	12	3 0	14	6.3	132	3.8
60 to 69	15,759	245	3.2	76.5	86	3 5	16	1.3	14	3.5	10	4.5	119	3.5
70 to 79	14,724	198	2.6	79.1	61	2.5	16	1.3	7	1.8	4	1.8	110	3.2
80 to 89	14,419	171	2.2	81.3	56	2.3	13	1.1	13	3.3	2	0.9	87	2.5
90 to 99	13,197	140	1.8	83 1	49	2.0	11	0 9	9	2.3	5	2 3	66	1.9
100 to 109	12,657	122	1.6	84.7	43	1 8	8	0.7	10	2.5	4	1.8	57	1.7
110 to 119	11,766	103	1.3	86.0	34	1.4	5	0.4	8	2 0	0	----	56	1.6
120 to 129	12,139	98	1.3	87.3	27	1.1	6	0.5	13	3.3	6	2.7	46	1.3
130 to 139	7,112	53	0.7	88.0	15	0.6	3	0.2	2	0 5	1	0.5	32	0 9
140 to 149	10,380	72	0 9	88 9	26	1 1	6	0.5	6	1 5	1	0.5	33	1 0
150 to 159	11,409	74	1 0	89.9	23	0 9	7	0.6	6	1.5	4	1.8	34	1.0
160 to 169	10,376	63	0.8	90.7	18	0.7	6	0 5	5	1.3	3	1.4	31	0.9
170 to 179	7,310	42	0.5	91.2	14	0.6	2	0 2	4	1.0	1	0.5	21	0.6
180 to 189	8,467	46	0 6	91 8	17	0.7	3	0.2	6	1 5	1	0.5	19	0.6
190 to 199	4,853	25	0.3	92.1	3	0.1	2	0.2	3	0.8	0	----	17	0.5
200 to 299	59,430	244	3.2	95.3	72	3.0	19	1.6	15	3.8	8	3.6	130	3.8
300 to 399	43,770	129	1.7	97.0	33	1.4	7	0.6	6	1.5	4	1.8	79	2.3

400 to 499	32,298	72	0 9	97.9	16	0.7	2	0.2	6	1 5	3	1.4	45	1.3
500 to 599	27,546	50	0.6	98 5	9	0.4	1	0.1	6	1 5	2	0.9	32	0.9
600 to 799	19,274	27	0.4	98.9	7	0.3	0	----	2	0.5	4	1.8	14	0.4
800 to 999	13,982	16	0.2	99 1	1	0 0	0	----	2	0 5	1	0.5	12	0.3
1,000 to 1,999	44,240	34	0 5	99.6	8	0 3	1	0.1	2	0.5	3	1.4	20	0 6
2,000 to 2,999	9,556	4	0.1	99.7	1	0.0	0	----	1	0.3	0	----	2	0 1
3,000 to 9,999	9,835	1	0 0	99.7	0	----	0	----	0	----	1	0.5	0	----
10,000 and over	46,338	20	0.3	100.0	3	0 1	0	----	0	----	2	0.9	15	0.4
B. DECERTIFICATION ELECTIONS (RD)														
Total RD elections	21,771	293	100.0	----	53	100.0	18	100.0	10	100.0	18	100.0	194	100.0
Under 10	414	68	23 2	23 2	3	5.7	4	22.2	0	----	7	38.9	54	27.8
10 to 19	904	64	21 9	45.1	8	15 1	4	22.2	0	----	5	27.8	47	24 2
20 to 29	1,092	45	15.4	60.5	7	13.2	1	5.6	0	----	4	22.2	33	17.0
30 to 39	691	21	7 2	67.7	2	3 8	1	5.6	1	10 0	0	----	17	8 8
40 to 49	570	13	4.5	72 2	5	9.4	1	5.6	4	40.0	0	----	3	1.5
50 to 59	443	8	2 7	74.9	0	----	1	5.6	1	10.0	0	----	6	3.1
60 to 69	452	7	2.4	77 3	3	5.7	0	----	0	----	0	----	4	2.1
70 to 79	446	6	2.0	79 3	5	9.4	0	----	0	----	0	----	1	0.5
80 to 89	510	6	2.0	81.3	2	3.8	0	----	0	----	1	5.6	3	1.5
90 to 99	470	5	1.7	83.0	0	----	1	5.6	1	10 0	0	----	3	1 5
100 to 109	311	3	1.0	84.0	1	1.9	0	----	0	----	0	----	2	1.0
110 to 119	164	2	0.7	84 7	0	----	1	5.6	0	----	0	----	1	0.5
120 to 129	619	5	1 7	86.4	3	5.7	0	----	0	----	0	----	2	1.0
130 to 139	408	3	1.0	87.4	0	----	0	----	0	----	0	----	3	1 5
140 to 149	427	3	1 0	88.4	0	----	0	----	1	10.0	0	----	2	1.0
150 to 159	314	2	0.7	89.1	1	1.9	0	----	0	----	0	----	1	0.5
160 to 169	494	3	1.0	90.1	0	----	0	----	0	----	0	----	3	1.5
170 to 199	1,089	6	2 0	92.1	3	5 7	1	5.6	0	----	0	----	2	1.0
200 to 299	1,704	7	2 4	94.5	2	3 8	0	----	2	20.0	0	----	3	1.5
300 to 399	1,309	4	1.4	95 9	2	3.8	1	5.6	0	----	0	----	1	0.5
400 to 499	498	1	0.4	96.3	1	1.9	0	----	0	----	0	----	0	----
500 to 799	3,994	6	2.0	98.3	2	3.8	1	5.6	0	----	1	5.6	2	1.0
800 and over	4,448	5	1.7	100.0	3	5.7	1	5.6	0	----	0	----	1	0.5

