THIRTY-FIFTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

1970

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[1] Appointed June 3, 1970, to succeed Sam Zagoria whose term expired December 16, 1969; designated Chairman June 3, 1970, to succeed Frank W McCulloch

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 3, 1971.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Thirty-fifth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1970, 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.

EDWARD B. MILLER, *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 1970

1. Summary

The National Labor Relations Board in fiscal year 1970, the period from July 1, 1969, to June 30, 1970, received 33,581 cases, a new high 1-year total for the Agency. The previous fiscal year's total was 31,303 cases. Statistics for fiscal 1971 indicate a higher case intake than in fiscal 1970.

Intake for fiscal 1970 included 21,038 unfair labor practice cases, a substantial increase above the 18,651 of the previous year. There was a slight drop in representation petitions—12,077 for fiscal 1970 compared with the 12,107 of the year before.

These two classes of cases amounted to 98.6 percent of the 1970 intake. The remaining 1.4 percent included union-shop deauthorization petitions (0.5 percent), amendments to certification petitions (0.3 percent), and unit clarification petitions (0.6 percent). (Chart 1.)

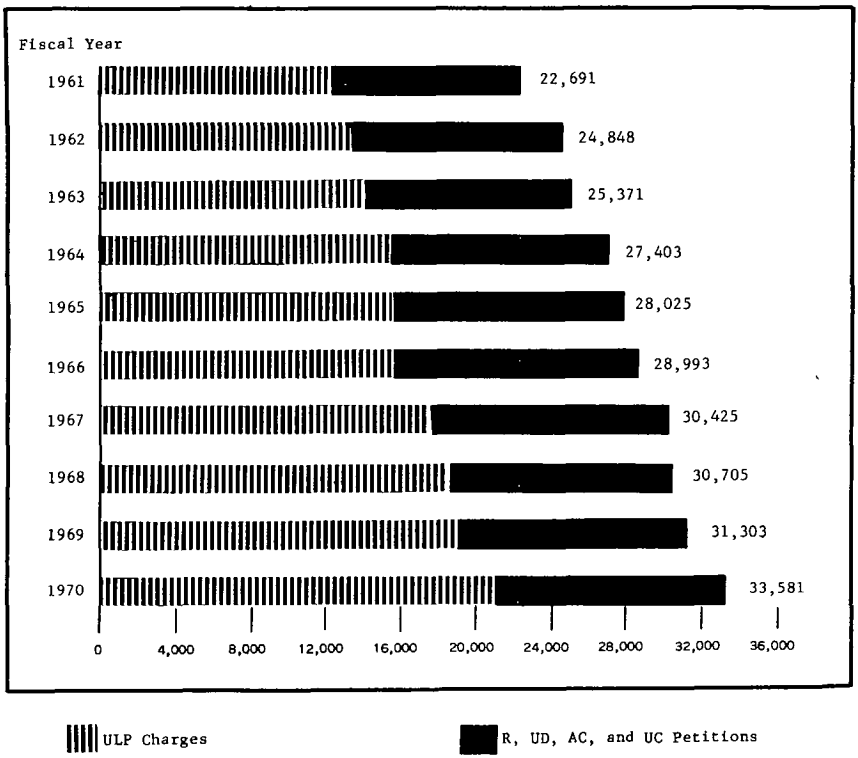
In closing cases, the Agency made a record in fiscal 1970. It closed 32,353 cases, of which 19,851 involved unfair labor practice charges and 12,502 affected employee representation. (Tables 7, 8, 9, and 10 give statistics on stage and method of closing by type of case.)

The major portion of cases are closed at the NLRB's 31 regional offices, significantly contributing to administration of the National Labor Relations Act. In fiscal 1970, about 92.3 percent of the 19,851 unfair labor practice cases were closed by regional offices, making formal decisions unnecessary. At the regional offices 26.3 percent of the total closed by the Agency were settled or adjusted voluntarily by the parties; 36.2 percent were withdrawn voluntarily by the charging parties; and 29.8 percent were dismissed administratively. Another 2.2 percent were disposed of by other means, without Board adjudication. Remaining was 5.5 percent, which went to the Board as contested cases. (Chart 3.)

In fiscal 1970, the Agency conducted 8,161 secret ballot elections of all types, a slight gain over the 8,083 of the previous year. In 1970 elections, 80 percent were arranged by agreement of the parties as to appropriate unit, date, and place of election.

Statistical tables on the Agency's activities in fiscal 1970 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.

CASE INTAKE BY UNFAIR LABOR PRACTICE CHARGES AND REPRESENTATION PETITIONS

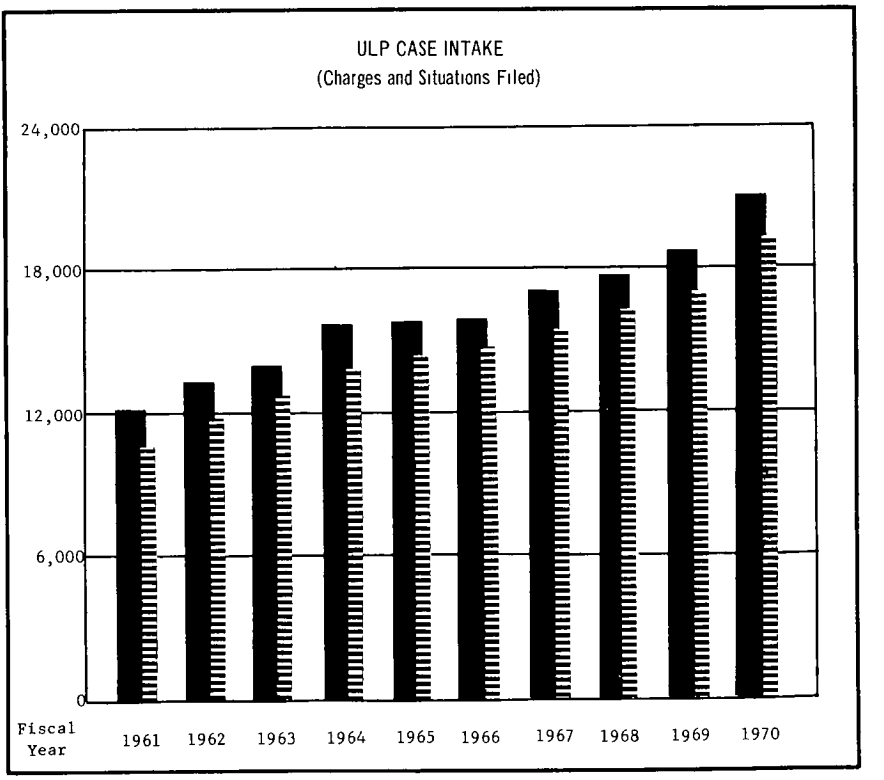


a. NLRB Administration

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 1970 were Chairman Frank W. 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 was General Counsel.

Edward B. Miller of Illinois became Board Chairman on June 3, 1970. Mr. McCulloch remained a Board Member. Sam Zagoria's term as a Member expired December 16, 1969.



Fiscal Year	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
Charges	12,132	13,479	14,166	15,620	15,800	15,933	17,040	17,816	18,651	21,038
Situations	10,592	11,877	12,719	13,978	14,423	14,539	15,499	16,343	17,045	19,402

19

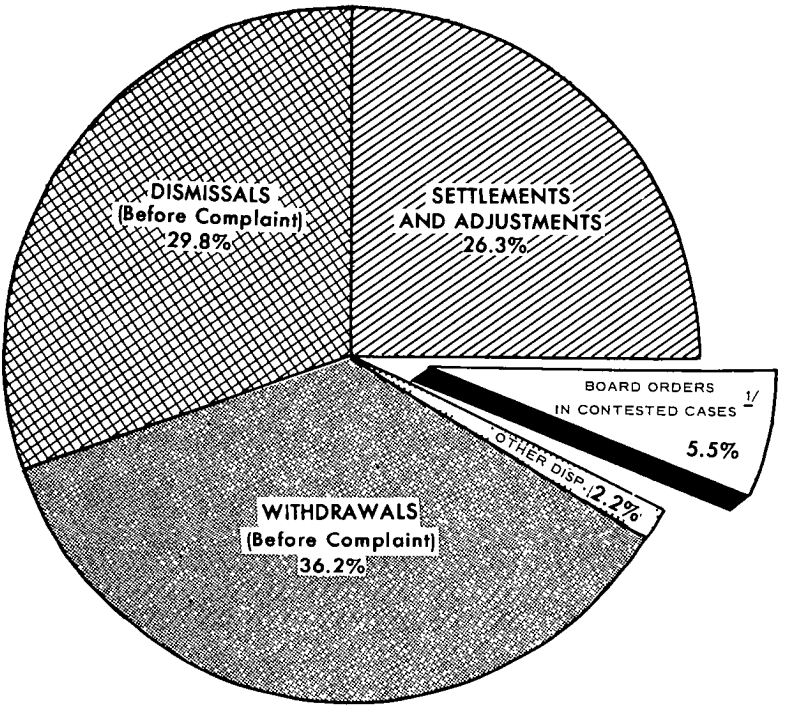
Although the Act administered by the NLRB has become complex, a basic national policy remains the same. Section 1 of the Act concludes, as it has since 1935, that: "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow 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 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.

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)

FISCAL YEAR 1970

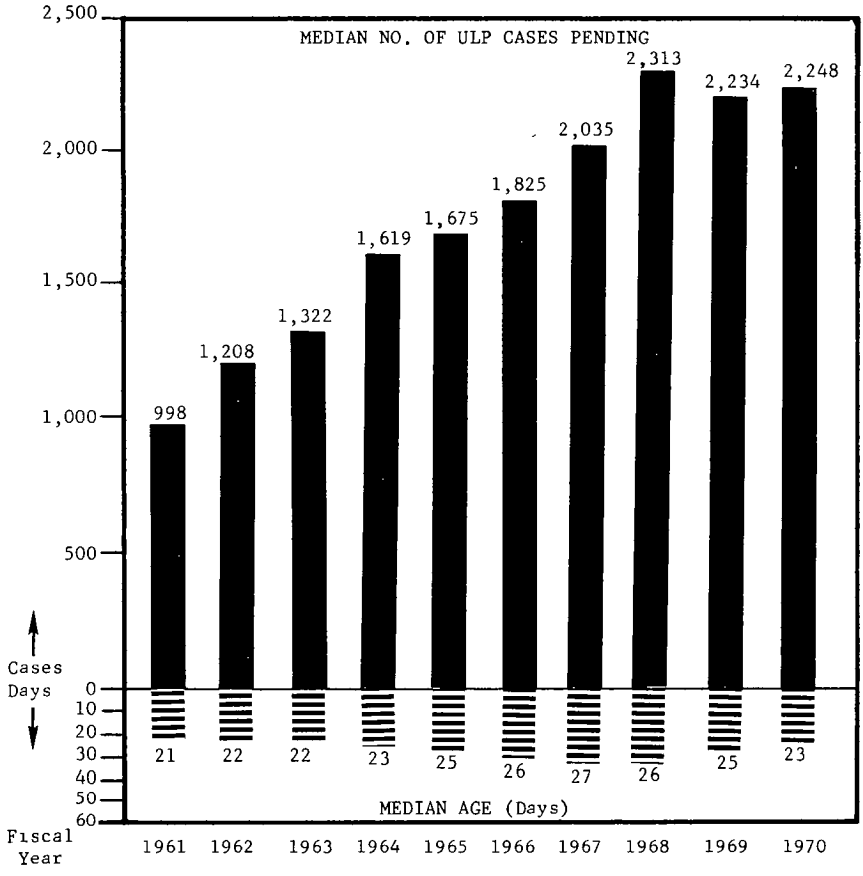


1/ CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

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

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

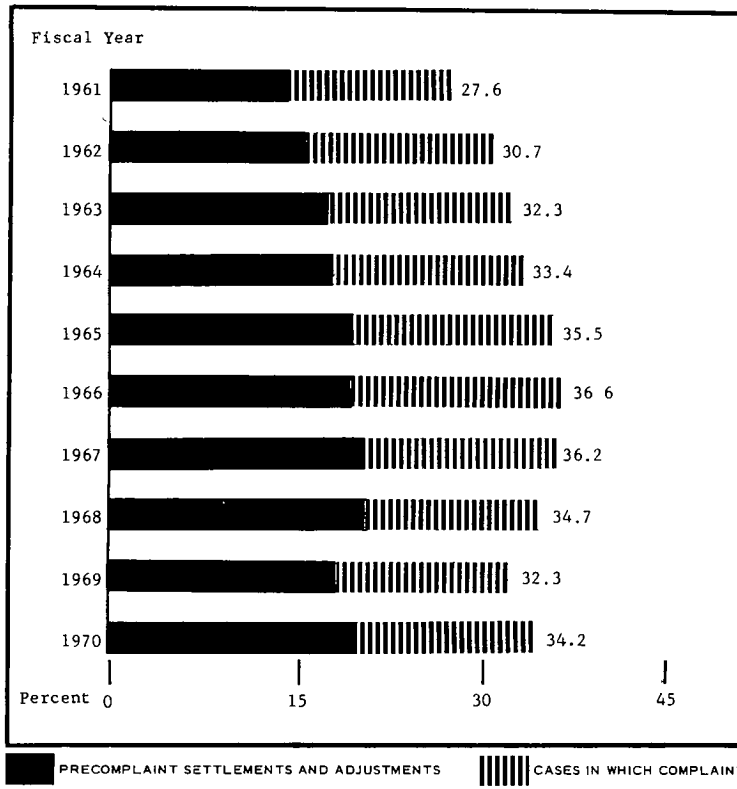


proceedings. Congress created the Agency in 1935 because labor disputes could and did threaten the health of the economy. In the 1947 and 1959 amendments to the Act, Congress increased the scope of the Agency's regulatory powers.

The 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.

UNFAIR LABOR PRACTICE MERIT FACTOR



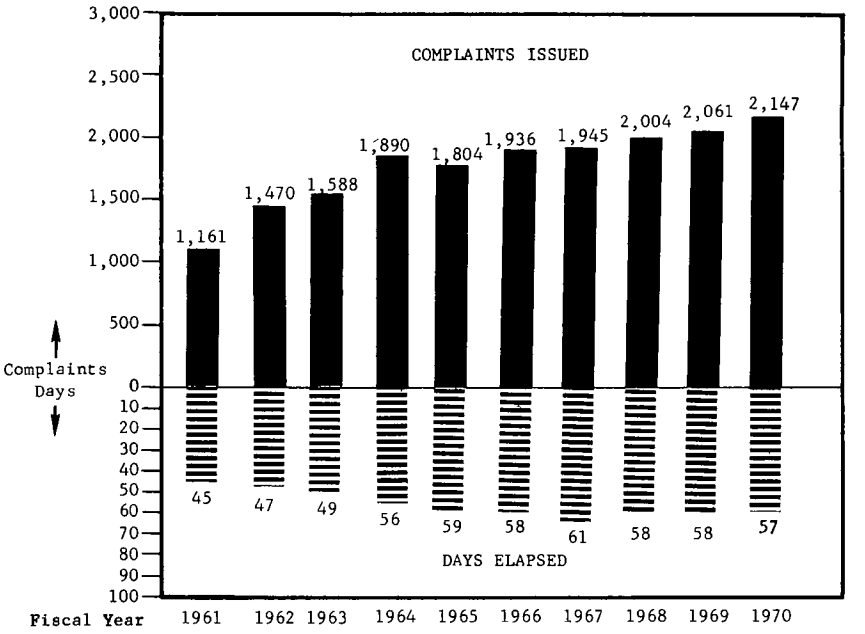
	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
PRECOMPLAINT SETTLEMENTS AND ADJUSTMENTS (%)	14.1	15.3	17.5	17.8	19.4	19.4	20.5	20.2	18.4	20 4
CASES IN WHICH COMPLAINTS ISSUED (%)	13.5	15.4	14.8	15.6	16.1	17 2	15.7	14.5	13.9	13.8
TOTAL MERIT FACTOR (%)	27.6	30.7	32 3	33.4	35.5	36.6	36.2	34.7	32.3	34.2

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.

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 in-

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



vestigate employee representation petitions, determine 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.

b. Case Activity Highlights

The NLRB's caseload, as in the 10 preceding years, reached a record high in fiscal 1970. Agency activity in the year, arising from employers', employees', and labor organizations' requests for adjustments of labor disputes and answers to questions concerning employee representation, included:

- Intake—a total of 33,581 cases, of which 21,038 were unfair labor practice charges and 12,543 were representation petitions and related cases.
- Closed—a total of 32,353, with a record number, 19,851, involving unfair labor practice charges.
- Board decisions issued—1,161 unfair labor practice decisions and 2,927 representation decisions and rulings, the latter by Board and regional directors.

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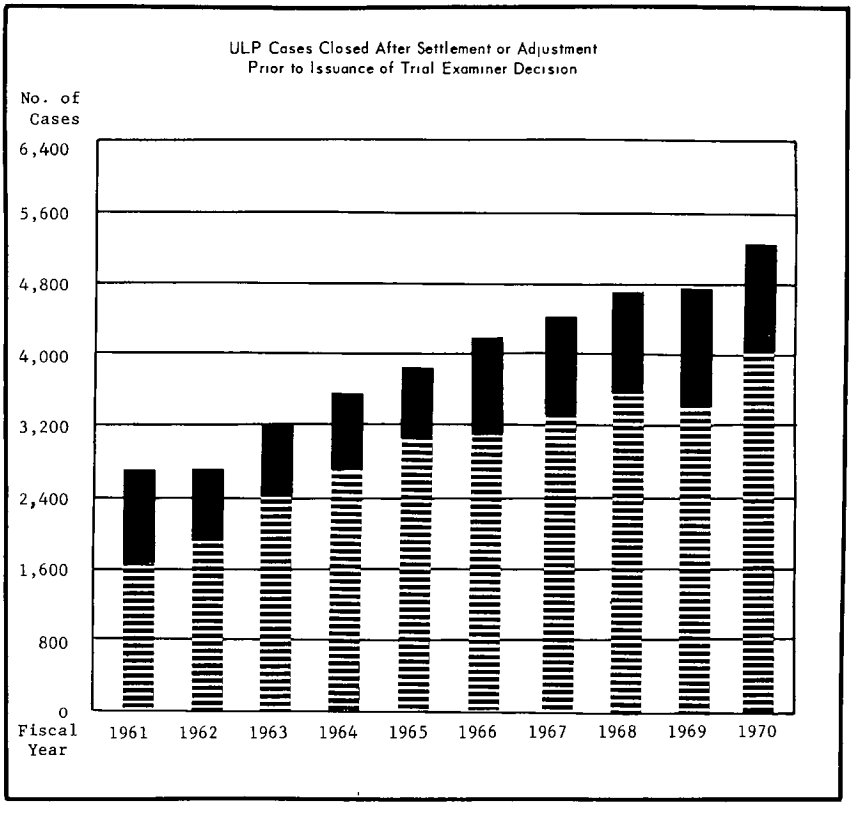
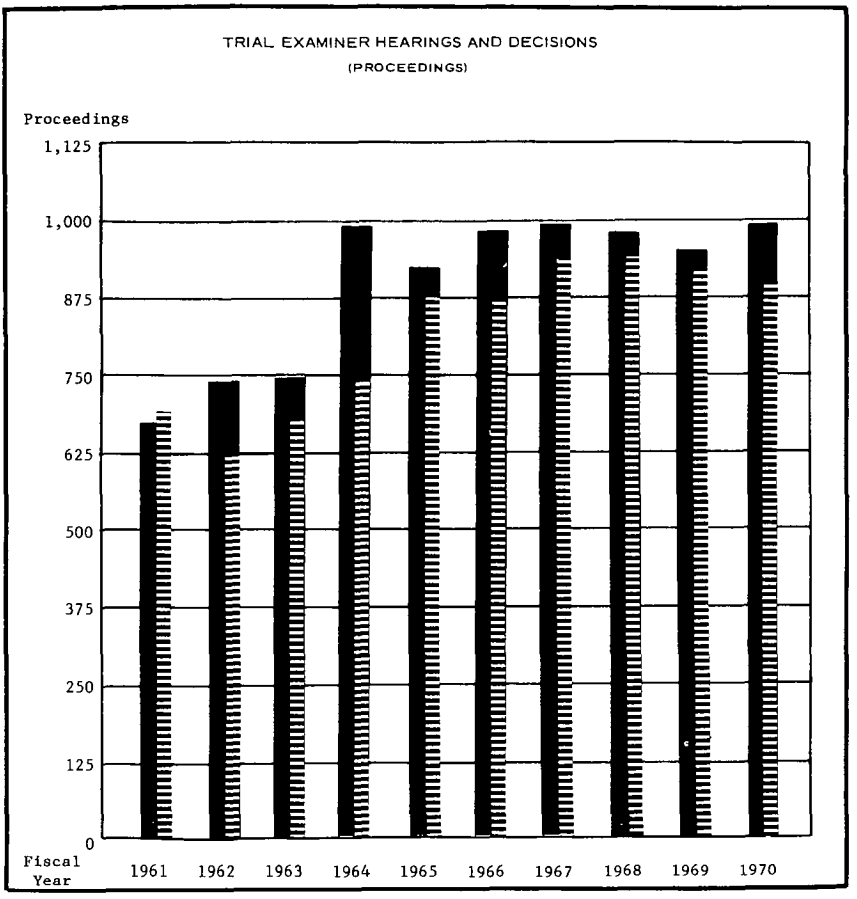
UNFAIR LABOR PRACTICE CASES SETTLED



Fiscal Year	Precomplaint	Postcomplaint	Total
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
1970	4,054	1,174	5,228



- General Counsel's office (and regional office personnel)
  —issued 2,147 formal complaints
  —closed 1,047 initial unfair labor practice hearings, including 57 hearings under section 10(k) of the Act (job assignment disputes).
- Regional directors issued 1,795 initial decisions in representation cases.
- Trial Examiners issued 894 initial decisions plus 40 on backpay and supplemental matters.
- There were 5,228 unfair labor practice cases settled or adjusted before issuance of trial examiners' decisions.