[1] See "Glossary" for definitions of terms.

Table 18.—Distribution of Unfair Labor Practice Situations Received, By Number of Employees in Establishment, Fiscal Year 1969 [1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations															
				CA		CB		CC		CD		CE		CP		CA–CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Total	[2] 15,799	100.0	----	10,112	100.0	2,527	100.0	1,210	100.0	455	100.0	38	100.0	341	100.0	952	100.0	164	100.0
Under 10	3,638	23.0	23.0	2,232	22.1	564	22 3	397	32.8	105	23.1	13	34.2	125	36.7	162	17.0	40	24.4
10 to 19	1,686	10.7	33.7	1,141	11.3	194	7.7	155	12.8	56	12 3	4	10.5	54	15.8	58	6.1	24	14.6
20 to 29	1,302	8.2	41.9	932	9.2	131	5.2	93	7.7	40	8.8	2	5.3	34	10.0	56	5.9	14	8.5
30 to 39	878	5.6	47.5	588	5.8	113	4.5	65	5.4	37	8.1	0	----	26	7.6	40	4.2	9	5.5
40 to 49	573	3.6	51.1	417	4.1	59	2.3	36	3.0	18	4 0	0	----	14	4.1	19	2.0	10	6.1
50 to 59	631	4.0	55.1	389	3.8	99	3.9	71	5.9	19	4.2	3	7 9	9	2.6	31	3.3	10	6.1
60 to 69	411	2.6	57.7	301	3.0	58	2 3	15	1.2	11	2.4	2	5.3	6	1.8	14	1.5	4	2.4
70 to 79	427	2.7	60.4	310	3.1	46	1.8	24	2.0	12	2 6	0	----	6	1.8	24	2.5	5	3.0
80 to 89	299	1.9	62.3	198	2.0	34	1 3	22	1.8	9	2.0	2	5.3	12	3.5	19	2.0	3	1.8

90 to 99	173	1.1	63.4	125	1.2	19	0.8	12	1.0	2	0.4	0	----	8	2.3	6	0.6	1	0.6
100 to 109	581	3.7	67.1	345	3.4	103	4.1	45	3.7	18	4 0	4	10.5	11	3.2	44	4.6	11	6.7
110 to 119	105	0.7	67.8	82	0.8	12	0.5	4	0.3	2	0.4	0	----	2	0.6	3	0.3	0	----
120 to 129	231	1.5	69.3	164	1.6	24	0.9	13	1.1	7	1.5	0	----	7	2.1	15	1.6	1	0.6
130 to 139	119	0.8	70.1	84	0.8	21	0.8	4	0.3	2	0.4	0	----	1	0.3	6	0.6	1	0.6
140 to 149	80	0.5	70.6	63	0.6	11	0.4	1	0.1	0	----	0	----	0	----	5	0.5	0	----
150 to 159	289	1.8	72 4	190	1.9	44	1.7	14	1.2	6	1.3	0	----	3	0.9	28	2.9	4	2.4
160 to 169	88	0.6	73 0	72	0.7	6	0.2	6	0.5	1	0.2	0	----	1	0.3	1	0.1	1	0.6
170 to 179	95	0.6	73.6	77	0.8	9	0.4	1	0.1	1	0 2	0	----	0	----	6	0.6	1	0.6
180 to 189	102	0.7	74.3	74	0.7	14	0.6	6	0.5	3	0.7	0	----	0	----	4	0.4	1	0.6
190 to 199	31	0.2	74.5	18	0.2	9	0.4	0	----	2	0.4	0	----	2	0.6	0	----	0	----
200 to 299	826	5.2	79.7	517	5.1	147	5.8	61	5.0	20	4.4	3	7.9	10	2.9	64	6.7	4	2.4
300 to 399	590	3.7	83.4	366	3.6	121	4.8	23	1.9	9	2.0	4	10.5	4	1.2	58	6.1	5	3.0
400 to 499	335	2.1	85 5	215	2.1	59	2.3	10	0.8	11	2.4	0	----	3	0.9	36	3 8	1	0.6
500 to 599	302	1.9	87.4	175	1.7	68	2.7	18	1.5	8	1.8	0	----	0	----	31	3.3	2	1.2
600 to 699	182	1.2	88.6	115	1.1	38	1.5	8	0.7	10	2.2	0	----	0	----	9	0.9	2	1.2
700 to 799	141	0.9	89.5	86	0.9	25	1.0	10	0.8	3	0.7	0	----	0	----	17	1.8	0	----
800 to 899	146	0.9	90.4	81	0.8	36	1.4	10	0.8	6	1 3	0	----	1	0.3	12	1.3	0	----
900 to 999	68	0.4	90.8	43	0.4	15	0.6	4	0.3	4	0.9	0	----	0	----	2	0.2	0	----
1,000 to 1,999	528	3.3	94.1	281	2.8	136	5.4	20	1.7	16	3 5	1	2.6	0	----	71	7.5	3	1.8
2,000 to 2,999	253	1.6	95.7	120	1.2	76	3.0	23	1.9	6	1 3	0	----	1	0.3	26	2.7	1	0.6
3,000 to 3,999	148	0.9	96.6	71	0.7	47	1.9	4	0.3	0	----	0	----	0	----	25	2.6	1	0.6
4,000 to 4,999	80	0 5	97.1	35	0.3	26	1.0	6	0.5	4	0.9	0	----	1	0.3	7	0.7	1	0.6
5,000 to 9,999	210	1.3	98.4	84	0.8	78	3.1	20	1.7	5	1.1	0	----	0	----	23	2.4	0	----
10,000 and over	251	1.6	100.0	121	1.2	85	3 4	9	0.7	2	0.4	0	----	0	----	30	3.2	4	2.4

[1] See "Glossary" for definitions of terms.

[2] Based on revised situation count which absorbs companion cases, cross-filing and multiple filings as compared to situations shown in charts 1 and 2 of chapter I, which are based on single and multiple filings of same type of case

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1969; and Cumulative Totals, Fiscal Years 1936–69