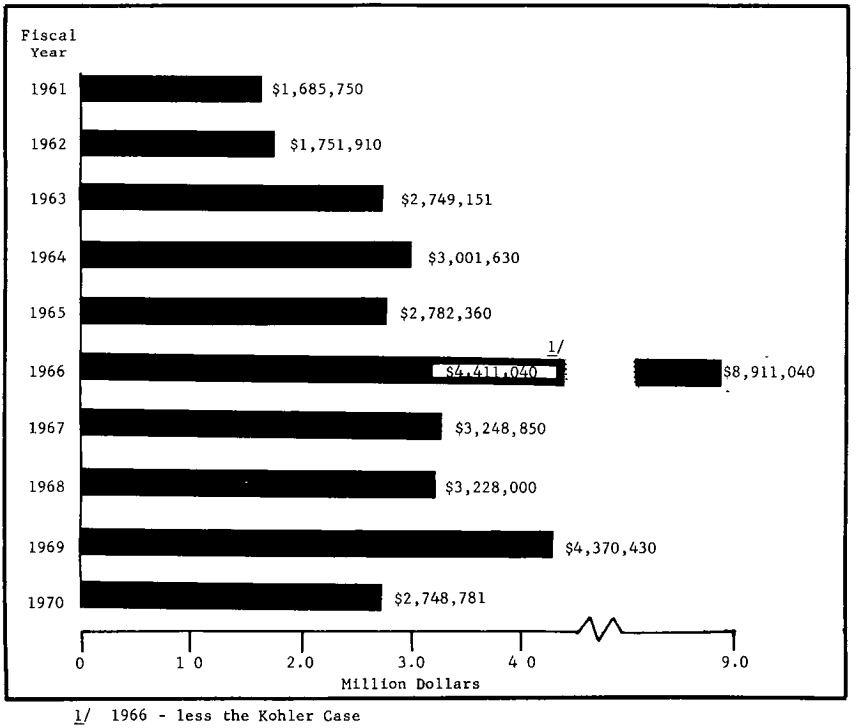
- Regional offices distributed $2,748,781 in backpay to 6,828 employees. There were 3,779 employees offered reinstatement; 2,723 accepted.
- Regional office personnel sat as hearing officers at 2,247 representation hearings—2,011 initial hearings and 236 on objections and/or challenges.
- There were 537,773 employees who cast ballots in NLRB-conducted representation elections.
- Appeals courts handed down 322 decisions related to enforcement and/or review of Board orders—84 percent affirmed the Board in whole or in part.

2. Operational Highlights

a. Unfair Labor Practices

In fiscal 1970 there were 21,038 unfair labor practice cases filed with the NLRB, a considerable increase of 2,387 over the 18,651 filed in fiscal 1969. The cases filed in 1970 were more than an 85-percent increase over those filed 10 years ago. In situations, in which related

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES



1/ 1966 - less the Kohler Case

charges are counted as a single unit, there was a 13.8 percent increase over fiscal 1969. (Chart 2.)

In 1970, alleged violations of the Act by employers increased to 13,601 cases, a more than 13-percent rise from the 12,022 of 1969. Charges against unions rose more than 11 percent, to 7,330 in 1970 from the 6,577 of 1969.

There were 107 charges of violations of section 8(e) of the Act, which bans hot cargo agreements: 76 against unions and 31 against both unions and employers. (Tables 1 and 1A.)

Regarding charges against employers in 1970, 9,290 (or 68.3 percent of the 13,601 total) alleged discrimination or illegal discharge of employees. There were 4,489 refusal-to-bargain allegations in about one-third of the charges. (Table 2.)

On charges against unions in 1970 there were 4,055 alleging illegal restraint and coercion of employees, about 55 percent as against the 53 percent of similar filings in 1969. There were 2,290 charges against unions for illegal secondary boycotts and jurisdictional disputes, 8.3 percent more than the 2,115 of 1969.

There were 1,782 charges of illegal union discrimination against employees in 1970. There were 409 charges of unions picketing illegally for recognition or for organizational purposes, a decrease from the 489 such charges in 1969. (Table 2.)

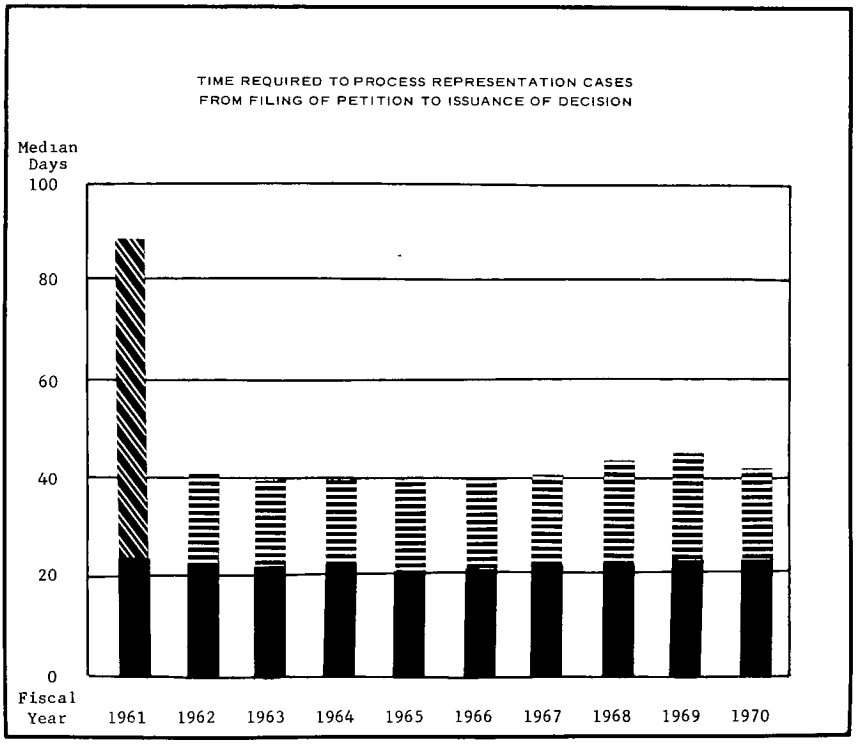
In charges against employers in 1970, unions led by filing 62 percent. Unions filed 8,497; individuals filed 5,086 charges (37 percent); and employers filed 18 charges against other employers.

More than half the charges against unions were filed by individuals—3,670—or 50.1 percent of 1970's total of 7,330. Employers filed 3,405 or 46.5 percent of the charges. Other unions filed the 255 remaining charges. Of the 107 hot cargo charges against unions and/or employers (involving the Act's section 8(e)) 90 were filed by employers, 3 by individuals, and 14 by unions.

As to the record-high 19,851 cases closed in 1970, about 92.3 percent were closed by NLRB regional offices, as compared with 91.9 percent in 1969. In 1970 there were 26.3 percent of cases settled or adjusted before issuance of trial examiner decisions. Withdrawal of cases by charging parties amounted to 36.2 percent and administrative decisions to 29.8 percent in 1970, while in 1969 the percentages were 36.0 and 31.0, respectively.

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 1970 it was 34.2 percent.

In 1970 the merit factor in charges against employers was 33.8 percent as against 31.9 percent in 1969. In charges against unions the



FISCAL YEAR	FILING TO CLOSE OF HEARING	CLOSE OF HEARING TO BOARD DECISION	CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION
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
1970	23	-	20

merit factor was 34.9 percent in fiscal 1970; it was 33 percent in fiscal 1969.

Since 1962 (see chart 5) more than 50 percent of merit charges have resulted in precomplaint settlements and adjustments; these amounted to 60 percent in fiscal 1970.

In 1970 there were 2,757 merit charges which caused issuance of complaints, and 4,054 precomplaint settlements or adjustments. The two totaled 6,811, or 34.2 percent, of the unfair labor practice cases. (Chart 5.)

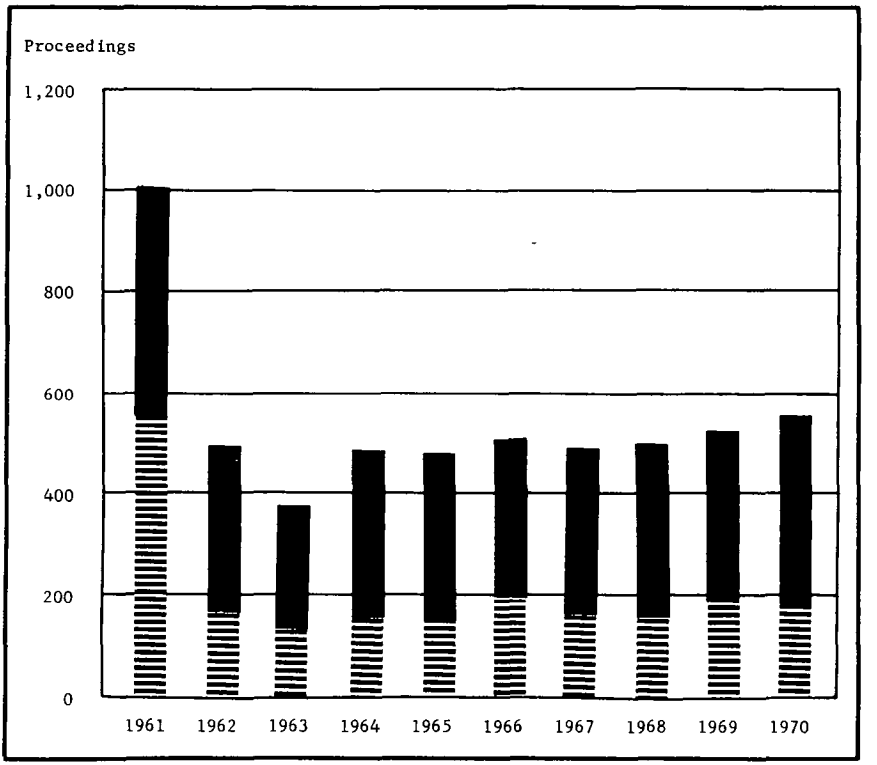
In fiscal 1970 NLRB regional offices issued 2,147 complaints, about 4 percent more than the 2,061 issued in 1969. (Chart 6.)

Of complaints issued, 73.8 percent were against employers, 22.1 percent against unions, and 4.1 percent against both employers and unions.

In 1970, NLRB regional offices processed cases from filing of charges to issuance of complaints in a median of 57 days, just 1 less than in 1969. The 57 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (Chart 6.)

Trial examiners in 1970 conducted 990 initial hearings involving 1,347 cases, compared with 951 hearings involving 1,368 cases in 1969.

BOARD CASE BACKLOG



Proceedings	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
C	460	323	256	344	336	323	343	352	356	382
R	549	165	122	142	148	190	146	144	171	171
Totals	1,009	488	378	486	484	513	489	496	527	553

(Chart 8 and table 3A.) Also, trial examiners conducted 54 additional hearings in 1970 in supplemental matters.

At the end of fiscal 1970, there were 8,276 unfair labor practice cases pending before the Agency, 17 percent more than the 7,089 cases pending at the end of fiscal 1969.

In fiscal 1970 the NLRB awarded backpay to 6,828 workers, in total amounting to $2.7 million. The backpay was 37 percent less than in fiscal 1969. (Chart 9.)

Employees in fiscal 1970 received $114,170 in reimbursement for fees, dues, and fines as a result of charges filed with the NLRB.

During fiscal 1970, in 952 cases there were 3,779 employees offered reinstatement, and 2,723, or 72 percent, accepted reinstatement. In fiscal 1969, about 73 percent of the employees accepted offered reinstatement.

Work stoppages ended in 351 of the cases closed in fiscal 1970. Collective bargaining was begun in 1,653 cases. (Table 4.)

b. Representation Cases

In fiscal 1970 the NLRB received 12,543 representation petitions. These included 11,311 collective-bargaining cases; 766 decertification petitions; 158 union-shop deauthorization petitions; 107 petitions for amendment of certification; and 201 petitions for unit clarification. The NLRB's total representation intake was about 1 percent, or 109 cases below the 12,652 of fiscal 1969.

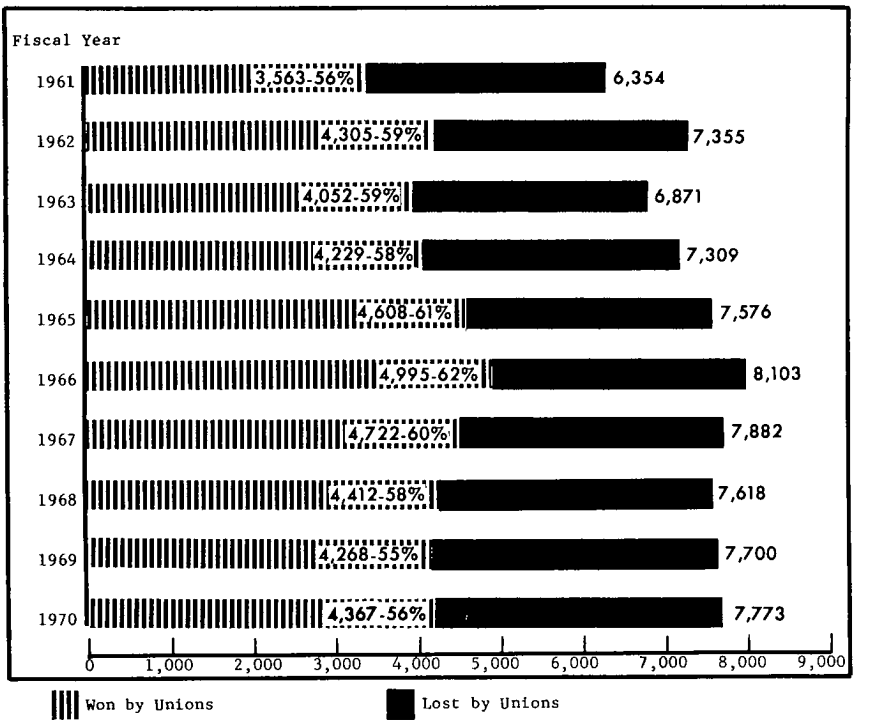
There were 12,502 cases closed in fiscal 1970, about 1.2 percent below the 12,658 closed in fiscal 1969. Cases closed in 1970 included 11,227 collective-bargaining petitions, 773 petitions for elections to determine whether unions should be decertified, 165 petitions for employees to decide whether unions should retain authority to make union-shop agreements with employers, and 337 unit clarification and amendment of certification petitions. (Chart 14 and tables 1 and 1B.)

There were 12,165 representation and union-deauthorization cases closed in fiscal 1970. About 68 percent, or 8,273 cases, were closed after elections. There were 2,925 withdrawals, 24 percent of the total number of cases, and 967 dismissals.

Of the 8,273 cases closed, 6,604, or 80 percent (79 percent in 1969), were conducted under election agreements.

The NLRB regional directors ordered elections following hearings in 1,550 cases, or 19 percent of those closed by elections. There were 25 cases which resulted in expedited elections pursuant to the Act's 8 (b) (7) (C) provisions pertaining to picketing. Board elections in 94 cases, about 1 percent of election closures, followed appeals or transfers from regional offices. (Table 10.)

COLLECTIVE-BARGAINING ELECTIONS CLOSED



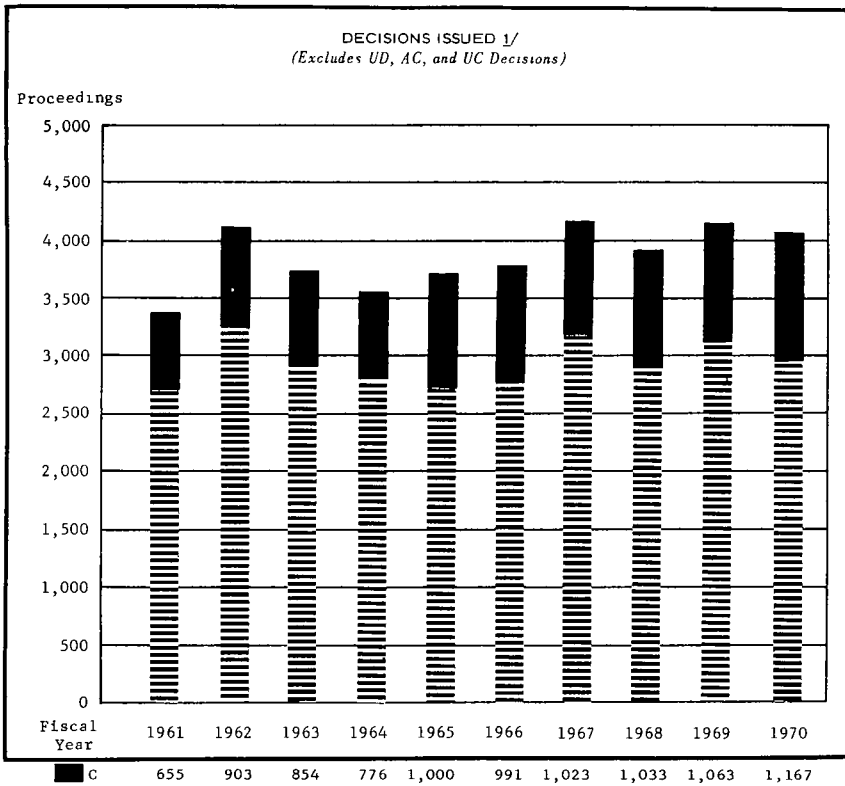
c. Elections

There were 8,161 conclusive elections in cases closed in fiscal 1970. Of those, 7,773 (95 percent) were collective-bargaining elections. (Chart 12.) During the year there also were 301 elections conducted to determine whether incumbent unions would continue to represent employees, and 87 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 87 deauthorization elections, while they maintained the right in 33 other elections, which covered 2,810 employees. (Table 12.)

By voluntary agreement of parties involved, 6,505 stipulated and consent elections were conducted. These were 80 percent of the total elections, compared with 79 percent in fiscal 1969. (Table 11.)

With more elections won by unions in 1970 as compared with 1969, more employees (531,402 in 1970; 526,419 in 1969) exercised their right to vote. For all types of elections, the average number of employees voting, per establishment, was 66, the same as in 1969. In about three-fourths of collective-bargaining elections each involved 59 or



Fiscal Year	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
C	655	903	854	776	1,000	991	1,023	1,033	1,063	1,167
R	2,718	3,211	2,857	2,812	2,707	2,769	3,155	2,869	3,108	2,927
Totals	3,373	4,114	3,711	3,588	3,707	3,760	4,178	3,902	4,171	4,094

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

fewer employees. There was about the same average of 59 employees for the decertification elections. (Tables 11 and 17.)