	Fiscal year 1969									July 5, 1935—June 30, 1969	
	Number of proceedings [1]					Percentages					
	Total	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissed [2]	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissal	Number	Percent
Proceedings decided by U.S. courts of appeals	380	316	44	10	10	----	----	----	----	----	----
On petitions for review and/or enforcements	363	305	39	9	10	100.0	100.0	100.0	100.0	4,015	100.0
Board orders affirmed in full	208	161	29	8	10	52.8	74.3	88.9	100.0	2,329	58.0
Board orders affirmed with modification	83	78	5	0	0	25.6	12.8	----	----	803	20.0
Remanded to Board	16	12	4	0	0	3.9	10.3	----	----	165	4.1
Board orders partially affirmed and partially remanded	4	4	0	0	0	1.3	----	----	----	50	1.3
Board orders set aside	52	50	1	1	0	16 4	2.6	11.1	----	668	16.6
On petitions for comtempt	17	11	5	1	0	100.0	100.0	100.0	----	----	----
Compliance after filing of petition, before court order	9	6	2	1	0	54.5	40.0	100.0	----	----	----
Court orders holding respondent in comtempt	7	4	3	0	0	36.4	60.0	----	----	----	----
Court orders denying petition	1	1	0	0	0	9.1	----	----	----	----	----
Proceeding decided by U.S. Supreme Court	10	9	0	0	1	100.0	----	----	100.0	180	100.0
Board orders affirmed in full	4	3	0	0	1	33.3	----	----	100.0	111	61.6
Board orders affirmed with modification	1	1	0	0	0	11.1	----	----	----	14	7.7
Board orders set aside	0	0	0	0	0	----	----	----	----	28	15.5
Remanded to Board	5	5	0	0	0	56.0	----	----	----	12	6.7
Remanded to courts of appeals	0	0	0	0	0	----	----	----	----	12	6.7
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	----	----	----	----	1	0.6
Contempt cases remanded to courts of appeals	0	0	0	0	0	----	----	----	----	1	0.6
Contempt cases enforced	0	0	0	0	0	----	----	----	----	1	0.6

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal year 1964. This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case." See "Glossary" for definitions of terms.

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the court of appeals.

Table 19A.—Proceeding Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1969 compared with 5-Year Cumulative Totals, Fiscal Years 1964 through 1968 [1]

Circuit courts of appeals (headquarters)	Total fiscal year 1969	Total fiscal years 1964–68	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set Aside			
			Fiscal year 1969		Cumulative fiscal years 1964–68		Fiscal year 1969		Cumulative fiscal years 1964–68		Fiscal year 1969		Cumulative fiscal years 1964–68		Fiscal year 1969		Cumulative fiscal years 1964–68		Fiscal year 1969		Cumulative fiscal years 1964–68	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	363	1,234	208	57.3	721	58.4	83	22.9	256	20.7	16	4.4	51	4 1	4	1.1	19	1.5	52	14.3	187	15.3
1. Boston, Mass.	14	67	9	64.3	43	64.2	2	14.3	8	11.9	0	---	4	6.0	0	---	1	1.5	3	21.4	11	16.4
2. New York, N.Y.	29	118	17	58.6	75	63.6	6	20.7	23	19.5	2	6.9	5	4.2	1	3.4	4	3.4	3	10.4	11	9.3
3. Philadelphia, Pa.	8	74	5	62.5	52	70.3	1	12.5	4	5.4	2	25.0	6	8.1	0	---	0	---	0	---	12	16.2
4. Richmond, Va.	30	114	18	60.0	68	59.6	10	33.3	26	22.8	0	---	1	0.9	0	---	0	---	2	6.7	19	16.7
5. New Orleans, La.	83	207	45	54.2	110	53.1	24	28.9	68	32.9	1	1.2	9	4.3	1	1.2	1	0.5	12	14.5	19	9.2
6. Cincinnati, Ohio	72	172	34	47.2	95	55.2	20	27.8	40	23.3	1	1.4	4	2.3	1	1.4	2	1.2	16	22.2	31	18.0
7. Chicago, Ill.	21	124	15	71.4	68	54.9	4	19.1	21	16.9	0	-	0	---	0	---	1	0.8	2	9.5	34	27.4
8. St. Louis, Mo.	24	75	7	29.2	22	29.3	7	29.2	29	38.7	3	12.4	1	1.3	0	---	2	2.7	7	29.2	21	28.0
9. San Francisco, Calif.	36	130	27	75.0	90	69.2	2	5.6	13	10.0	4	11.1	7	5.4	0	---	1	0.8	3	8.3	19	14.6
10. Denver, Colo.	17	55	8	47.1	33	60.0	5	29.4	11	20.0	1	5.9	5	9.1	1	5.9	0	---	2	11.7	6	10.9
Washington, D.C.	29	98	23	79.3	65	66.3	2	6.9	13	13.3	2	6.9	9	9.2	0	---	7	7.1	2	6.9	4	4.1

[1] Percentages are computed horizontally by current fiscal year and total fiscal years.