In decertification elections, unions won in 91, lost in 210. Unions retained the right of representation of 11,786 employees in the 91 elections won. Unions lost the right of representation of 8,558 employees in the 210 in which they did not win. As to size of bargaining units involved, unions won in units averaging 130 employees and lost in units averaging 41 employees. (Table 13.)

d. Decisions Issued

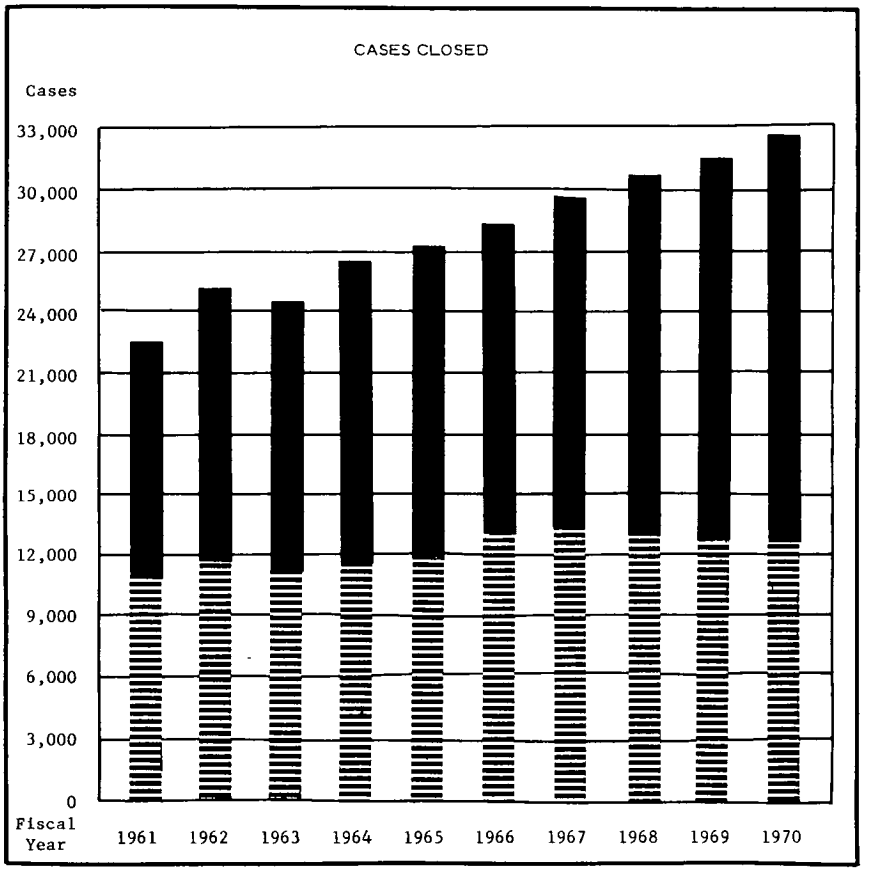
There were 4,327 decisions issued by the Agency in fiscal 1970, a 1.4 percent decrease from the 4,387 decisions of fiscal 1969. Board Members issued 2,012 decisions in 2,522 cases—90 more decisions than the 1,922 of 1969. Regional directors issued 2,315 decisions in 2,454 cases, a loss of 150 from the 2,465 decisions in 1969.

Trial examiners issued 894 decisions and recommended orders in fiscal 1970, a 3.8-percent decline from the 929 of fiscal 1969. (Chart 8.)

Trial examiners in 1970 also issued 20 backpay decisions (22 in 1969) and 20 supplemental decisions (16 in 1969). (Table 3A.)

In 1970 Board Members and regional directors issued 4,094 decisions involving 4,731 unfair labor practice and representation cases. (Chart 13.) The Board and regional directors issued 233 decisions in 245 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 1,240 of the 2,012 Board decisions.



	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
C CASES	12,526	13,319	13,605	15,074	15,219	15,587	16,360	17,777	18,939	19,851
R, UD, AC, AND UC CASES	10,289	11,708	11,073	11,641	11,980	12,917	13,134	12,973	12,658	12,502
TOTALS	22,815	25,027	24,678	26,715	27,199	28,504	29,494	30,750	31,597	32,353

The contested decisions follow:

Total contested Board decisions	1,240
Unfair labor practice decisions	796
Initial (includes those based on stipulated record)	639
Supplemental decisions	97
Backpay decisions	13
Determinations in jurisdictional disputes	47
Representation decisions total	432
After transfer by regional directors for initial decisions	110
After review of regional directors' decisions	27
Decisions on objections and/or challenges	295
Clarification of bargaining unit decisions	11
Amendment to certification decisions	1
Union deauthorization decisions	0

This tally left 772 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. (Chart 3 and Tables 7 and 7A.) These processes effectively dispose of a vast bulk of charges filed with the Agency without the need of extended litigation.

A number of related cases may be covered in Board decisions. In fiscal 1970, the 639 contested unfair labor practice decisions were concerned with 886 cases. The Board found violations of the Act in 734, or 83 percent. In 1969 violations were found in 892, or 83 percent, of the 1,080 contested cases.

Contested case decisions by the Board showed the following results:

1. *Employers*—During fiscal 1970 the Board issued decisions in 690 contested unfair labor practice cases against employers, or 5 percent of the 12,815 unfair labor practice cases against employers disposed of by the Agency. Violations were found by the Board in 593 cases (86 percent), as compared with 1969 when violations were found in 87 percent of 850 cases. Board remedies in the 593 cases included ordering employers to reinstate 910 employees with or without backpay; to give backpay without reinstatement to 37 employees; to cease illegal assistance to or domination of labor organizations in 15 cases; and to bargain collectively with employee representatives in 244 cases.

2. *Unions*—In fiscal 1970 there were 196 Board decisions in contested unfair labor practice cases against unions. The decisions included five against unions in hot cargo cases. A hot cargo case involves an agreement or demand for such an agreement under which the employer will refuse to handle or deal in any product of another

employer or will cease doing business with another person. The 196 Board decisions amounted to 3 percent of the 7,036 union cases closed in 1970. Of the 196 cases, 141 resulted in findings of violations, amounting to 72 percent. In 1969 there were violations in 151 cases, or 76 percent. Remedies in the 141 cases included orders to unions in 9 cases to cease picketing and to give 60 employees backpay. Unions and employers were held jointly liable for backpay for 7 of the 60 employees.

At the close of fiscal 1970, there were 553 decisions pending issuance by the Board—382 dealing with alleged unfair labor practices and 171 with employee representation questions. The total was a 5-percent increase over the 527 decisions pending at the beginning of the year. (Chart 11.)

e. Court Litigation

In fiscal 1970, U.S. Courts of Appeals handed down 322 decisions in NLRB-related cases, 41 fewer decisions than in fiscal 1969. In the 322 decisions NLRB was affirmed in whole or in part in 84 percent. This was an increase over the 81 percent in the 363 cases of the prior year.

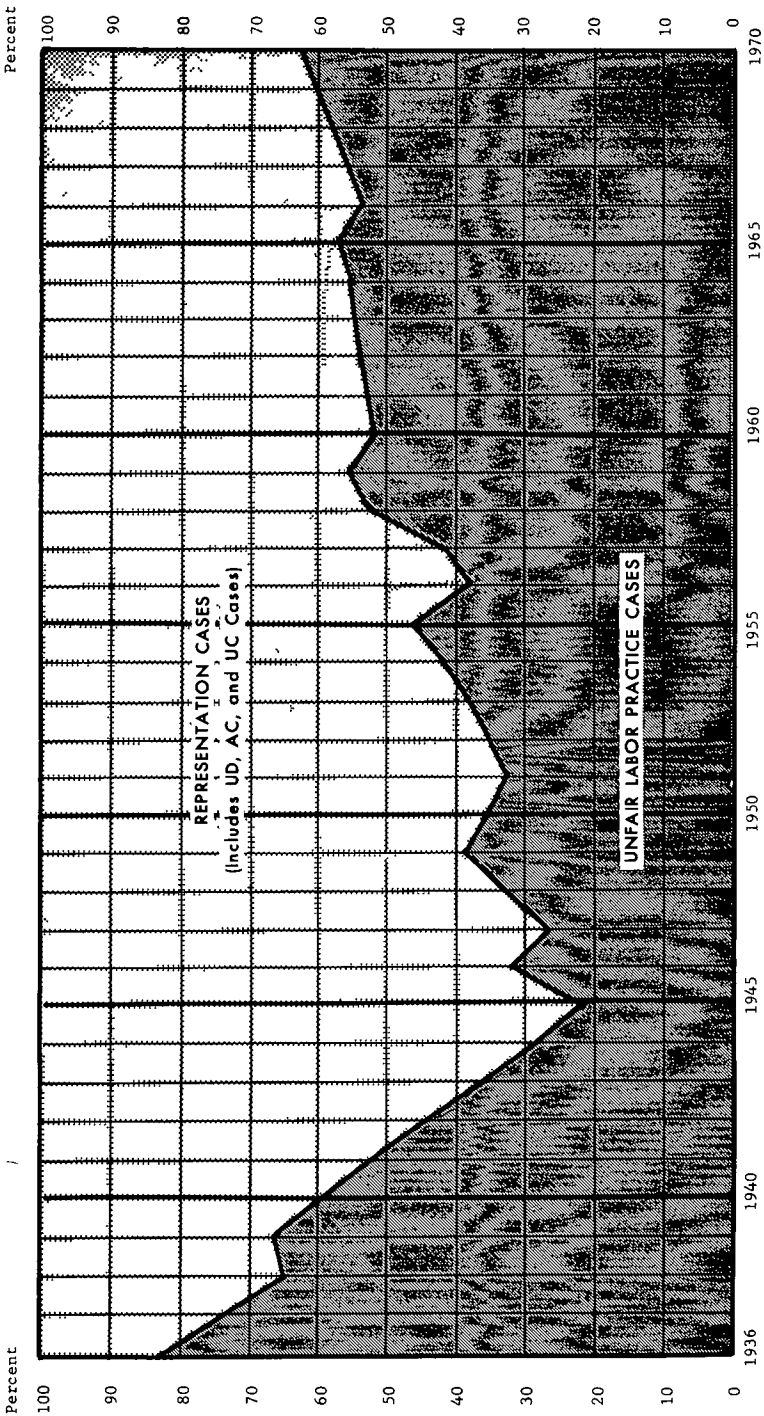
A breakdown of appeals courts rulings in fiscal 1970 follows:

Total NLRB cases ruled on	322
Affirmed in full	219
Affirmed with modification	32
Remanded to NLRB	20
Partially affirmed and partially remanded	19
Set aside	32

In 16 contempt cases (17 in the prior year) before the appeals courts, the respondents in 6 cases complied with the NLRB order after the contempt petition had been filed but before court decision. In seven, the courts held the respondents in contempt, and in three a court denied the Agency's petitions. (See tables 19 and 19A.)

The U.S. Supreme Court affirmed in full two NLRB orders. In another case the Board order was set aside. In a fourth case, the Court sustained the Board's position that the case had been rendered moot by the issuance of the Board decision in a related unfair labor practice

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 - 1970.

proceeding. The NLRB appeared as *amicus curiae* in two cases. The position the NLRB supported was sustained in one case but in the other the Court dismissed the case without ruling on the merits. An additional two cases were remanded to appeals courts.

U.S. District Courts in fiscal 1970 granted 97 contested cases litigated to final order on NLRB injunction requests filed pursuant to section 10(j) and 10(l) of the Act. This amounted to 87 percent of the contested cases, compared with 84 cases granted in fiscal 1969, or 88 percent.

The following shows NLRB injunction activity in district courts in fiscal 1970:

Granted	97
Denied	14
Withdrawn	30
Dismissed	22
Settled or placed on courts' inactive docket	72
Awaiting action at end of fiscal 1970	17

There were 228 NLRB-related injunction petitions filed with the district courts in 1970, as against 205 in 1969. The NLRB in 1970 also filed two petitions for injunctions in appeals courts pursuant to provisions of the Act's section 10(e). The appeals courts ruled on three petitions involving that same section of the Act, granting all three. (See table 20.)

In 1970 there were 36 additional cases involving miscellaneous litigation decided by appellate and district courts, 30 of which upheld the NLRB's position. (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 "Representation Proceedings," and chapter IV 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

During the year the Board for the first time determined to exercise its discretion and assert jurisdiction over major league baseball and

over nonprofit educational institutions whose activities affect commerce. In *American League of Professional Baseball Clubs* [1] the Board, considering for the first time the question of whether as a matter of discretion to assert its conceded statutory jurisdiction over major league baseball, concluded that the policies of the Act, as well as national labor policy, would best be effectuated by its assertion of jurisdiction. In so concluding the Board pointed out that an employer whose operations were so clearly national in scope ought not have its labor relations problems subject to diverse state labor laws, and that baseball's internal self-regulation of disputes, to the limited extent it took place, was through a system designed by and under the control of the employers and owners and therefore not likely to prevent disputes nor assure their resolution in a manner conducive to voluntary compliance.

In the *Cornell University* [2] case the Board departed from its discretionary policy of declining jurisdiction over nonprofit educational institutions, which had been established in the *Trustees of Columbia University* case.[3] It concluded that the underlying considerations which existed in 1951 when *Columbia University* was decided "no longer obtain two decades later," and that it could best effectuate the policies of the Act by asserting jurisdiction over nonprofit colleges and universities whose operations have a substantial effect on commerce. As reasons for its action the Board noted that the nearly 1,500 private colleges and universities now account for annual expenditures of 6 billion dollars, their operations have increasingly become a matter of Federal concern and support, and the States largely have failed to provide adequate labor codes for the resolution of labor relations disputes affecting such institutions and their employees.

b. The Bargaining Obligation

The scope of the bargaining obligation was further defined by Board decisions concerning the bargainable nature of retired employees' benefits and the extent to which an unexpired collective-bargaining contract is binding on successor employers or employee representatives. In *Pittsburgh Plate Glass Co.*,[4] the Board found that retired employees were employees within the statutory definition of that term and that decisions concerning retirement benefits of those employees have such a direct and immediate impact upon, and inextricable relationship to, those actively employed in the bargaining unit that they constitute an appropriate subject for bargaining with

[1] 180 NLRB No. 30, *infra*, pp. 26.
[2] 183 NLRB No. 41, *infra*, pp 26.
[3] 97 NLRB 424 (1951).
[4] 177 NLRB No. 114, enforcement denied 427 F.2d 936 (C.A. 6), cert granted 91 U.S. 867.

the unit representative. It therefore held the employer was obligated to consult and bargain with the unit representative with respect to changes in the benefits accorded retired employees.

In the *Burns Detective Agency*[5] case the Board held that, absent unusual circumstances, the national labor policy embodied in the Act requires a successor-employer to take over and honor a collective-bargaining agreement negotiated on behalf of the employing enterprise by the predecessor-employer. Noting the theretofore well-established principle that a successor-employer's bargaining obligation was the same as that imposed on employers generally during the period between contracts, the Board concluded that the 8(d) obligation should be equally applicable "where there is in effect" an agreement negotiated by the employing industry. It viewed the enactment of section 8(d) as clearly demonstrating Congress' recognition of the paramount role in maintaining industrial peace played by the parties' adherence to existing collective-bargaining agreements, and concluded that the impressive policy considerations favoring the maintenance and adherence to existing agreements were not overborne by the fact that the successor-employer had not himself signed the agreement. In other cases involving related issues the Board held that an incumbent union similarly continued to be bound by the existing contract when a successor employer took over the employing industry.[6] In *Ranch-Way*,[7] the Board concluded that the successor employer, being bound by the contract, was thereby also precluded, as his predecessor had been, from challenging the union's majority status during the term of the contract. And in *S-H Food Service*,[8] the Board made clear that the successor's obligation to honor the contract includes the obligation to continue in effect provisions for separately bargainable benefits such as insurance benefits and dues checkoff authorizations.

c. Union Fines

In the *Blackhawk Tanning* case[9] the Board held that the union violated section 8(b)(1)(A) by imposing a fine on a member for invoking Board processes by filing a petition seeking to decertify the union as employee representative. In so holding it distinguished its prior decision finding no violation where the union expelled a member for filing such a petition. The Board pointed out that expulsion was not punitive under such circumstances since the union was acting defensively and the member had indicated by his action the low

[5] *William J Burns Intl. Detective Agency*, 182 NLRB No. 50, *infra*, pp. 60
[6] *Kota Div. of Dura Corp*, 182 NLRB No. 51, *infra*, pp. 61.
[7] 183 NLRB No. 116, *infra*, pp 61.
[8] 183 NLRB No. 124, *infra*, pp. 61
[9] *Intl Molders' & Allied Workers Union, Loc. 125*, 178 NLRB No 25, *infra*, pp 62–63

value he placed upon his union membership, whereas in the case of the levying and threat of collection of a fine, the union action is coercive and may deter a member's resort to Board processes.

d. Remedy

In *Southwestern Pipe*,[10] the Board reconsidered the adequacy of reinstatement offers made to less than all unfair labor strikers, after unconditional application to return, to cut off backpay liability to those rejecting the offers. Departing from its prior decisions, the Board held that a valid offer of reinstatement made to some but not all unfair labor practice strikers entitled to reinstatement terminates the employer's liability for backpay to those refusing to accept the offer. The Board pointed out that although the employees continued to enjoy the protection of the Act by electing to continue to strike against the unfair labor practices, they should not be paid for doing so when the employer was willing to have them work.

4. Financial Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1970, are as follows:

Personnel compensation	$31,349,579
Personnel benefits	2,392,674
Travel and transportation of persons	1,558,384
Transportation of things	29,705
Rent, communications, and utilities	1,207,111
Printing and reproduction	784,569
Other services	1,105,915
Supplies and materials	298,350
Equipment	190,637
Insurance claims and indemnities	11,323
Subtotal, obligations and expenditures[1]	38,928,247
Transferred to other accounts (GSA)	126,666
Total Agency	39,054,913

[1] Includes reimbursable obligations distributed as follows:

Personnel compensation	22,167
Personnel benefits	1,658
Travel and transportation of persons	193
Rent, communications, and utilities	302
Total obligations and expenditures	24,320

[10] 179 NLRB No. 52, *infra*, pp. 68.

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]

Enterprises Over Which the Board Will Assert Jurisdiction

During the report year the Board had occasion to delineate further the extent to which it would or would not assert jurisdiction over various enterprises in order to effectuate the policies of the Act. Among the decisions in which jurisdiction was asserted were those pertaining to educational institutions, professional baseball, and nonprofit nursing homes.

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[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, Twenty-third Annual Report (1958), p 18 See also *Floridan Hotel of Tampa,* 124 NLRB 261 (1959), for hotel and motel standards

[5] While a mere showing that the Board's gross dollar volume standards are met is ordinarily insufficient to establish legal or statutory jurisdiction, no further proof of legal or statutory jurisdiction is necessary where it is shown that 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

1. Educational Institutions

In the *Cornell University* case,[6] the Board departed from its past discretionary policy, established in *Trustees of Columbia University*,[7] of declining jurisdiction over nonprofit educational institutions. The Board concluded that the underlying considerations which existed in 1951 when Columbia University was decided "no longer obtain two decades later," and that the Board could best effectuate the Act's policies by asserting jurisdiction over nonprofit colleges and universities whose operations have a substantial effect on commerce. As reasons for its action the Board noted that the nearly 1,500 private colleges and universities have total annual expenditures of 6 billion dollars in order to carry out their educational objectives and maintain their academic communities, their operations have increasingly become a matter of Federal concern and support, and the States largely have failed to provide adequate labor codes for the resolution of labor relations disputes affecting such institutions and their employees. In announcing this decision, the Board, in view of the fact that the institutions involved clearly met any size or dollar volume standard which might be found appropriate, left the establishment of a discretionary jurisdictional standard for determination in future situations involving institutions far nearer an appropriate dividing line.