Table 20.—Injunction Litigation Under Section 10(e), 10 (j), and 10 (l), Fiscal Year 1969

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court June 30, 1969
		Pending in district court July 1, 1968	Filed in district court fiscal year 1969		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under section 10(e), total	[1] 3	0	[1] 3	2	2	0	0	0	0	0	1
Under section 10(j), total	19	4	15	18	6	3	3	4	2	0	1
8(a)(1)(2), 8(b)(1)(A)(2)	1	1	0	1	0	0	0	0	1	0	0
8(a)(1)(2)(3)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2)(3)(5)	2	1	1	2	0	0	1	1	0	0	0
8(a)(1)(2)(3)(5); 8(b)(1)(A)(2)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(3)	3	0	3	3	0	1	1	1	0	0	0
8(a)(1)(3)(4)	1	0	1	1	0	1	0	0	0	0	0
8(a)(1)(3)(5)	2	1	1	2	0	0	1	1	0	0	0
8(a)(1)(5)	5	1	4	4	1	1	0	1	1	0	1
8(a)(1)(5); 8(b)(1)(3)	1	0	1	1	1	0	0	0	0	0	0
8(b)(3)	2	0	2	2	2	0	0	0	0	0	0
Under section 10(l), total	210	20	190	187	78	8	57	25	7	12	23
8(b)(4)(A)(B)	3	1	2	3	2	0	1	0	0	0	0
8(b)(4)(B)	109	10	99	103	39	6	32	13	4	9	6
8(b)(4)(B)(D)	3	1	2	2	1	0	0	1	0	0	1
8(b)(4)(B); 8(e)	3	2	1	3	2	0	1	0	0	0	0
8(b)(4)(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(D)	63	1	62	52	20	1	19	10	0	2	11
8(b)(7)(A)	3	1	2	3	1	0	0	1	1	0	0
8(b)(7)(B)	6	0	6	3	3	0	0	0	0	0	3
8(b)(7)(C)	13	0	13	12	7	0	4	0	0	1	1
8(e)	6	4	2	5	2	1	0	0	2	0	1

[1] In courts of appeals.

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1969

Type of litigation	Number of proceedings								
	Total—all courts			In courts of appeals			In district courts		
	Number decided	Court determination		Number decided	Court determination		Number decided	Court determination	
		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position
Totals—all types	54	50	4	23	23	0	31	27	4
NLRB-initiated actions	20	19	1	10	10	0	10	9	1
To enforce subpena	18	18	0	9	9	0	9	9	0
To restrain dissipation of assets by respondent	0	0	0	0	0	0	0	0	0
To defend Board s jurisdiction	2	1	1	1	1	0	1	0	1
Action by other parties	34	31	3	13	13	0	21	18	3
To restrain NLRB from	21	20	1	7	7	0	14	13	1
Proceeding in R case	15	14	1	3	3	0	12	11	1
Proceeding in unfair labor practice case	4	4	0	4	4	0	0	0	0
Proceeding in backpay case	1	1	0	0	0	0	1	1	0
Other	1	1	0	0	0	0	1	1	0
To compel NLRB to	13	11	2	6	6	0	7	5	2
Issue complaint	1	1	0	1	1	0	0	0	0
Seek injunction	0	0	0	0	0	0	0	0	0
Take action in R case	6	4	2	2	2	0	4	2	2
Other	6	6	0	3	3	0	3	3	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1969 [1]

	Number of cases					
		Identification of petitioner				
	Total	Individuals	Employer	Union	Courts	State boards
Pending July 1, 1968	0	0	0	0	0	0
Received fiscal 1969	8	1	4	3	0	0
On docket fiscal 1969	8	1	4	3	0	0
Closed fiscal 1969	6	1	3	2	0	0
Pending June 30, 1969	2	0	1	1	0	0

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1969 [1]

Action taken	Total cases closed
Total	6
Board would assert jurisdiction	5
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	0
Dismissed	1
Withdrawn	0

[1] See "Glossary" for definitions of terms.

U.S. GOVERNMENT PRINTING OFFICE: 1970 O—384-517