2. Professional Baseball

During the report year the Board was presented for the first time with the questions of whether professional baseball was subject to the Act and, if so, whether the Board should assert jurisdiction.[8] The Board first found professional baseball an industry in or affecting commerce, and as such subject to Board jurisdiction. In reaching this conclusion the Board took cognizance of the Supreme Court's early ruling that baseball was not interstate in nature,[9] but pointed out that that decision has been supplanted by others establishing that baseball, like other professional sports, is an interstate industry, and that baseball's current antitrust exemption has been preserved merely as a matter of *stare decisis*.[10] Additional support for this position was found by the Board in congressional deliberations which reflected a "Congressional assumption that sports were subject to the commerce

[6] 183 NLRB No 41.
[7] 97 NLRB 424 (1951).
[8] *American League of Professional Baseball Clubs*, 180 NLRB No 30
[9] *Federal Baseball Club of Baltimore* v *National League of Professional Baseball Clubs*, 259 U S. 200 (1922).
[10] *Radovich* v. *National Football League*, 352 U.S 236; *U S* v *International Boxing Club of New York, Inc.*, 348 U.S. 236; *Toolson* v. *New York Yankees, Inc*, 346 U S. 356.

clause," and the fact that "[l]egal scholars have agreed . . . that professional sports are in or affect commerce."

The Board further concluded that it would best effectuate the policies of the Act, as well as national labor policy, to assert jurisdiction. In doing so it noted that the effect on interstate commerce of any labor disputes involving baseball would be national in scope, and admittedly millions of dollars of interstate commerce are involved in its normal business operations. The Board further noted that the league's employer-designed system of self-regulation was not "likely either to prevent labor disputes from arising in the future, or, having once arisen, to resolve them in a manner susceptible or conducive to voluntary compliance by all parties." Moreover, deferral to the system would be contrary to Board policy, in that it was unilaterally established by the employer and failed to include those employees most likely to require the Board's processes.[11]

3. Nonprofit Nursing Homes

In *Drexel Home*,[12] the Board considered the implications for nonprofit nursing homes of its prior decision to assert jurisdiction over nursing homes operated for profit,[13] and asserted jurisdiction over a nonprofit extended care facility. Reasoning from its previous assertion of jurisdiction over such proprietary nursing homes [14] the Board concluded that "[B]ecause the operations of nonprofit extended care facilities are analogous to the operations of such proprietary facilities and also substantially affect commerce in much the same manner . . . the Employer's nonprofit status is irrelevant and . . . no proper basis exists for declining the assertion of jurisdiction . . . under the provisions of Section 14(c)(1)." Furthermore, it found the fact that the employer characterized itself as a home for the aged and not as a nursing home, did not render the Board's prior decisions inapplicable since it had previously asserted jurisdiction not only over nursing homes but also over "related facilities." Accordingly, as the employer received in excess of $100,000 in gross revenues annually, jurisdiction was asserted.

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[11] Chairman McCulloch and Members Fanning, Brown, and Zagoria for the majority Member Jenkins, dissenting, would find that an amendment to the Act is needed to give the Board jurisdiction, but, assuming the Board has jurisdiction, would find no compelling reason for its excercise.

[12] 182 NLRB No. 151.

[13] *Butte Medical Properties*, 168 NLRB 266, *University Nursing Home*, 168 NLRB 263; Thirty-third Annual Report (1968), pp 29–30.

[14] *University Nursing Home, supra.*

III

Representation Proceedings

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

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

A. Existence of Questions Concerning Representation

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

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

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]

The investigation of a petition for a representation election must establish a proper basis for the finding of the existence of a question concerning representation. The ultimate finding depends further on the presence or absence of certain factors, some of which are discussed in the following sections.

1. Qualification of Representative

The Board will refuse to direct an election where the proposed bargaining agent fails to qualify as a bona fide representative of the employees. Three cases which presented the question of qualification in unique circumstances came to the Board during the year. In *Gino Morena Enterprises*,[6] the Board directed an election in a unit of barbers, holding that the petitioner was a competent labor organization despite the fact that certain provisions of the petitioner's constitution indicated that its membership was to be drawn from the ranks of Government employees.[7] Although the constitutional provisions did not restrict membership exclusively to Government employees, the Board ruled, apart from the provisions, that the controlling factor under the Board's precedent [8] is the petitioner's willingness to function as a bargaining agent under the Act. Rejecting a contention that the petitioner failed to qualify under the Act as a labor organization in which employees participate, the Board noted that the petitioner gave assurances on the record that employees in the prospective bargaining unit would be entitled to all rights and prerogatives of full membership status. Furthermore, the Board stipulated that any certification which might eventuate would be subject to revocation upon a showing that the petitioner has not complied with its statutory duties relating to adequate representation and membership rights on behalf of the subject employees.

Although a proposed representative satisfies the two-part statutory definition of a labor organization, it still may be disqualified from acting as such if it has interests which conflict with the interests of

[4] Sec 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] 181 NLRB No 128

[7] Sec 2(2) excludes Federal, state, and local governments from the definition of employer Sec 2(3) excludes from the definition of employee "any individual" employed "by any . . person who is not an employer." Sec 2(5) defines labor organization in terms of employees.

[8] See *American Buff Co.*, 67 NLRB 473 (1946); *F. C Russell Co.*, 116 NLRB 1015, fn. 5 (1956); cf. *International Paper Co., Southern Kraft Div.*, 172 NLRB No. 100 (1968)

the employees it seeks to represent. In *Bambury Fashions*,[9] the petitioner, an association of salesmen engaged in the sale of apparel at wholesale, sought certification as the representative of certain traveling salesmen. The Board found that the petitioner was originally formed and continued to operate primarily to strengthen and coordinate trade shows at which its affiliate salesmen sought to sell apparel. As these trade shows were but one of several methods by which apparel was sold in the industry, the Board found that the petitioner, in its trade show activities, was engaged in the business of selling apparel in direct competition with apparel manufacturers. Although the participtaing employers, because of contracts with salesmen, could not at that time utilize competing methods of selling, the potential for competition was very real. The Board reasoned that under prior case law [10] what disqualifies a union from acting as bargaining representative is the latent danger that it may negotiate, not for the benefit of unit employees, but for the protection and enhancement of its business interests which are in direct competition with those of the employer at the other side of the bargaining table.

A similar question was raised in *H. P. Hood*,[11] where an employer alleged that a conflict of interest arose from a loan to a competitor of the employer by the international affiliate of the petitioning local. Weighing several factors, the Board held that the local was not disqualified to represent the employer's employees. The international's participation in meetings initiated by the local with the competitor to discuss the competitor's proposed curtailment of operations did not rise to the level of control by the international over the local's course of bargaining. Rather, the Board found, the local had the dominant voice in its dealings with employers. Considering the question of whether the competitor's ability to repay the loan was so doubtful as to induce the international to take action impinging on the local's bargaining to protect the loan, the Board found that the competitor was still a going concern, danger of default was not imminent, and its assets were still sufficient to cover the loan in the event of a business collapse. From its overall appraisal of both the power and temptation to abuse the bargaining process, the Board found no "proximate" or "clear and present" danger of such abuse.

2. Bars To Raising Questions of Representation

In certain situations 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.

[9] 179 NLRB No. 75
[10] *Bausch & Lomb Optical Co*, 108 NLRB 1555 (1954)
[11] 182 NLRB No. 28

Thus under the rule announced in *Briggs Indiana Corp.*,[12] the Board has held that where a union has promised not to seek to represent certain employees for the term of an agreement, a petition by that union seeking to represent such employees during the contract term will not be entertained. The Board was asked to apply this rule during the year in *Allis-Chalmers Mfg. Co.*,[13] where an international union petitioned to represent a unit of clerical and technical employees in a plant where a local of the same international represented other employees. The Board found that both the petitioner and its local were bound by an agreement with the employer not to represent those employees during the term of a current collective-bargaining agreement. Both organizations had signed an agreement providing that the "union" should not, during the term of the agreement, solicit or accept membership of any person excluded from coverage, and the employees sought were excluded from such coverage. The international's contention that the word "union" in the provision applied solely to the local was rejected, since the word was used in other contract provisions to refer to both organizations, the minutes of the negotiations showed that the parties understood that the paragraph applied to the international, and both parties were signatory to the agreement. Moreover, the Board noted, petitioning locals have in the past been held bound by promises not to represent certain employees contained in contracts executed by their international or by another local of the same international.[14] The Board also rejected a contention that the *Briggs Indiana* rule restricts employees in their right to bargain collectively through representatives of their own choosing, stating that rather than disenfranchising employees, the rule merely permits the diminishing, by one, of the options as to which unions are available. Finally, in exploring the underlying rationale of the rule, the Board expressed its unwillingness "to lend Government sanction to undo the terms of a bargain which the parties themselves have struck," such a result being "at variance with Board precedent and contrary to the statutory policy directed toward stabilizing the collective-bargaining relationship."

In *Community Motors*,[15] an employer filed a petition with the Board regarding a unit of employees for which the union had been certified as the representative by the Virgin Islands Department of Labor. Although the employer had requested an election, a certification had been issued, pursuant to the authority of the local statute, on the basis of membership cards executed by 60 percent of the unit employees.

[12] 63 NLRB 1270 (1945).
[13] 179 NLRB No 1
[14] See *Cessna Aircraft Co.*, 123 NLRB 855 (1959)
[15] 180 NLRB No 119.

The Board found, however, that at no time did the employer question the majority status of the union, claim that the cards had been improperly solicited, or notify the union that it did not consider itself bound by the local certification. Furthermore, the employer had engaged in delaying tactics, failed to advise the union that it was about to file a petition with the Board, and engaged in discussion of contract terms with the union without disclosing that the petition had been filed. In these circumstances, the Board found that no question concerning representation existed, citing the principle of *Keller Plastics Eastern* [16] that the parties to a bargaining relationship established as a result of voluntary recognition must be afforded a reasonable time for bargaining and the execution of a contract.

Under the Board's contract-bar rules, a present election among employees currently covered by a valid collective-bargaining agreement may, with certain exceptions, be barred by an outstanding contract. Generally, these rules require that to operate as a bar a contract must be in writing, properly executed, and binding on the parties; it must be of definite duration and in effect for no more than 3 years; and it must also contain substantive terms and conditions of employment which in turn must be consistent with the policies of the Act.

The period during the contract term when a petition may be timely filed is calculated in relation to the expiration date of the contract. A petition is timely when filed not more than 90 nor less than 60 days before the terminal date of an outstanding contract.[17]

The Board had occasion during the year to apply the rule regarding timeliness in rather unusual circumstances. In *Midway Lincoln-Mercury*,[18] two locals of different unions had been certified as joint representatives of the employees in a single unit. Following joint negotiations, the employer entered into separate contracts for the employees represented by each local. These two contracts had expiration dates 1 month apart. The employer then filed a petition asserting that the unit employees no longer wished to be represented by either local. This petition was timely as to one of the joint representative's contracts, but within the 60-day insulated period as to the contract which expired 30 days earlier. The Board, emphasizing that the two locals were joint representatives of all the employees in the unit covered by both contracts, which were jointly negotiated and administered, found that the petition was timely filed as to both joint representatives, since "[t]o require the petition to be filed 90 to 60 days before the expiration date of both contracts . . . would render it virtually impos-

[16] 157 NLRB 583; Thirty-first Annual Report (1966), pp. 86–87.

[17] *Leonard Wholesale Meats*, 136 NLRB 1000; Twenty-seventh Annual Report (1962), pp 58–59.

[18] 180 NLRB No. 10.

sible for these employees to exercise a right enjoyed by others to change representatives at regular intervals if they so desire."

The Board faced another contract-bar question in *Herlin Press* [19] in which the contract was to remain in effect from year to year after a certain named date unless proper notice of a desire to modify was given. All irreconcilable disputes regarding the provisions of a new contract were to be determined by arbitration, and the old contract was to remain in force in the interim. The petition was filed after the named date, after notice to modify had been given, and at a time when no new agreement had been executed. The Board found that the agreement to arbitrate the provisions did not constitute a bar to an election petition for, to constitute a bar, a contract must be in writing and signed by all the parties at the time the petition is filed. Since the petition was timely under several alternative interpretations of the agreement, the Board directed an election.

The provision of the *Deluxe Metal* rule (121 NLRB 995) that a collective-bargaining contract executed on the same day that a rival union petition had been filed with the Board will bar an election if the employer has not been informed at the time of execution that a petition has been filed, was considered by the Board in the *Boise Cascade Corp.* case.[20] There the employer executed a contract on the same day but after the petition was filed. Prior to the execution of the contract the employer had received a telegram from the petitioner requesting recognition but making no mention of the petitioner's intention to file a petition. The employer was in fact unaware of the filing of the petition at the time of execution. Distinguishing cases in which an employer has either actual [21] or constructive [22] knowledge of a petitioner's filing of its petition before the time of execution, the Board ruled that knowledge of the petitioner's bare telegraphic claim of representation was not sufficient to remove the contract as a bar. The petition was therefore dismissed.

B. Unit Determination Issues

1. Merger and Separation of Established Units

The Board is often requested to consider the addition or combination of small units either to increase the size of an existing multiplant unit or to form such a unit for the first time. In *Cities Service Oil Co.*,[23] the petitioner sought to represent 3 of the employer's 12 previously

[19] 177 NLRB No 119

[20] 178 NLRB No. 106.

[21] *Rappahannock Sportswear Co.*, 163 NLRB 703, Thirty-second Annual Report (1967), pp 47–48

[22] *Portland Associated Morticians*, 163 NLRB 614 (1967).

[23] 182 NLRB No. 6.

unrepresented plants and to add these plants to an existing unit of 20 of the employer's plants. All the plants involved were in the same division which contained, in addition to the 20-plant unit and the 12 unrepresented plants, a 3-plant unit represented by the petitioner and a single plant represented by another union. None of the three plants was sought on a single-plant basis. The employer opposed this request, arguing that the resultant multiplant unit would be inappropriate and therefore beyond the Board's power to create. The Board noted that, with respect to the requested multiplant unit, there was no mutual consent of the parties, administrative coherence, geographic cohesiveness, or established bargaining history. In such circumstances, the Board explained, citing *PPG Industries*,[24] single-plant units can be combined with a larger multiplant unit over an employer's opposition only if the record establishes that the resultant unit would be distinguished by such shared factors as common terms and conditions of employment, substantial uniformity of wage systems and fringe benefits, substantial integration of operations, interchange of employees within unit lines, and the like. The petitioned-for plants were found to be autonomous, having no product integration with each other or with plants in the existing unit, and with responsibility for day-to-day operations of each plant being vested in local plant superintendents. Therefore, discounting the similarity of wages and benefits at the plants in the proposed unit as a factor not peculiar to the plants in question, since all employees in the division enjoyed substantially the same benefits, the Board found that the employees at the plants named in the petition and those in the existing unit did not share a sufficient community of interest to warrant combining them into a single unit. Each of the three plants, however, was found to constitute a separate appropriate unit.[25]

The Board faced a similar question, though no multiplant unit existed at the time the petition was filed, in *Rohm & Haas*.[26] The employer operated a division of five plants. The petitioner, which represented separate production and maintenance units at one plant and a combined production and maintenance unit at another, sought to combine these three units into one by order or by election. At two other plants in the division, the production employees were unorganized and the maintenance employees were represented by different unions. A combined unit at the remaining divisional plant was represented by yet another union. The employer contended that the unit sought would be inappropriate. Finding the "normal" tests of admin-

[24] 180 NLRB No 58.

[25] Chairman McCulloch, while agreeing that each of the three plants might constitute a separate appropriate unit, believed that there was sufficient community of interest to find the proposed unit appropriate.

[26] 183 NLRB No 20

istrative coherence, geographical cohesiveness, bargaining history, and mutual consent unmet, the Board, again following *PPG Industries*, *supra*, looked to such factors as common terms and conditions of employment, substantial uniformity of wage systems and fringe benefits, substantial operational integration, and employee interchange. As these too were not present, it was ultimately found that the three units had not merged into a single overall unit and that the Board was without statutory authority to conduct elections in the circumstances.[27]

In *Transcontinental Bus System*,[28] the Board was presented with a somewhat different problem. There, two joint petitioners sought to consolidate into a single nationwide bargaining unit all bus operators in all of the employer's divisions and subsidiaries. Historically, bargaining units had been confined to the scope of operating divisions and subsidiaries, with the operators and other employees at 11 of such units represented by one joint petitioner, the operators alone at 9 units represented by the other joint petitioner, and 7 units unrepresented. The employer contended that separate units, established by 20 years of bargaining history, constituted the only appropriate units. The Board, while recognizing that in certain transportation cases,[29] where there was a high degree of integration of services, centralized control of labor relations, and similarity of working conditions of affected employees, a systemwide unit has been held to be the most appropriate unit, found these standards unmet in this case. Rather, the Board found, each of the divisions and subsidiaries operated within different geographical territories, with the labor relations and supervision for each being directed and controlled at the local level in almost all instances. In view of these factors, as well as the separate bargaining history, high degree of autonomy in all matters within each division and subsidiary, lack of interchange, separate seniority among the affected employees, and the exclusion of previously represented nonoperators from the proposed unit, the Board found the single nationwide unit inappropriate.[30]

The merger of several units in a single plant was at issue in *Armstrong Rubber*.[31] There, the petitioner, who had been separately repre-

[27] Chairman McCulloch, though in agreement with the result reached, found the case factually distinguishable from such cases as *PPG Industries*, which involved established multiplant units long adhered to by the parties He would have found the unit sought inappropriate under traditional objective standards applied by the Board

[28] 178 NLRB No 110.

[29] See *St Louis Public Service Co*, 77 NLRB 749 (1948), *American Buslines*, 79 NLRB 329 (1948), *Eastern Mass Street Railway Co*, 110 NLRB 1963 (1954)

[30] Member Brown dissented, finding no justification for saying that existing units are the only appropriate basis for bargaining, particularly where the bargaining history developed by chance and without Board determination Chairman McCulloch dissented separately, agreeing in part with Member Brown but also taking the position that separate self-determination elections be conducted in appropriate voting groups of unrepresented employees.

[31] 180 NLRB No. 98

senting four units, two of which had been combined by mutual agreement of the parties, sought to combine all the units into one by a unit clarification proceeding. The previously combined unit, consisting of production and maintenance employees and inspectors, covered 1,250 of the 1,385 plant employees, while the two other units covered small complements of technicians and schedulers. Unrepresented employees numbered approximately 115. The employer contended that the proposed unit would be inappropriate. The Board applied a community of interest standard and, considering such factors as supervision, method of payment, benefits received, qualifications required, skills employed, and frequency of contact, found that the employees whom the petitioner sought to add to the plant and maintenance unit had a close community of interest with the unrepresented employees. As the petitioner had not sought to include these previously unrepresented employees, the Board dismissed the petition.

The same issue of merger arose in a novel fashion in two cases involving *General Electric Co.*[32] In each case a decertification petition was filed against an international union and one of its locals, seeking a decertification election in an individually certified shop unit. The single question posed was whether the pattern of nationwide bargaining between the union and the employer had brought about an effective merger of the individually certified units into a multiplant contractual unit, thereby precluding the processing of the petitions on grounds they requested elections in units which were not coextensive with the existing collective-bargaining units. The Board found that the employer and the union had engaged in multiplant bargaining for several years through national agreements which provided for automatic coverage at newly organized locations. Each local had delegated to a committee its authority to negotiate and give binding approval to the master agreement. Only matters of individual plant concern were reserved for local bargaining, and local agreements could not be made contradictory to the national pacts. The employer's labor relations were found to be centrally controlled and its approach to collective bargaining to be one which treated all employees uniformly regardless of representation. Describing the historical bargaining relationship as having "obliterated" the separate units, and viewing the "realities of the relationship," the Board dismissed the individual petitions.

The converse of the merger-by-bargaining issue was confronted by the Board in *Houdaille-Duval-Wright Co.*,[33] where, following an election victory over the petitioner, another union had been certified as the representative of construction and maintenance employees in

[32] 180 NLRB No. 162; 180 NLRB No 163
[33] 183 NLRB No 85.

a single unit. The employer and this certified union then agreed in a collective-bargaining contract to designate the petitioner and a third union as agents of the certified union for purposes of administering the contract with respect to certain employee classifications. The petitioner, now seeking an election in a unit composed of one classification of employees, contended that through collective bargaining each of the three unions involved had been accorded representative status in separate identifiable units. The Board, in agreement with the certified union and its other agent, who had intervened in the proceeding, found no agreement among the three unions and the employer to divide the unit. Discussion of the demarcation of classifications among the three unions did not constitute an agreement for separate recognition, the Board reasoned, since two of the unions involved denied such an interpretation and since there was no basis for finding employer acquiescence. Finding further that the parties had not engaged in conduct which was clearly or necessarily inconsistent with the certification and the contract provisions, and distinguishing a prior case [34] in which an intent to establish separate units was found, the Board found the unit sought by the petitioner inappropriate.[35]

2. Establishment of Maintenance Units

Two cases during the year posed the question of the appropriateness of a separate maintenance unit in a previously unorganized plant, and each was ultimately decided by a divided Board. In *Alcan Aluminum Corp.*, [36] an aluminum industry case, a combined production and maintenance unit was sought by one petitioner, in addition to the separate maintenance unit sought by another petitioner. Holding the combined unit to be the only appropriate unit, the Board announced that although it no longer adheres to the policy of automatic denial of separate units in the basic aluminum industry,[37] the integrated nature of operations and the historic pattern of plantwide bargaining in the industry are relevant factors, although not in themselves controlling. They are to be considered together with all other facts and circumstances in each case. The Board then proceeded to find that in addition to the integration of the industry and the plantwide bargaining history, other factors, including interchange of function,

[34] *Clohecy Collision*, 176 NLRB No 83 (1969).

[35] Member Fanning dissented, finding that the employer had agreed to the unions' "cutting up the unit," and that bargaining had been for separate units In his view, the majority decision was inconsistent with Board precedent and served to deny the employees an important option

[36] 178 NLRB No 55

[37] See *National Tube Co*, 76 NLRB 1199 (1948), *Permanente Metals Corp*, 89 NLRB 804 (1950), overruled by *Mallinckrodt Chemical Works, Uranium Div*, 162 NLRB 387 (1966), Thirty-second Annual Report (1967), pp 49–51.

mutual aid, close contact between maintenance and production employees, and the fact that most maintenance employees are recruited from the production ranks, supported a conclusion that the maintenance employees were not a distinct and homogeneous group with interests separate from other employees. The Board directed an election in the combined production and maintenance unit.[38] The second case, *Monsanto Company*,[39] involved only a single petitioner seeking a separate maintenance unit at a previously unorganized plant. Again the Board dismissed the petition, distinguishing *American Cyanamid*[40] as a case involving no interchange, little contact, and different supervision of production and maintenance employees, as well as homogeneity of skills among the maintenance workers. The Board noted that *American Cyanamid* did not require that every maintenance department be found to be an appropriate unit, and observed that it had, since that case, both granted and denied separate representation to maintenance department employees depending on the particular facts before it.[41]

3. Severance Issues

Applying the considerations set forth in *Kalamazoo Paper Box Corp.*,[42] the Board in two cases rejected requests for severance of a unit of truckdrivers from an established production and maintenance unit. In both *Consolidated Packaging Corp.*[43] and *Olinkraft*,[44] the truckdrivers were engaged principally in delivering the employer's products to customers, but spent 10 and 20 percent, respectively, of their regular worktime performing work identical to that of other employees whom petitioner did not seek to represent. Each truckdriver group received the same fringe and other benefits, was compensated in the same manner, and had the same supervision as other unit employees. These factors, the Board stated in dismissing the petitions, point to "the very substantial community of interests" shared by the truckdrivers with other unit employees "as a result of their inclusion for a number of years in the overall unit." Member Fanning dissented

[38] Member Fanning dissented, contending that the majority decision effectively negated the Board's promise in *Mallinckrodt, supra*, to end plantwide guarantees in this industry Viewing the "other factors" relied on by the majority as normal, run-of-the-mill contact between production employees, he would follow instead *American Cyanamid Co*, 131 NLRB 909 (1961), and the "longstanding Board policy of permitting separate maintenance units on initial organization"

[39] 183 NLRB No 53

[40] See fn 38, *supra*

[41] Member Fanning again dissented, describing the unit sought as a "typical" maintenance unit essentially the same as that approved in *American Cyanamid* and other cases

[42] 136 NLRB 134; Twenty-seventh Annual Report (1962), p 64.

[43] 178 NLRB No. 88.

[44] 179 NLRB No. 61.

in each case, emphasizing that the drivers in *Kalamazoo* who were denied severance spent only 50 percent of their time driving, whereas the majority was denying severance to groups which spent 90 and 80 percent, respectively, of their time away from the plant driving.

Distinguishing an earlier case [45] in which severance had been denied to in-store bakers in a multistore grocery chain unit, the Board during the year found such a unit appropriate for a separate election in *Safeway Stores.*[46] The earlier case had involved the same employer's operation, but in Los Angeles rather than Las Vegas. The bakers in the earlier decision did not exercise "the full gamut of skills usually associated with the bakers' trade," the Board said. They generally did not work from recipes or measure and mix the basic ingredients, 25 percent of their time was spent in selling areas of the baking department, and they had regular contacts with customers. Moreover, they had worked under the same direct supervision as all store employees. Turning to consideration of the record before it, "the duties and skill requirements of bakers have markedly changed," the Board stated, and whereas the in-store bakers were originally designed to produce baked goods from frozen doughs shipped from a wholesale plant, 95 percent of these products are now made from primary ingredients. Some 70 different baking products were found to be involved, requiring the use of ovens, mixers, fryers, and other tools of skilled journeymen bakers. The bakers had only rare contact with customers, and the baking department was separately supervised. The employer has also established a 2-year apprenticeship program. Considering these new job circumstances, and the short history of bargaining on a storewide basis, the Board found a separate community of interest among the bakers and directed an election.

4. Other Unit Issues

Other unit issues the Board considered during the year included the use of standard metropolitan statistical areas as a factor in unit determination, accretion of technicians to a craft unit, and the inclusion of system load supervisors in a unit of production and maintenance employees.

Despite a "highly centralized" operation and other factors indicating that an employerwide unit could be appropriate, the Board found a unit limited to a "Standard Metropolitan Statistical Area," as identified by the Bureau of the Budget, appropriate for the purposes of collective bargaining. *Drug Fair-Community Drug Co.*[47] The Bu-

[45] *Safeway Stores,* 137 NLRB 1741 (1962).
[46] 178 NLRB No. 64.
[47] 180 NLRB No 94.

reau has developed criteria for defining "metropolitan areas" to identify segments of the population which share common metropolitan characteristics, needs, and problems on the basis of population density and character and integration of social and economic communication.

Drug Fair, a Maryland corporation, operated a chain of 116 retail drugstores in the District of Columbia, Maryland, Virginia, West Virginia, and Delaware. The petitioner sought a unit of pharmacists and internes confined to 84 stores in the District of Columbia and four cities and six counties in Maryland and Virginia, which, with one exception, were located in the greater Washington, D.C.-Maryland-Virginia "Standard Metropolitan Statistical Area." The employer's pharmacy operations were administered centrally, with general offices and distribution center in Alexandria, Virginia; all labor relations matters pertaining to pharmacists were handled by company officials from Alexandria. Rejecting the employer's argument that the proposed unit was arbitrary, in that it excluded stores within 1, 2, 5, or 10 miles of stores placed in the unit but included stores as much as 50 miles apart, the Board found the unit appropriate based on economic, demographic, social, and geographic integration in reliance on the Bureau of the Budget's determination that the locations were within a standard metropolitan statistical area.

In *Oyster Creek Div., Dow Chemical Co.*,[48] the Board held that a new division located only 1½ miles from another division of the parent company was not an accretion to the existing bargaining unit despite substantial product interchange and the fact that a facility of the older division manufactured the same product. A major factor in the decision was the use of "technicians" at the new Oyster Creek division in place of the traditional crafts employed at the older Texas division. At the Texas division the company employed 123 craft-type classifications while there were only 3 production and maintenance classifications at Oyster Creek, each a type of "technician." Employees in each of the separate production groups at Oyster Creek regularly rotated job assignments, crossing traditional classification and craft lines. In addition, Oyster Creek was physically and administratively a separate division, all employees below the supervisory and managerial level were new hires, "technicians" received much more extensive training than craft employees, and there had been no temporary interchange between the two divisions involving bargaining unit employees. Although not stressed, the Board also found that employment conditions differed in the two divisions.

The Board found that the system load supervisors and assistant system load supervisors of an Arizona public utility engaged in gener-

[48] 179 NLRB No. 128.

ating and distributing electricity were not supervisors within the meaning of the Act, since they exerted no direct control over service crews, and that, if they desired representation, they should be included in the existing bargaining unit. *Arizona Public Service Co.*[49] Their duties included monitoring power consumption by means of complex equipment, maintaining an adequate supply of power in the system, and insuring that the power system continued to function. In the event of a problem, they determined the source, initiated corrective action to energize or deenergize electrical circuits, and dispatched service crews by orders to station managers or foremen. Their inclusion in the existing bargaining unit was based on the fact that their duties were integrated with those of other employees through intermediaries and that, while they were more responsible, they served much the same purpose as field employees. A self-determination election was directed since they had been excluded from the unit since 1949.

C. Conduct of Elections

Section 9(c)(1) of the Act provides that where a question concerning representation is found to exist pursuant to the filing of a petition, the Board shall resolve it through a secret ballot election. The election details are left to the Board. Such matters as voting eligibility, timing of elections, and standards of election conduct are subject to rules laid down by the Board in its Rules and Regulations and in its decisions. Elections are conducted in accordance with strict standards designed to insure that the participating employees have an opportunity to register a free and untrammeled choice in the selection of a bargaining representative. Any party to an election who believes that the standards have not been met may file timely objections to the election with the regional director under whose supervision it was held. The regional director may either make an administrative investigation of the objections or hold a formal hearing to develop a record as the basis for a decision, as the situation warrants. If the election was held pursuant to a consent-election agreement authorizing a determination by the regional director, he will then issue a final decision.[50] If the election was held pursuant to a consent agreement authorizing a determination by the Board, the regional director will issue a report on objections which is subject to exceptions by the parties and decision by the Board.[51] However, if the election was originally directed by the Board,[52] the regional director may either (1) make a report on the

[49] 182 NLRB No 72.
[50] Rules and Regulations, Sec. 102 62(a).
[51] Rules and Regulations, Secs 102 62(b), 102 69(c).
[52] Rules and Regulations, Secs. 102.62, 102.67.

objections, subject to exceptions with the decision to be made by the Board, or (2) issue a decision, which is then subject to limited review by the Board.[53]

1. Eligibility of Voters

The results of an election may depend on the voting eligibility of individual employees whose right to vote has been challenged by one of the parties or the Board agent. If the challenged employees' votes would affect the result of the election, the Board will determine their eligibility and either count or reject their votes, as appropriate.

In one case decided during the year, a majority of the Board found that striking employees who signed termination slips in order to receive vacation pay had not intended to abandon their jobs and were thus eligible to vote in a representation election as economic strikers. *Roylyn, Inc.*[54] The Board relied on its decision in *Pacific Tile & Porcelain Co.*,[55] where it had held that an economic striker is presumed to continue in such status unless the presumption is affirmatively rebutted by the challenging party. Here the Board found that the employees sought to obtain their vacation pay, not abandon their jobs, and the evidence of the termination slips was not sufficient in the circumstances to rebut the presumption that their status as economic strikers continued.[56]

Close family relationship to a company officer or stockholder may, depending on the circumstances, bar an employee from voting in a representation election. However, in *Supermarket of Dunbar*,[57] the Board held that the votes of the challenged employees should be counted despite a close family relationship. The Board relied on the absence of evidence of special benefits and privileges being accorded to the employees by virtue of such relationship in addition to the nature of the relationship in one instance and the position of the employee's relative in the company in the other. In the first instance, the fact that the employee was the sister and not the spouse or child of the president and majority stockholder was determinative; in the second, the fact that the child's father was only the manager and not an officer or shareholder was held to be controlling.[58]

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[53] Rules and Regulations, Secs. 102.69(c), 102 69(a)

[54] 178 NLRB No. 33

[55] 137 NLRB 1358 (1962)

[56] Chairman McCulloch and Member Zagoria dissented on the basis that the contract provided for a general vacation period to be designated by the employer, with a provision that employees who were laid off or terminated could receive vacation pay They would have found that the employees voluntarily went to the employer and had made a reasoned decision to resign in order to be eligible for vacation pay.

[57] 178 NLRB No. 34.

[58] Member Brown would have upheld the challenges

2. Name and Address Lists of Eligible Voters

The Board requires an employer to submit a list of the names and addresses of all eligible voters to the regional director to be furnished to all parties to an election so that voters may have an opportunity to be informed of the issues. *Excelsior Underwear.*[59] This rule was challenged on procedural grounds and reached the Supreme Court in *N.L.R.B.* v. *Wyman-Gordon Co.*[60] The Court held that the rule was substantively valid and that when the Board specifically directs production of an "*Excelsior* list" in an adjudicatory proceeding its order is enforceable.

The Board has since held that execution of a stipulation for certification upon consent election is not a waiver of the adjudicatory proceeding required by *Wyman-Gordon* and that a regional director was not acting outside his authority by ordering production of an *Excelsior* list pursuant to such a stipulation. *Bishop-Hansel Ford Sales.*[61] The Board noted that stipulation for certification is permitted by section 9(c)(4) of the Act and serves only to shorten the proceeding by permitting the parties to stipulate to certain facts. It does not obviate compliance with other statutory requirements or Board policies, nor does it deprive the proceeding of its adjudicatory nature.

During the year the Board also held that, while the *Excelsior* rule is not to be applied mechanically, an employer's omission of more than 11 percent of the eligible voters from the list deprived the union of an opportunity to advise a substantial portion of the electorate of its position and the issues. In these circumstances the employer's defense of an inadvertent error was held to be unacceptable. *Pacific Gamble Robinson Co.*[62]

In other litigation involving *Excelsior* the Board decided that an employer would not be excused from producing an *Excelsior* list in a given case even if it could show that the petitioner already had the names and addresses of all eligible voters. *Murphy Bonded Warehouse.*[63] Among the considerations leading to this decision were the Board's findings that such a determination would require impermissible examination of the number or identity of employees who had signed authorization cards, that the employer's list would still be needed to insure accuracy and currency, and that testimony would relate only to the date of the hearing and not to the need for the list when the election should be directed. Additionally, the Board noted that one purpose for the list is to expedite resolution of voter eligibil-

[59] 156 NLRB 1236 (1966).
[60] 394 U S 759.
[61] 180 NLRB No. 176.
[62] 180 NLRB No 84.
[63] 180 NLRB No 29

ity, which might best be accomplished by focusing attention on one official list furnished by the employer. This purpose would not be served by recognizing an exception where a union had the names and addresses.

3. Election Propaganda

In determining whether the election propaganda of one of the parties has exceeded permissible bounds and requires setting an election aside, the Board balances the right of the employees to a free and informed choice of a bargaining representative against the right of the parties to wage a free and vigorous campaign with all the normal tools of legitimate electioneering. Threats and promises of benefit are, of course, forbidden. An election will also be set aside, however, when there has been misrepresentation or campaign trickery involving a substantial, material departure from the truth, but will not be set aside on the basis of propaganda, where the message was merely inartistically or vaguely worded or subject to different interpretations.[64] These principles were applied by the Board in a number of cases during the year; the following are representative examples.

In *Plymouth Shoe Co.*[65] the Board held that in context a series of five employer letters constituted threats, not permissible predictions, of the consequences should the employees favor the petitioner over the independent incumbent. The first three letters dealt with the possibility of a merger between the petitioner and the incumbent and the employer's strong opposition to it. Additionally, the letters referred to the number of jobs lost by union-represented employees in the industry during the year, the dictatorial control of the union over employees, and the fact that the employer had taken over a formerly unionized plant and that the employees to whom the letters were addressed had these ex-union jobs. The next-to-last letter in the series requested employees to vote against the petitioner so that the company would have the opportunity to show its appreciation and stated that they then could negotiate a "contract of which we can all be proud." The employer's last letter accused the petitioner of misleading statements about membership requirements and suggested that its employees ask themselves what else the union had lied about. Citing *N.L.R.B.* v. *Gissel Packing Co.*,[66] the Board held that an employer may predict the precise effects it believes will flow from the choice of the union but that, as the Court held, the prediction must be "carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond

[64] *Hollywood Ceramics Co*, 140 NLRB 221 (1962).
[65] 182 NLRB No 1.
[66] 395 U.S. 575, 618.

his control or to convey a management decision already arrived at to close the plant in the case of unionization." The Board held that the letters did not meet this test because they suggested an adverse effect from selection of the international union which was not entirely beyond the employer's control, as evidenced by the assurances that there would be beneficial effects, including a favorable contract, were the incumbent selected.

As noted previously, the Board may set aside elections where one of the parties makes a substantial misrepresentation of a material fact and circumstances prevent an effective reply, so that the misrepresentation reasonably may be considered to have had a substantial impact on the election.[67] In one case, where the union passed out leaflets on the afternoon before the election which purported to show the wage rates at a unionized plant of the company in another State, and the employer was unable to obtain information to rebut the allegations effectively before the election, the Board held that, while there had been a partial misrepresentation, it was not substantial. *Jeffery Manufacturing Co.*[68] It was established that the base pay at the unionized plant was lower than that shown in the leaflet, but the record showed that when incentive pay was considered the average employee at the unionized plant earned more than that claimed in the leaflet.[69] The Board also found that partial misrepresentations involving the length of time required for a janitor to attain the wage rate shown in the leaflet and a claim that skilled employees would receive $4 an hour at the next automatic pay increase, when the skilled employees consisted only of three tool-and-die makers who would not attain that rate until the second automatic increase, were not substantially erroneous. Since the leaflet's second paragraph showed that there was a differential between tool-and-die makers and other arguably skilled employees, the Board found that the employees probably were not misled to believe that the $4 rate applied to all.

Some election propaganda oversteps the bounds of permissible campaigning and requires setting aside an election. In *Macklanburg-Duncan Co.*[70] the employer provided its supervisors with campaign buttons and tee shirts bearing antiunion and proemployer slogans. The buttons were also placed on supervisors' desks where employees could readily obtain them and, upon inquiry, employees were told

[67] *Hollywood Ceramics Co , supra*

[68] 180 NLRB No 108

[69] *Grede Foundries,* 153 NLRB 984 (1965), was distinguished There the rates quoted were at a plant organized by the union involved, while a second union was involved in *Jeffrey,* and the leaflet stated that the petitioner had "learned of" the contract. Under *Hollywood Ceramics Co.,* 140 NLRB 221 (1962), employees are presumed to take note whether or not the party making statements has an intimate knowledge of the facts The Board also found that in *Jeffrey* the employees had some basis for evaluating the facts

[70] 179 NLRB No. 143.

that tee shirts could be ordered for 5 cents. The Board found that the employer intended to make antiunion material available so that employees would disclose their choice by electing whether or not to wear it, and set aside the election.[71]

The Board also held during the year that use of a slide, in the course of a legal antiunion speech, showing an official sample ballot bearing the employer's name and marked "No," did not contravene the Board's policy against the use of marked sample official ballots as campaign propaganda. *Burnside Steel Foundry Co.*[72] The purpose of the policy is to avoid the suggestion that the Board approves the selection indicated on the sample. In the context in which the slide was presented, after the showing of an unmarked ballot and accompanied by remarks indicating that the decision on how to vote was entirely up to the voter, there was no tendency to suggest Board approval and, unlike a poster or leaflet, the slide was not available for consideration out of context.

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[71] *Aero Commander Div of Rockwell Standard Corp*, Case 16–RC–4407, March 31, 1967 (not printed in NLRB volumes), was distinguished on the ground that the "Vote No" cards there were not distributed to supervisors in quantities, or under circumstances, to suggest that the employer intended, or had reasonable basis to believe, that employees would be required to declare their allegiance

[72] 178 NLRB No 32.

IV

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 an unfair labor practice charge has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other persons 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 1970 fiscal year which involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Interference With Employee Rights

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

1. Employer Polls of Employees

Defining the permissible scope of employer polls, the Board in the earlier *Struksnes*[2] case had set forth criteria designed to strike a

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

[2] *Struksnes Construction Co*, 165 NLRB 1062, see Thirty-second Annual Report (1967), pp 81–82.

reasonable balance between the protection of employee rights and the legitimate interests of employers.

During the fiscal year the Board had occasion to apply these standards in a situation where the employer, in an effort to uncover areas of employee dissatisfaction, had its employees answer an extensive written questionnaire with instructions that they were not to reveal their names, departments, or supervisors and, further, that they were to answer each question or statement by indicating whether they agreed, disagreed, or had no opinion.[3] The university psychologist who prepared the questionnaire evaluated the results and submitted them to the employer. Later, at small group meetings from which supervisors were excluded, employee grievances were solicited and discussed. Throughout the survey the only reference to unions or unionism appeared in the following statement in the questionnaire: "Many company employees I know would like to see the union get in." The Board in dismissing the complaint found this sole union reference "innocuous," and noted that the employer's solicitation of employee grievances was legal where, as here, it was not "accompanied by an express or implied promise of benefits specifically aimed at interfering with, restraining, and coercing employees in their organizational effort."

2. Arrest of Union Organizer

In another case[4] involving unlawful interference the Board found that the circumstances under which an employer, in enforcing its unduly broad, and hence invalid, nonemployee no-solicitation rule, caused the arrest of a union organizer for trespassing on store premises constituted a violation of section 8(a)(1). When the union organizer appeared on the store's parking lot he was requested by the manager to leave although he stated that he only wanted to look at some sporting goods and promised that he would not speak to any employees about the union. The manager replied that he had orders to call the police if the union organizer entered the store. Nonetheless, the union agent entered and proceeded to the store's sporting goods department. Shortly thereafter, in full view of the employees, he was arrested by a policeman and escorted out of the building. The Board, distinguishing other cases, held that the employer's action was not justified by any legitimate business consideration, as the union organizer acted in accordance with his declared intention and in no way engaged in activity disruptive of the employer's business. That the union organizer's real

[3] *ITT Telecommunications, Div. of Intl Telephone & Telegraph Corp.*, 183 NLRB No 115
[4] *Central Hardware Co*, 181 NLRB No 74

reason was to acquaint himself with the identity of the employees for future contacts did not, in the Board's opinion, detract from the employer's unlawful motivation, as further evidenced by numerous other acts of illegal restraints on employee and nonemployee communication.

3. Discharge for Engaging in Protected Activity

The rights guaranteed to employees by section 7, in the exercise of which they are protected by section 8(a)(1), include the right "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." Several cases decided this past report year further defined the sphere of concerted activity protected by section 7. In the *Ben Pekin Corp.*[5] case the Board held that an employer violated section 8(a)(1) by discharging an employee for pursuing his and his fellow workers' alleged entitlement to a union-negotiated wage increase. Moreover, the discharged employee's questioning of the employer and union representatives about a "payoff" and insinuations that they had conspired to deny the employees what was their due were considered by the Board to be part of that concerted activity and, in the circumstances of this case, not so defamatory as to be removed from the protection afforded by the Act. The critical question in the Board's view was not the amount of the wage increase but rather "whether [the employee] was acting in good faith on behalf of himself and his fellow employees for rights which he though they all were entitled to." In *Cominco-American, Inc.*,[6] the Board considered whether an employer violated section 8(a)(1) and (3) when it agreed with the union to lower the seniority status of several veteran employees, who had been transferred from outside the unit, thus causing their layoffs.[7] A dispute arose when the employer transferred the six employees in question from one of its facilities which was closed down to a unit represented by the union. One of the transferees, who was not a union member, was placed in a job without having first bid for it on the basis of seniority and a grievance was filed. The employer and the union initially held to different interpretations of the bargaining agreement's seniority provisions, but finally the employer accepted the union's position that seniority was to be based on length of service within the unit and adopted a contract modification to that effect. The employer's original position was that service with the employer in any unit was controlling, contrary to the interpretation urged by the union. The Board found that the seniority

[5] 181 NLRB No 165.
[6] 182 NLRB No. 92.
[7] The union was also charged with violations of section 8(b)(1)(A) and (2).

provisions were sufficiently ambiguous to necessitate resort to parol evidence which, when considered, clearly supported the position ultimately agreed to by the employer. In dismissing the complaint the Board concluded that the parties "were truly motivated by the Union's legitimate desire to fully represent the employees in the unit, as contrasted with other company employees outside the unit."

B. Employer Support of Labor Organization

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

Assistance through recognition is but one of the many forms of support to a labor organization. Under the Board's *Midwest Piping* doctrine,[8] an employer faced with conflicting claims of two or more rival unions which give rise to a real question concerning representation violates section 8(a)(2) and (1) if he recognizes or enters into a contract with one of those unions before its right to be recognized has finally been determined under the special procedures provided in the Act.

In a case decided during the report year the Board was called upon to determine whether under the circumstances a real question concerning representation was raised and, therefore, whether an employer's recognition of a rival union was unlawful. The Board, in *Sinclair Mfg. Co.*,[9] held that the employer did not violate section 8(a)(2) by extending recognition to a rival union at a time when the incumbent union had "neither a valid nor even colorable claim to representative status." In concluding that the incumbent union, which had been the employees' bargaining representative for 25 years, did not have a claim sufficient to raise a question concerning representation, the Board relied on findings that the employees on their own initiative overwhelmingly agreed to disaffiliate from the incumbent union and join the rival union, and that an authorization card check by an independent party verified the rival union's majority status. In addition, the representatives of the incumbent union attempted to conceal the occurrence and results of these votes from the employer, refused to submit to an election, and made no claim that its local continued to exist or that it represented any employee in the unit. Under these circumstances, the Board concluded that the employer lawfully recognized the rival union.

[8] *Midwest Piping & Supply Co.*, 63 NLRB 1060 (1945)
[9] 178 NLRB No. 29.

C. 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.[10] Many cases arising under this section present legally uncomplicated issues as to employer motivation. Other cases, however, present substantial questions of policy and statutory construction.

During the report year, the Board had occasion to consider the applicability of the Supreme Court's holdings in *N.L.R.B.* v. *Insurance Agents' Intl. Union*[11] and *American Ship Building Co.* v. *N.L.R.B.*[12] in a case[13] where an employer, while negotiating for a new agreement, temporarily lowered wages and reduced benefits in order to put pressure on the union to accept his latest contract offer. The union protested, but did not strike over these changes. Shortly after implementing these changes the employer locked out its employees. Acknowledging the Court's admonition in *Insurance Agents* that the Board may not judge the particular choice of economic weapons, the Board adopted the trial examiner's reasoning that "nothing therein suggests that interdiction of conduct deliberately calculated to promote a strike is beyond the Board's powers." It found that the employer's true motive in reducing wages and benefits was to precipitate a strike and, therefore, its actions were inconsistent with its duty to bargain in good faith and interfered with the employees' protected rights in a manner violative of section 8(a)(1) and (3). The Board rejected the argument that the changes in benefits were a legitimate exercise of economic pressure and, as such, analogous to a lawful lockout; in this case, unlike those involving lockouts, the employees were being forced either to strike, and thus risk replacement, or to continue working under terms inferior to those recently enjoyed.[14] The Board adopted the trial examiner's disbelief that "*American Ship* leaves the employer an unlimited choice of weapons for use in his economic war."

The principles set forth in *American Ship* were also considered in *Chevron Oil Co., Standard Oil Co. of Texas Div.*,[15] where the Board

[10] However, the union-security provisions of sec. 8(a)(3) and 8(f) create exceptions to this blanket 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.

[11] 361 U S 477.

[12] 380 U S 300.

[13] *U.S. Pipe & Foundry Co.*, 180 NLRB No. 61.

[14] Member Zagoria, dissenting, thought that in this type of case it would be preferable to allow the employer, in aid of good-faith bargaining, to exert economic pressure by temporarily reducing benefits while permitting the employees to respond, if they choose, by going on strike without risking replacement

[15] 182 NLRB No. 64.

held that an employer, already bargaining in bad faith, further interfered with employees' rights by withholding from them, during bargaining, wage benefits it had granted to its unorganized employees. Such conduct was found to be part of an overall design to intimidate and undermine the employees' bargaining representative. The Board recognized that the withholding of increased benefits pending contract completion is normally a valid exercise of economic pressure in support of a legitimate bargaining position, but held that it loses that protection when undertaken to discipline employees for their choice of bargaining representative. The Board distinguished the *Shell Oil Co.*[16] and *American Ship*[17] cases on the ground that there the employers were engaged in good-faith bargaining and in furtherance of their bargaining positions they exerted "legitimate" pressure, whereas in *Chevron Oil* the employer's action not only had the logical effect of undermining the union, but was clearly initiated for that express purpose as evidenced by the employer's aggravated breaches of its statuatory bargaining obligation in other respects.

A somewhat similar issue was presented in *Roegelein Provision Co.*[18] where it was alleged that the denial of vacation benefits to employees who had engaged in strike activity was violative of section 8(a)(3) and (1). The employer in *Roegelein* had refused to count strike time for the purpose of vacation eligibility, basing its decision on a newly negotiated collective-bargaining agreement. Thus, reinstated strikers were ineligible for vacation benefits they would have earned if they had worked during the strike. It appeared that the employer applied the same standard to nonstrikers who, for one reason or another, had accumulated a total number of hours absent in excess of the allowable minimum, and who were thus also not considered entitled to vacation benefits. Furthermore, the record showed that the parties had fully discussed the relevant contract provisions relied on by the employer. The Board, noting its authority[19] to remedy unfair labor practices despite the assertion that disposition of the dispute rests on contract interpretation, found that the vacation provisions in clear and unambiguous terms supported the employer's position. In dismissing the complaint a majority[20] of the Board noted that the employer's action was but "a lawful implementation of a right understood to have been acquired through the collective-bargaining process, from which conduct no inference of improper motive should be drawn."

[16] 77 NLRB 1306 (1948).
[17] See fn. 12, *supra*
[18] 181 NLRB No 72.
[19] Citing *N L R B* v. *C & C Plywood Corp*, 385 U.S. 421
[20] Member Brown dissented

D. 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.[21]

1. Response to Requests for Recognition and Bargaining

In *N.L.R.B.* v. *Gissel Packing Co.*,[22] the Supreme Court approved the Board's practice of ordering an employer to bargain with a union on the basis of authorization cards signed by a majority of the employees in an appropriate unit where the employer, by committing unfair labor practices, has made it improbable that an election free from coercion could be held. The Court further held that such a determination could be made without reference to whether the employer's claim of doubt of the union's majority status was made in bad faith. Numerous cases decided during the past fiscal year dealt with the application of the *Gissel* bargaining order remedy. In this section some of the relevant criteria considered by the Board are discussed.

In two cases[23] decided during the report year the Board rejected employer assertions for refusing union requests for recognition supported by authorization cards. In *General Stencils* the employer contended that the union's majority status shown by authorization cards was an unreliable reflection of employee sentiment primarily because twice before unions asserting card majorities had later lost elections. The Board noted that the same argument had been rejected in *Gissel* and alone could not successfully be maintained as a valid reason for refusing to recognize the union, for it fails to account for periodic changes in circumstances and views. Also, the Board found that the employer's unfair labor practices both before and after the union's organizing drive began were of such a pervasive character as to tend

[21] 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."

[22] 395 U.S. 575, see Thirty-fourth Annual Report (1969, pp. 116.)

[23] *General Stencils*, 178 NLRB No. 18, *Triggs-Miner Corp*, 180 NLRB No. 39

to destroy the possibility of a free choice in an election. Under these circumstances, and notwithstanding the employer's willingness to proceed to an election, the Board found that the rights of the employees and the purposes of the Act would be better effectuated by reliance on the employee sentiments expressed in the authorization cards. The Board therefore ordered the employer to recognize and bargain with the union. Similar employer arguments were rejected in *Triggs-Miner* where the union, which had obtained authorization cards signed by a majority of employees in an appropriate unit, was refused recognition by the employer. The Employer contended it was not required to bargain with the charging union because the latter had unsuccessfully filed two petitions and an unfair labor practice charge against an incumbent union. The Board issued a bargaining order, finding that the employer's unfair labor practices, including 8(a)(1) and (2) conduct, were of such an aggravated nature as to render virtually impossible a restoration of conditions as they existed when the union attained its card majority.

The Court in *Gissel* drew in broad outline three guidelines governing the issuance of bargaining orders.[24] To begin with, the Court declared that the bargaining order should issue to remedy unfair labor practices "so coercive that, even in the absence of a § 8(a)(5) violation, a bargaining order would have been necessary to repair the unlawful effect of [the unfair labor practices.]" The Court also sanctioned the use of the bargaining order remedy in "less extraordinary cases marked by less pervasive practices which nonetheless [in the Board's discretion] still have the tendency to undermine majority strength and impede the election processes." Finally, the Court noted a third category where the unfair labor practices "because of their minimal impact on the election machinery, will not sustain a bargaining order."

A number of cases decided during the report year fall within this third category. In *Poughkeepsie Newspapers* [25] the employer expressed doubt that the union by a showing of authorization cards did indeed represent a majority of employees in an appropriate unit because, *inter alia*, it questioned whether certain of the card signers were in fact employee-members of the unit. The Board stated that if that were the only reason asserted by the employer, and if that reason were ultimately deemed to have been erroneous, it would find the employer's refusal to extend immediate recognition unjustified. However, that was not the employer's only reason; it also had other reservations about the union's claimed majority. In view of the above, and considering the minimal impact of the few 8(a)(1) violations, namely,

[24] *N.L.R.B* v *Gissel Packing Co*, *supra* at 614–615.
[25] 177 NLRB No. 125.

one implied promise of benefit and limited threats to three or four drivers, all occurring in a large unit, the Board found that the unfair labor practices were not of sufficient gravity to support a refusal-to-bargain finding or a bargaining order and concluded that under these circumstances the new election it had directed could be conducted free of coercion.

The Board also declined to find an 8(a)(5) violation and issue a bargaining order in *Arcoa Corp.*[26] in which it was alleged that the employer unlawfully withdrew recognition and committed acts designed to interfere with the employees' choice of a bargaining representative. The union in *Arcoa* first presented the employer with some of the authorization cards signed by a majority of the employees in its plant, but the employer, who did not inspect the cards or grant recognition, stated that it needed legal advice. Shortly thereafter the employer's attorney twice offered to proceed to a consent election, but the union declined each time and decided to call a strike which was participated in by a majority of the employees. Upon viewing this show of interest the employer advised its attorney that it would recognize the union and instructed him to draft the necessary papers. The strike was called off and shortly after the employees returned to the plant they decided, on their own initiative, to abandon the union. The employer was informed of this change in sentiment and thereupon polled each employee. Satisfied that there was a substantial defection from the union, the employer instructed counsel that it was revoking recognition. Later that same day the union, with the employer's permission, twice met with the employees and attempted without success to dissuade them. Under the circumstances, the Board concluded that section 8(a)(5) had not been violated and the independent violations of section 8(a)(1)—unlawful polling of employees, which the Board characterized as "borderline," and a wage increase granted after the employees' rejection of the union—were not of sufficient gravity to support the bargaining order remedy.

In *Central Soya of Canton*,[27] the Board concluded that there was more likelihood that an election would afford an accurate measure of employee interest than an authorization card count would, as the employer's acts of interference were relatively minor. Of particular importance was the fact that the employer had voluntarily attempted to remedy its unfair labor practices, thus substantially reducing their impact and the likelihood of their recurrence. Finally, in *J. A. Conley Co.*[28] the Board considered allegations that the employer's refusal to recognize the union's card majority and attendant commission of acts

[26] 180 NLRB No. 5
[27] 180 NLRB No. 86.
[28] 181 NLRB No. 20.

of interference warranted the issuance of a bargaining order. The Board disagreed, finding only one incident of interference and dismissing the 8(a)(3) and (5) charges.

A somewhat different question was presented in *Bill Pierre Ford*[29] where, unlike the cases discussed above, there were no independent acts of interference or employee discrimination. The case turned solely on whether the employer's conduct in refusing to recognize the union, which held cards signed by a majority of the employees, had so impeded the election process as to warrant or support the bargaining order remedy. The Board, in dismissing the 8(a)(5) charge, noted that under *Gissel* an employer confronted with a card majority may lawfully refuse recognition as long as he has no independent knowledge that the union has a majority, and may insist on an election unless he has committed unfair labor practices disruptive of election conditions. Here, the Board concluded, the employer possessed no such independent knowledge and, as mentioned above, had not engaged in any unlawful conduct that would tend to impede the election which it had requested. The Board reached a contrary result in *Pacific Abrasive Supply Co.*[30] where, although the employer engaged in no independent and substantial unfair labor practices interfering with the election process, its refusal to recognize the union was unlawful because it clearly had obtained independent knowledge that its employees desired to be represented by the union for purposes of collective bargaining. All four of the employer's warehousemen had signed authorization cards. The employer inspected these cards and acknowledged their authenticity. Moreover, the employer learned from conversations with them that each supported the union. Finally, all four employees engaged in a strike against the employer. In the Board's view such an awareness of employee sentiment clearly constituted independent knowledge within the meaning of the *Gissel* decision. Therefore, the employer's refusal to bargain was found to be violative of section 8(a)(5) and warranted the issuance of a bargaining order.

2. Validity of Authorization Cards

During the fiscal year the Board had occasion to define and clarify the principles applicable to the validity of union designation cards offered in support of a claim of majority status. In *Marie Phillips*, 178 NLRB No. 53, the union solicited some of the cards with the misrepresentation that a majority had already signed. Modifying its earlier holding in *G & A Truck Line*, 168 NLRB 846 (1967), that it

[29] 181 NLRB No. 155.
[30] 182 NLRB No. 48.

was immaterial that such cards were signed in reliance upon the misrepresentation that a majority had already signed, the Board held that if contemporaneous objective evidence clearly showed that the misrepresentation was the decisive factor in causing the employees to sign, the cards would be considered invalid and would not be counted. In the absence of such evidence, however, the Board declined to invalidate cards clearly designating the union, merely on the ground of the employees' subjective testimony at the hearing, unsupported by testable or reliable objective evidence that they would not have signed but for the misrepresentation. Somewhat the converse of this situation was presented in *Nash-Finch Company*, 178 NLRB No. 77, where the Board refused to consider valid certain cards improperly solicited by supervisors, even though the signers testified at the hearing that they had decided to sign cards in any event and were not influenced by the fact that they were solicited by supervisors.

3. Duty to Furnish Information

The duty of an employer to bargain in good faith includes the duty to supply to the statutory bargaining representative requested information which is "relevant, material, and necessary" to the intelligent performance of its collective-bargaining function of administering a collective-bargaining contract.[31]

The Board decided several cases during the fiscal year illustrating the scope of this duty. In *Gulf States Asphalt Co.*, 178 NLRB No. 63, the employer, after furnishing the union what it considered to be a sufficient amount of the requested information relating to certain grievances, refused to permit the union to examine its records, asserting that the union's request for further information was irrelevant. Rejecting this defense, the Board held that the requested information was "relevant, material, and necessary" to the union not only to provide a basis for the employer's asserted reasons for denying the grievances, but also to enable the union to decide whether to proceed further to arbitration or to drop the grievances. In *Universal Atlas Cement Div. of U.S. Steel Corp.*, 178 NLRB No. 75, the employer refused the union's request to examine the payroll records, after having complied with the union's earlier request that the employer itself search the records to ascertain whether any basis existed for filing additional grievances. The Board, disagreeing with the dissent of Member Zagoria that the union was merely engaging in a "fishing expedition," found the employer's refusal unlawful on the ground that the further information sought was of "potential relevance" to the filing of grievances.

[31] See Thirty-third Annual Report (1968), p 98.

4. Subjects for Bargaining

The Act requires both an employer and his employees' statutory representative to bargain collectively with respect to "wages, hours, and other terms and conditions of employment" within the appropriate unit.[32] In addition to these mandatory subjects for collective bargaining, the parties may, if they wish, bargain with respect to a wide range of other matters. But neither party may insist that the other party agree with respect to such nonmandatory or permissive matters, nor may a party condition performance of his mandatory bargaining obligation on agreement by the other party with respect to such matters.

During the fiscal year the Board issued a number of decisions involving the distinction between these two classes of subjects. In *Long Lake Lumber Co.*, 182 NLRB No. 65, the employer insisted throughout the collective-bargaining negotiations that the union agree to a limited form of "management rights" clause whereby the employer could take unilateral action with respect to all matters not specifically covered in the final contract. Noting that the employer at no time refused to bargain in good faith with respect to any terms and conditions of employment, and further noting that any action taken under the limited "management rights" clause would be subject to the contractual grievance procedure, the Board, with Member Brown dissenting, found that the employer's insistence related to a mandatory collective-bargaining subject, and provided no sufficient basis for inferring that the bargaining was in bad faith. In *Dolly Madison Industries*, 182 NLRB No. 147, the employer insisted that the union agree to a "Most Favored Nations" clause providing that, if the union made a more favorable contract with any competitor covering terms and conditions of employment, the agreement with the employer would be automatically amended to reflect the revised terms and conditions. Noting that the employer had bargained in good faith in all other respects, and rejecting the union's unsupported contention that the clause violated the antitrust laws, the Board held that the clause was directly related to the terms and conditions of employment applicable to the unit, and was therefore a mandatory subject of bargaining upon which the employer could legally insist.

On the other hand, the Board found violations of the collective-bargaining obligation where the employer or the union conditioned the performance of the bargaining obligation upon obtaining agreement with respect to nonmandatory subjects. In *F. W. Woolworth Co.*, 179 NLRB No. 129, the employer insisted on bargaining with two separate unions jointly, and refused to bargain with each separately, despite the fact that in a prior representation case the Board

[32] Sec 8(d) of the Act.

had rejected the employer's request for a single overall collective-bargaining unit, and had certified each union as the statutory representative of a separate appropriate unit. Rejecting the employer's defense that it was willing to sign separate contracts embodying the agreements reached, the Board held that the employer could not in this manner relitigate the issue decided in the representation proceeding. In reaching this decision, the Board pointed out that the employer's position did not directly involve terms and conditions of employment or any mandatory collective-bargaining subject within each unit found to be appropriate. A related situation was presented in a case against a union, *South Atlantic & Gulf Coast Dist., I.L.A. (Lykes Bros. Steamship Co.)*, 181 NLRB No. 89, where the union refused to sign an agreement or abide by an oral understanding reached with the employer unless the employer also reached an understanding with the union covering a different appropriate unit. In *UOP Norplex Div. of Universal Oil Products Co.*, 179 NLRB No. 111, the Board found that the employer violated its bargaining obligation by conditioning bargaining on the union's revocation of fines imposed on certain employee-members who crossed the union's lawful economic picket line at the employer's plant.

In *Pittsburgh Plate Glass Co.*, 177 NLRB No. 114, the Board was required to decide whether retired employees were employees within the statutory definition of that term and, if so, whether they were within the unit for which the employer was obligated to bargain. The employer, after having made past contracts with the union which included various provisions about retired employees, decided to make a unilateral change in the existing plan, and challenged the union's right to bargain for retired employees at all. Holding that these retirees continued to be "employees" within the meaning of the Act, both in their own right and because of the interest of the still-working fellow employees in their own future retirement, and further holding irrelevant the fact that retired employees are normally ineligible to vote in Board elections, the Board found that the employer thereby violated its bargaining obligation.[33] The Board noted the ever-increasing number of collective-bargaining contracts concerned with the retirement of employees, and declined to interfere with this trend by precluding the statutory representative from enforcing through our Act contracts which had been lawfully negotiated, establishing benefits for employees upon their retirement.[34]

[33] On June 10, 1970, the Sixth Circuit refused to enforce this Order (427 F.2d 936). The Board filed a petition for certiorari on November 12, 1970

[34] Member Zagoria dissented from the majority's decision, noting that retirees are no longer working for the employer, are not on the payroll, and probably have no access to the plant or hope of recall Though lauding parties' voluntary efforts to bargain about past pensioners' rights and benefits, Member Zagoria would not find them to be within the unit for which a bargaining representative has a right to bargain

5. Obligation of Successor Employer Under Preexisting Contract

During the fiscal year, the Board issued a series of four landmark decisions with respect to the effect on an existing collective-bargaining agreement when the employer who had made the agreement transfered the enterprise to a successor employer. In *William J. Burns Intl. Detective Agency*, 182 NLRB No. 50, after inviting briefs from nationwide employer associations and labor organizations and hearing oral argument from many interested parties, the Board decided that the outstanding agreement continued in effect and was binding on the successor employer. In *Burns*, employees performing plant protection services for their employer, who was under contract with an aircraft company, were covered by a collective-bargaining agreement executed by their statutory representative and their employer. Pursuant to the service contract, the aircraft company invited bids from competitors to take over the plant protection services, and advised the prospective bidders of the existence of the collective-bargaining agreement. Burns' bid was accepted by the aircraft company. Thereupon, Burns employed most of its predecessor's employees, but refused to honor the existing collective-bargaining agreement with the union. In view of the substantial continuity of the employing industry, the Board found that Burns was a successor to the employer which had signed the collective-bargaining agreement, despite Burns' lack of a direct contractual relationship with the predecessor employer. Relying heavily on the Supreme Court's decision in *John Wiley & Sons* v. *Livingston*, 376 U.S. 543, the Board viewed the collective-bargaining agreement not as an ordinary contract binding only on those who had signed it, but rather as a generalized code also binding on the successor Burns because it continued essentially the same employing enterprise as was covered by the agreement. The Board accordingly held that Burns was obligated under section 8(a)(5) to honor the agreement, noting that it was not compelling Burns to agree to a union proposal or make a concession, but rather to abide by an agreement previously entered into by Burns' predecessor. The Board pointed out that an employer, when framing the bid which it submits prior to a takeover, could take into account the obligations imposed by the collective-bargaining agreement of the predecessor. Member Jenkins dissented on the grounds that the result would restrict the new employer's ability to preserve a marginal or faltering enterprise, and thus contractual provisions to which an employer has not agreed should not be imposed upon it in the absense of a clear statutory command or binding judicial precedent.

Companion cases establish other facets of the same principle. *Hackney Iron & Steel Co.*, 182 NLRB No. 53, announced a similar holding,

and added provisions for the restitution not only of all withheld contractual benefits, but also of all benefits unilaterally discontinued or changed since expiration of the predecessor's contract.[35] The parallel to this situation was presented in *Kota Div. of Rura Corp.*, 182 NLRB No. 51, where the employer refused the union's demand for collective-bargaining negotiations on the ground of the existence of the union's collective-bargaining agreement with the employer's predecessor, an agreement which the employer had in fact expressly assumed. The Board dismissed the 8(a)(5) allegation on the ground that the parties were bound by the agreement and the union accordingly was barred from demanding bargaining outside the terms of the agreement. On the other hand, in *Travelodge Corp.*, 182 NLRB No. 52, the Board found that the employers were not bound by the existing agreement made by a multiemployer association, because under the special facts of that case there was not a sufficient degree of continuity in the employing enterprise.

Further application of this principle appears in *Ranch-Way*, 183 NLRB No. 116. *Ranch-Way* succeeded to the operation of a feed mill early in the term of a 3-year collective-bargaining agreement which the predecessor had made with the union. But *Ranch-Way* refused the union's demand for recognition and proceeded to make unilateral changes in pay and other benefits provided for in the agreement. When the union protested, *Ranch-Way* contended that it was not a successor, and that in any event it doubted that the union still represented a majority of the employees or was entitled to continued recognition. The Board rejected this argument and found a violation of section 8(a)(5) on the ground that a valid question concerning representation could not lawfully be raised during the term of the agreement. The Board ordered *Ranch-Way* to honor the agreement and to make the employees whole for any losses suffered as a result of the unilateral changes it had made.

E. Union Interference With Employee Rights

1. Imposition of Fines

The applicability of section 8(b)(1)(A) as a limitation on union actions, and the forms of those actions protected by the proviso to that section,[36] continued to pose questions for the Board this year as

[35] See also *S-H Food Service*, 183 NLRB No 124.

[36] Sec 8(b)(1)(A) provides · "It shall be an unfair labor practice for a labor organization or its agents—(1) 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 prior years.[37] Several cases involving disciplinary action by unions against their members for violating internal union rules required the Board once more to reconcile unions' statutory right to prescribe their own rules respecting "the acquisition or retention of membership" with the public policy of protecting unobstructed access to the Board. The Board, with court approval, has held that a union violates section 8(b)(1)(A) by fining or expelling [38] a member because he filed unfair labor practice charges against the union with the Board, but does not violate the Act by expelling [39] or suspending [40] from membership a member because he filed a decertification petition with the Board. The distinction is based on the right of a union to defend itself from destruction by one who is privy to its strategy and tactics. Issues as to whether a union violates the Act by fining, rather than expelling or suspending, a member because he filed a petition with the Board to have it decertified or because he circulated such a petition among his fellow unit employees, were considered by the Board during the past year. In *Blackhawk Tanning* [41] the Board majority held that a union violates section 8(b)(1)(A) by fining its member for filing a decertification petition with the Board. The majority decision explained that the rule permitting a union to expel a member who seeks its decertification was an exception to the general rule prohibiting a union from penalizing its members because they seek to invoke the Board's processes. The exception was based on "the necessities of the situation, the right of the union to defend itself" from destruction by one who is privy to its strategy and tactics. In addition, the deterrent or punitive effect of expulsion in such circumstances is minimal. The Board stated, however, that where a union fines a member because he filed a decertification petition, the effect is not defensive but punitive, since "the union is not one whit better able to defend itself against decertification as a result of the fine." [42]

[37] See, e g., Thirty-first Annual Report (1966), pp. 97–98; Thirtieth Annual Report (1965), pp. 82–87; Twenty-ninth Annual Report (1964), pp 83–85

[38] *N L R.B* v. *Industrial Union of Marine & Shipbuilding Workers [Bethlehem Steel Co.]*, 391 U.S. 418; *Loc. 138, Operating Engineers (Charles Skura)*, 148 NLRB 679 (1964), Thirtieth Annual Report (1965), pp. 83–84

[39] *Tawas Tube Products*, 151 NLRB 46, Thirtieth Annual Report (1965), p. 85.

[40] *United Steelworkers of America, Loc 4028 (Pittsburgh-Des Moines Steel Co.)*, 154 NLRB 692 (1965), Thirty-first Annual Report (1966), p 97.

[41] *Intl. Molders' & Allied Workers Union, Loc. 125, AFL–CIO*, 178 NLRB No. 25.

[42] Chairman McCulloch and Member Zagoria signed the majority opinion. Member Brown, concurring, contended that the same policy which makes it unlawful for a union to penalize its members for filing unfair labor practice charges with the Board should apply with equal force to representation procedures. The limited exception which permits a union to expel a member for filing a decertification petition is based only on the lack of a deterrent or coercive effect of expulsion upon a member who attacks and seeks to undermine the existence of the union Members Fanning and Jenkins, dissenting, would find no valid distinction between fines and expulsion where a union acts to defend its very existence and that, generally, fining is a lesser penalty than expulsion.

In a somewhat related case,[43] the union not only fined its member for circulating a decertification petition among employees at his place of employment, but also removed him from his elected position as chairman of the shop committee and barred him from holding office in the union for a period of 3 years. The Board, relying on *Blackhawk Tanning*,[44] held that although the imposition of the fine was unlawful, no violation was committed by the union in removing its member from the shop committee and barring him from holding union office for a period of years.[45] The latter conduct had a defensive effect and therefore did not violate the Act under the Board's rationale in *Tawas Tube Products*.[46] In yet another case,[47] the Board, again relying on *Blackhawk Tanning*,[48] held that the union acted unlawfully by fining a member who had solicited unit employees represented by the union to sign a petition authorizing a rival union to represent them for collective-bargaining purposes. The conduct for which the member was fined resulted in a representation petition under section 9 of the Act being filed by the rival union. However, no violation was committed by the union in barring that member from holding office in the union for a period of 5 years since such action was defensive under *Tawas Tube, supra.*

2. Imposition of Other Internal Penalties

Several cases decided in the past year concerned the imposition of union penalties other than fines or expulsion. In *Amalgamated Meat Cutters & Butcher Workmen of North America, Loc. 590 (Natl. Tea Co.)*, 181 NLRB No. 116, a panel majority of Chairman McCulloch and Member Jenkins adopted, without comment, a trial examiner's decision that the union violated section 8(b)(1)(A) of the Act by removing a member from his duly elected position as job steward, resulting in his loss of superseniority, because he had filed charges with the Board. The charges were based on the manner in which the union had processed grievances against the employer. Citing the Supreme Court's admonition that "The overriding public interest makes unimpeded access to the Board the only healthy alternative, except

[43] *United Lodge 66, Intl. Assn. of Machinists (Smith-Lee Co.)*, 182 NLRB No. 129.

[44] 178 NLRB No 25.

[45] Chairman McCulloch and Member Brown constituted the majority. Member Fanning, concurring in part and dissenting in part, would have found no violation by the union in fining its member because he circulated a decertification petition, relying upon the reasons stated in his dissent in *Blackhawk Tanning, supra* On the other hand, Member Fanning agreed with the majority that no violation was committed by removing and barring its member from holding office in the union.

[46] 151 NLRB 46 (1965).

[47] *Printing Specialities & Paper Products' Union 481, Intl Printing Pressmen & Assistant's Union of North America, AFL–CIO (Westvaco Corp)*, 183 NLRB No. 125.

[48] 178 NLRB No. 25.

and unless plainly internal affairs of the union are involved," [49] the trial examiner held that since the member was not only an officer of the union but was also an employee in the bargaining unit represented by the union, the union's disciplinary action demonstrated to all members—whether job stewards or rank-and-file employees—that all were prohibited from seeking recourse to the Board for their relief.[50]

In *Loc. 4186, United Steelworkers of America (McGraw Edison Co.)*, 181 NLRB No. 162, the Board held that a union violates section 8(b)(1)(A) by invoking, or threatening to invoke, a lawful union-security clause to enforce payment of dues by a member whose membership had been significantly impaired because he filed a decertification petition.[51] Although a reduction-in-membership rights for filing a decertification petition is of itself not necessarily unlawful,[52] the union's insistence upon continued payment of dues during periods when membership rights were thus significantly reduced constituted a continuing form of coercion tending to operate as a serious restraint upon access to the Board's processes. Neither the proviso to section 8(b)(1)(A) nor the need for self-preservation was held to have justified the union's threat to invoke the union-security clause in these circumstances.

F. Coercion of Employers in Selection of Representatives

Section 8(b)(1)(B) provides: "It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances . . . ." This section has been the subject of increasing litigation during the past several years,[53] and that trend continued this fiscal year. In *Dallas Mailers Union, Loc. 143 (Dow Jones Co.)*, 181 NLRB No. 49, the Board held that the union violated section 8(b)(1)(B) by expelling a member for orders given by him as the company's foreman. The Board rejected the unions' contentions that the expulsion from membership

[49] *N L R B.* v. *Industrial Union of Marine & Shipbuilding Workers [Bethlehem Steel Co.]*, 391 U.S. 418, 424–425.

[50] Member Brown, dissenting, was of the opinion that the majority decision extends the principles of assuring employees free access to the Board beyond their intended reach, since the dispute between the union and the job steward was over the internal workings of the Union—i.e., the manner in which the union processed a grievance against the company. In his view, such disagreements do not raise issues of section 7 rights

[51] The Board found it unnecessary to determine whether a union violates section 8(b)(1)(A) by similar conduct against a member whose membership was impaired for reasons unrelated to seeking access to Board decertification processes.

[52] *Tawas Tube Products*, 151 NLRB 46 (1965).

[53] *Toledo Locals 15–P & 272, Lithographers & Photoengravers Intl. Union, AFL–CIO (Toledo Blade Co.)*, 175 NLRB No. 173 (1969); *New Mexico Dist Council of Carpenters & Joiners of America; United Brotherhood of Carpenters & Joiners of America (A. S Horner)*, 176 NLRB No. 105 (1969); *New Mexico Dist. Council of Carpenters & Joiners of America (A. S Horner)*, 177 NLRB No. 76

of a company foreman does not restrain or coerce the company as, once expelled, the foreman is relieved of any further responsibility to, or fear of disciplinary action by, the union which might tend to inhibit him from representing the viewpoint of management. The inhibiting effect of expelling the foreman did not end with his expulsion, the Board held. For, the foreman here wanted to remain in the union in order to retain the benefits that such membership afforded and, because of his desire for reinstatement in the union, his future conduct as a supervisor and representative of the company would likely be inhibited.

Although the Board had in the past, as indicated, held that a union's fining of members for conduct engaged in while acting as an employer representative violated section 8(b)(1)(B), this was the first case in which the union's disciplinary action involved expulsion.

G. 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 any individual employed by any person 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).

1. Picketing Employer With Right-of-Control

The insulation of neutral or secondary employers from involvement in primary disputes under the secondary boycott provisions of the Act requires, at the outset, identification of the primary employer. In a number of cases, 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 a neutral or secondary employer, and the employer who has the power to resolve the dispute is the primary employer.[54]

In restating the principles underlying its inquiry into the "right of control," the Board recently said that the issue of identifying the primary employer can be resolved, as stated by the Court of Appeals for the First Circuit,[55] by consideration of two questions: (1) What

[54] E g, *Intl Longshoremen's Assn & Loc 1694 (Board of Harbor Commissioners)*, 137 NLRB 1178 (1962); *Loc. 636, United Assn of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States & Canada (Mechanical Contractors Assn. of Detroit)*, 177 NLRB No 14.

[55] *Beacon Castle Square Bldg Corp.* v. *N L.R.B.*, 406 F 2d 188

was the union seeking? (2) Was the person against whom the union directed its action in a position to do anything about it?

During the past year the Board applied this standard in a case [56] involving the efforts of a bricklayers local union to obtain compliance with a work preservation clause in its contract with two masonry employers. The contract provided that it would not be a violation of the agreement for the union to refuse to permit bricklayers covered therein to handle prefabricated fireplaces, and that "the unit work encompassed within the erection and installation of fireplaces . . . shall be fabricated on the job site or in the shop of an employer within the bargaining unit who is bound by this agreement." The union sought compliance with this provision by threatening the two masonry contractors and the employees of one with picketing and other disciplinary action if they continued to work on prefabricated fireplaces. The two contractors and one employee were union members, and the union thereafter fined them because they continued to perform work on prefabricated fireplaces. Although the Board found that the work preservation clause itself did not violate section 8(e) of the Act, it concluded that the union's action against the two masonry contractors and the employees of one violated section 8(b)(4)(i) and (ii)(B) of the Act because these employers were powerless to meet the union's demand. In so finding, the Board found that the general contractor alone, and not the masonry employers, had the power effectively to meet the union's demands by altering the job specifications and assigning to unit employees the work of erecting conventional fireplaces at the site. The Board also held that the union's threat to picket the general contractor did not violate section 8(b)(4)(ii)(B) because it was aimed at the entity considered by the Board to be the primary employer.[57]

2. Product Boycott Picketing

The Board has recognized that the legality of consumer picketing must be evaluated not in terms of the proviso to section 8(b)(4) exempting from the prohibition of that section "publicity, other than picketing" but in terms of whether such picketing imposes on the secondary employer pressures condemned by section 8(b)(4)(ii)(B). Union picketing appeals to consumers which did not intelligibly identify the struck product were found by the Board in two cases to

[56] *Bricklayers' & Stone Masons' Union, Loc 8, Bricklayers, Masons & Plasterers Intl. Union of America (Calif Concrete Systems)*, 180 NLRB No. 3.

[57] Member Brown, dissenting, would have found that the union had a legitimate contract dispute with the masonry employers and that its actions, therefore, were solely and directly against the primary employer. On the other hand, and contrary to his colleagues, he would have found the union's picketing of the general contractor unlawful.

be directed to a total boycott of the secondary employers and therefore violative of that section. In one case [58] the union, while striking the Marietta Daily Journal, stationed pickets at several stores which regularly advertised products in that newspaper. The Board found that the picket signs, appealing to consumers not to buy "products advertised by this store" in the Marietta Daily Journal, did not adequately identify the struck products so as to fall within the *Tree Fruits* [59] exception to the 8(b)(4)(ii)(B) prohibition on secondary situs picketing. Although the pickets had available to those who inquired a list of the products advertised, the Board held that the union may not shift its burden of struck product identification to the public but must clearly identify on the picket signs themselves the products which it asks the public not to purchase.

The Board reached a similar result in a case [60] where the union picketed and distributed handbills at stores which advertised specific products and general storewide sales in the struck newspapers. The picket signs appealed to potential customers not to buy goods advertised by the named store. The trial examiner's decision, adopted by the Board, acknowledged that any effort at specificity of products boycotted by the union would have been "nigh impossible," due to the contents of the advertisements. Nonetheless, the decision held that, because of the ambiguity of the picket signs which failed even to identify whether the union's dispute was with one or both of the employers named, and because of the accompanying handbills which appealed for a total boycott of all merchants who advertised in the struck newspaper, the picketing of the stores was not confined to products advertised in the struck newspaper. Rather, it was aimed at inducing customers to cease all trade with those stores. The decision explained that, although the publicity proviso has been interpreted to sanction *handbilling* to stop all trading,[61] where such handbilling is accompanied by picketing with signs lacking clarity and specificity, "the intent and purpose of the picketing can be and must be interpreted by statements that accompany it." [62]

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[58] *Atlanta Typographical Union 48 (Times-Journal)*, 180 NLRB No 164.

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

[60] *Los Angeles Typographical Union 174 (White Front Stores)*, 181 NLRB No 61

[61] *Honolulu Typographical Union 37, AFL–CIO (Hawaii Press Newspapers)*, 167 NLRB 1030 (1967), enfd. 401 F.2d 952 (C A D C.), Thirty-third Annual Report (1968), p. 115.

[62] Members Fanning and Brown signed the majority opinion Member Jenkins, dissenting, viewed the picketing herein as no more violative of sec. 8(b)(4) than picketing directed at only those products which the secondary employer chose to advertise, since the secondary employer here chose to advertise not only numerous specifically named products but also countless unnamed other products "in *all* 100 departments."

H. Hot Cargo Agreements

Section 8(e) makes it an unfair labor practice for an employer and a union to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person.

Upon remand of an earlier decision [63] by the court of appeals,[64] the Board, in light of evidence adduced pursuant to the remand order, reversed its prior holding and found that the "protective wage clause" there under scrutiny, in the coal industry, did not violate section 8(e).[65] The disputed clause was designed to restrict signatory operators from purchasing "substitute" coal under the guise of "supplemental" coal from operators who did not maintain union standards. Since the evidence indicated that signatory operators in multiemployer units regularly purchased nonunit coal at times when mines within the unit were producing at less than full capacity, the Board held that "the Union has a legitimate interest in restricting outside purchases of nonunit coal in order to promote fuller mining of existing capacity." In the Board's view, no practical way existed for the union or an operator to know whether particular coal was "supplemental" or "substitute," and the Board found the General Counsel had not shown "the clause is not germane to the economic integrity of the work units." [66]

I. Remedial Orders

1. Offers of Reinstatement

During the past year the Board had occasion in the *Southwestern Pipe* case [67] to reconsider its decision in *Abbott Publishing Co.*[68] and *Rice Lake Creamery Co.*[69] and concluded, in accord with the opinion of the Circuit Court of Appeals for the Seventh Circuit,[70] that those decisions should be reversed. The earlier decisions had held that an employer's failure to offer strikers group reinstatement subjected

[63] *Raymond O. Lewis, United Mine Workers,* 144 NLRB 228 (1963).

[64] 350 F.2d 801 (C A.D C.).

[65] *W. A. Boyle, et al.,* 179 NLRB No. 80

[66] Member Jenkins concurred, on the basis of the views expressed by him previously in *Raymond O. Lewis,* 148 NLRB 249 (1964). Chairman McCulloch dissented, on grounds the protection afforded by the clause extended beyond the bounds of the work unit involved.

[67] 179 NLRB No 52.

[68] 139 NLRB 1328 (1962) (Member Fanning dissenting in pertinent part at 1330, fn. 4), enforcement denied 331 F 2d 209 (C.A. 7).

[69] 151 NLRB 1113 (1965).

[70] *N.L.R.B.* v. *Robert S. Abbott Publishing Co.,* 331 F.2d 209.

that employer to backpay liability even as to employees who were offered reinstatement but refused in favor of continuing their strike. In the latest *Southwestern Pipe* decision, *supra*, the Board reiterated that, after unconditionally requesting reinstatement, "A striker may refuse an offer of reinstatement, without losing his status as a striker, because the employer has not made a similar offer to other strikers who are also entitled to immediate reinstatement. The striker is thereby engaging in protected concerted activity." But, the Board majority held, "he cannot elect to continue his strike, regardless of his motive, and simultaneously demand that the employer pay him for not working." [71]

In *O'Daniel Oldsmobile*, 179 NLRB No. 55, the Board, relying on its *Southwestern Pipe* decision, *supra*, reached a similar result. The Board stated that "where striking employees make an unconditional offer to return to work and the employer, without a discriminatory motive, offers reinstatement to them as less than a group, backpay is tolled as to those strikers who receive offers of reinstatement but who refuse them to return to work."

An opposite result was reached in a case where the employer was found to have acted for discriminatory reasons. Thus, in a backpay proceeding,[72] where the employer had been adjudged in contempt of a court-enforced reinstatement and backpay order,[73] the Board refused to toll the employer's backpay liability since the court in the contempt action [74] specifically found that the employer's staggered offers of reinstatement were motivated by antiunion considerations and for that reason did not constitute valid offers. The Board explained that the rule in *Southwestern Pipe*, *supra*, and *O'Daniel Oldsmobile*, *supra*, not only requires the absence of a discriminatory motive, but is clearly inapplicable to a situation where the employer made such staggered offers of reinstatement "willfully and contumaciously with knowledge that they were not in compliance" with the Board's court-approved order.

2. Computation of Backpay

It is well settled that the purpose of a reinstatement or backpay order is to restore the situation, as nearly as possible, to that which

[71] Chairman McCulloch and Members Fanning and Zagoria for the majority Members Brown and Jenkins, dissenting, would adhere to the established policy and find that piecemeal offers of reinstatement to unfair labor practice strikers were not valid offers and hence did not toll the employer's backpay obligation with respect to those strikers who rejected such offers The dissenters expressed the view that the piecemeal offers of reinstatement constituted a new form of discrimination which inherently undermined the solidarity of the strikers' actions and "denies to each member of the group the very protection the Act seeks to afford "

[72] *My Store,* 181 NLRB No 47

[73] *My Store,* 147 NLRB 145 (1964), enfd 345 F.2d 494 (C A 7), cert. denied 382 U S. 927.

[74] April 22, 1968 (unreported)

would have obtained but for the unlawful discrimination. In a backpay proceeding [75] the Board held that backpay claimants whose calling was in the printing trades did not engage in willful loss of interim earnings when they elected to continue picketing rather than actively seeking available jobs outside the printing trade, following the employer's rejection of their unconditional offer to return to work. The Board held the claimants were under no obligation to seek or accept work less suitable to their background or experience than the jobs unlawfully denied them by the employer.

[75] *Madison Courier,* 180 NLRB No 118.

V

Supreme Court Rulings

During fiscal year 1970, the Supreme Court decided three cases [1] involving review of Board orders and one case involving an appeal from the denial of injunctive relief sought by the regional director. In the former category, one case involved the power of the Board to require an employer, found to have bargained in bad faith with respect to the union's request for a contract provision respecting the checkoff of union dues, to agree to such a provision as a remedy for the violation. The Board was reversed in that case. Another case involved the question whether the Board's backpay award could be reduced by a court because of the Board's delay in instituting backpay proceedings, and the third involved the question whether a Board order designed to remedy violations of section 8(a)(1) was rendered moot by the holding of a valid election while judicial proceedings to enforce the order were pending. The Board was upheld in both of these cases. In the fourth case, involving the right of a charging party to appeal from a district court's denial of an injunction under section 10(l) of the Act when the regional director does not appeal, the court held that the issue had been rendered moot by the Board's issuance of a decision in the underlying unfair labor practice case. In addition, the Board participated as *amicus curiae* in two cases. One involved the power of a state court to enjoin as a trespass peaceful picketing on a privately owned sidewalk around a retail store, which was used by the store's patrons and suppliers. The other concerned the power of a state court to enjoin peaceful picketing against substandard wages paid by foreign-flag vessels to American longshoremen working the ships while in American ports.

[1] In addition, two cases were remanded to courts of appeals for reconsideration in light of intervening Supreme Court decisions. *Tex Tan Welhausen Co.* v. *N.L.R.B.*, discussed in fn. 5, *infra*, and *N.L R B.* v. *Clark's Gamble Corp.*, 396 U.S. 23, vacating the Sixth Circuit's judgment denying enforcement of the Board's bargaining order and remanding the case to that court for reconsideration in light of *N.L.R.B.* v. *Gissel Packing Co*, 395 U.S. 575.

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A. Authority of Board to Require Employer to Agree to Contract Term

In *H. K. Porter*,[2] the Court held that the Board was without power to order an employer, who was found to have refused a contract provision for the checkoff of union dues solely to frustrate the making of a collective-bargaining agreement, to agree to such a provision as a remedy for its unlawful refusal to bargain. The Court [3] ruled that "while the Board does have power . . . to require employers and employees to negotiate, it is without power to compel a company or a union to agree to any substantive contractual provision of a collective-bargaining agreement." The Court added that, while the Board's "remedial powers under § 10 of the Act are broad . . . they are limited to carrying out the policies of the Act itself," and one "of these fundamental policies is freedom of contract." "It would be anomalous indeed to hold that while § 8(d)[4] prohibits the Board from relying on a refusal to agree as the sole evidence of bad faith bargaining, the Act permits the Board to compel agreement in that same dispute." [5]

B. Effect of Delay on Board's Remedial Authority

In *Rutter-Rex*,[6] where the Board issued a backpay specification 4 years after court enforcement of its order requiring reinstatement of strikers, the Supreme Court held that the action of the court of appeals, in modifying the order to provide an early cutoff date for backpay because of the delay, was an unwarranted interference with the Board's remedial power. The Court [7] stressed that the Board's remedial authority is a broad discretionary one, subject to limited judicial review, and that the power to order backpay was intended not only to deter unfair labor practices, but to make employees whole for losses suffered as a result of the discrimination against them. The Court added that either "the company or the employees had to bear the cost of the Board's delay," and concluded that the Board was not unreasonable in placing "that cost upon the company, which had wrongfully failed to reinstate the employees."

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[2] *H K Porter Co.* v. *N.L.R B*, 397 U.S 99, reversed 414 F.2d 1123 (C.A D C), enfg , 172 NLRB No 72.

[3] Justice Black wrote the opinion for the Court and Justice Harlan a concurring opinion Justice Douglas wrote a dissenting opinion in which Justice Stewart joined.

[4] Sec 8(d) of the Act provides, *inter alia*, that "[the] obligation [to bargain collectively] does not compel either party to agree to a proposal or require the making of a concession."

[5] In *Tex Tan Welhausen Co.* v. *N L.R.B.*, 397 U S. 819, the judgment of the Fifth Circuit, enforcing the Board's order, was vacated, and the case was remanded to that court for further consideration in light of the decision in *H. K. Porter*. The Fifth Circuit subsequently modified the Board's order, 434 F.2d 405.

[6] *N.L.R.B.* v. *J. H. Rutter-Rex Mfg. Co*, 396 U.S. 258, reversing 399 F 2d 356 (C.A. 5), enfg 158 NLRB 1414.

[7] Justice Marshall wrote the opinion for the Court Justice Douglas wrote a dissenting opinion in which Chief Justice Burger and Justice Harlan joined.

C. Effect of Subsequent Election on Board Order

In *Raytheon*,[8] the Court held that the Board's order, requiring an employer to cease and desist from preelection misconduct found to be violative of section 8(a)(1), was not rendered moot by the holding of a valid representation election which the union lost while judicial proceedings to enforce the order were pending. In the Court's view, the later election merely indicated that the employer had complied with the Board's order during the pendency of the election, and provided no assurance that the conduct found to be unlawful would not be repeated in the future. "The Act," added the Court "is not designed merely to protect a particular election or organizational campaign," but "to protect employees in the exercise of their organizational rights [at all times], and that protection cannot be affected merely because a particular labor organization has chosen an immediate election rerun rather than awaiting enforcement of the Board order."

D. Duration of Injunctive Relief Under Section 10(l)

In *Sears Roebuck*,[9] the Court granted certiorari to consider whether the charging party has standing to appeal a district court's decision denying injunctive relief sought by the regional director under section 10(l) when the director has chosen not to appeal. The Tenth Circuit had held, in agreement with the Board, that the charging party lacked standing to appeal. The Supreme Court declined to decide the issue, since it concluded that the issue had become moot when the Board, meanwhile, had issued its decision in the underlying unfair labor practice proceeding, finding that the union had violated section 8(b)(4)(B).[10] The Court pointed out that section 10(l) merely authorizes the issuance of an injunction pending the final adjudication of the Board with respect to the underlying unfair labor practice charge. It held that "final adjudication" means when the Board has issued its decision, and not, as the charging party urged, when the Board's order was "either enforced or denied enforcement by the Court of Appeals." For, if the Board finds an unfair labor practice, it can seek interim relief from the court of appeals under section 10(e), which empowers that court to grant "such temporary relief or restraining order as it deems just and proper." On the other hand, if the Board dismisses the complaint, "it would clearly be contrary to the policies

[8] *N.L.R.B.* v. *Raytheon Co*, 398 U.S. 25, reversing 408 F.2d 681 (C.A. 9), denying enforcement of 160 NLRB 1603.

[9] *Sears, Roebuck & Co.* v. *Carpet Layers Local 419*, 397 U.S. 655, vacating 410 F.2d 1148 (C.A. 10).

[10] *Carpet Layers Loc. 419 (Sears, Roebuck & Co.)*, 176 NLRB No. 120.

of the Act to permit a district court injunction to remain in effect pending Court of Appeals review of the District Court's action."

E. Cases in Which the Board Participated as *Amicus Curiae*

In *Ariadne Shipping*,[11] the Supreme Court held, in agreement with Board, that the state court lacked jurisdiction to enjoin peaceful picketing by an American union to protest substandard wages paid by foreign-flag vessels to American longshoremen loading those vessels in American ports. The Court held that the picketing "arguably constituted protected activity under § 7," and hence, under the preemption principles enunciated in *Garmon*,[12] the state court could not enjoin the picketing.[13] The Court distinguished the *McCulloch*,[14] *Incres*,[15] and *Benz*[16] cases, which held that the Board is without jurisdiction over labor disputes between foreign-flag ships and their foreign crews, on the ground that in those cases the Board would have been drawn into problems involving the internal discipline and order of a foreign vessel, contrary to the well-established rule that the law of the flag state ordinarily governs those matters. The longshoremen in the instant case, however, were American residents hired to work exclusively on American docks as longshoremen. Their "short-term, irregular, and casual connection with the respective vessels plainly belied any involvement on their part with the ships' 'internal discipline and order.' "

In *Weinacker's*,[17] the Board contended that the state court was without jurisdiction to enjoin a union's peaceful picketing on the privately owned sidewalk in front of a retail grocery and department store, which was used by the store's patrons and deliverymen. The Board argued that the picketing, which was designed to publicize an unfair labor practice strike,[18] was "arguably protected" by section 7 of the

[11] *ILA, Loc. 1416* v. *Ariadne Shipping Co.*, 397 U S 195

[12] In *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959), the Court held that the jurisdiction of the Board is exclusive and preemptive as to activities which are "arguably subject" to regulation under sections 7 or 8 of the Act.

[13] Justice Brennan wrote the opinion for the Court. Justice White wrote a concurring opinion, in which Chief Justice Burger and Justice Stewart joined, finding that the record indicated that the picketing was in fact protected by section 7 of the Act Justice White pointed out that "an employer faced with 'arguably protected' picketing is given by the present federal law no adequate means of obtaining an evaluation of the picketing by the NLRB." He concluded that, so long as that situation persisted, "I would hold that only labor activity determined to be actually, rather than arguably, protected under federal law should be immune from state judicial control."

[14] *McCulloch* v. *Sociedad Nacional*, 372 U.S. 10 (1963), Twenty-eighth Annual Report (1964), pp. 120–121.

[15] *Incres Steamship Co.* v. *International Maritime Workers Union*, 372 U.S. 24 (1963), Twenty-eighth Annual Report (1964), p. 121, fn. 8.

[16] *Benz* v *Compania Naviera Hidalgo*, 353 U.S. 138 (1957).

[17] *Taggart* v. *Weinacker's, Inc*, 397 U S. 223

[18] In proceedings before it, the Board found that the employer had engaged in numerous violations of sec. 8(a) (1), (3), and (5) of the Act. *Weinacker Bros.*, 153 NLRB 459 (1965).

Act, and hence, under *Garmon* (fn. 12, *supra*), could not be enjoined as a trespass by the state court. The Supreme Court did not decide the issue, since it found that only a bare remnant of the original controversy remained, and the record did not adequately detail "the physical circumstances concerning the narrow sidewalk in front of the door where the picketing took place." [19]

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[19] Chief Justice Burger wrote a concurring opinion in which he urged that nothing in *Garmon, supra,* warranted the Court in declaring "state-law trespass remedies to be ineffective." In his view, the power of a State to grant such redress fell within the exception recognized in *Linn* v. *United Plant Guard Workers,* 383 U.S. 53 (1966), Thirty-first Annual Report (1966), p. 125, for conduct which touches interests "deeply rooted in local feeling or responsibility."

Justice Harlan, in a separate memorandum, took issue with both the view of the Chief Justice and that expressed by Justice White (fn. 13, *supra*) Respecting the latter, Justice Harlan stated: "Where conduct is 'arguably protected,' diversity of decisions by state courts would subvert the uniformity Congress envisioned for the federal regulatory program." Respecting the former, Justice Harlan stated · *"Linn* is far removed from the present case." The decision there must be read "in the context of an implicit holding that 'malicious libel,' even though published during a labor campaign, was not 'arguably protected' by the Act and the determination that it was a 'merely peripheral concern of the Labor Management Relations Act.'"

VI

Enforcement Litigation

Board orders in unfair labor practice proceedings were the subjects of judicial review by the courts of appeals in 322 court decisions issued during fiscal 1970.[1] Some of the more important issues decided by the respective courts are discussed in this chapter.

A. Court and Board Procedure

1. Imposition of Penalty for Frivolous Litigation

In the *Smith & Wesson* case,[2] the First Circuit concluded that the employer's opposition to enforcement of the Board's order based on violations of section 8(a) (1) and (3) of the Act was frivolous, and that "some penalty should attach" to taking up the court's time with meritless contentions. Accordingly, it ordered, pursuant to rule 38 of the Federal Rules of Appellate Procedure, that, in addition to its printing costs, the Board should recover the sum of $500 for expense.

2. Board Jurisdiction

In one case,[3] the Sixth Circuit held that a natural gas utility district, created pursuant to state law but not operated by the State, was a political subdivision of the State and hence immune from the Board's jurisdiction. Distinguishing the *Randolph Electric* case,[4] where the Fourth Circuit sustained the Board's finding that private nonprofit utility corporations were not political subdivisions of the State, the court noted that the district here, unlike the utilities in *Randolph*, was formed for the benefit of the inhabitants of the community, had the power of eminent domain, and could exercise it over other governmental entities. Moreover, the district's commissioners had the power

[1] The results of enforcement and review litigation are summarized in table 19 of Appendix A.

[2] *N.L.R.B.* v *Smith & Wesson*, 424 F 2d 1072.

[3] *N.L.R.B.* v *Natural Gas Utility Dist. of Hawkins County, Tenn.*, 427 F 2d 312.

[4] *N.L.R.B.* v *Randolph Electric Membership Corp.*, 343 F 2d 60, Thirtieth Annual Report (1965), p. 125

to subpena witnesses and to administer oaths, its records were "public records," income from its bonds was claimed to be exempt from Federal income taxes, and social security benefits for its employees were voluntary instead of mandatory because it was considered a political subdivision for purposes of the Social Security Act. The district was created by petition to the county judge, an elected official, who had to find a public convenience and necessity therefor, and who appointed the first commissioners of the district and filled vacancies if the remaining commissioners were unable to do so. In populous counties, the commissioners were subsequently elected at regular general elections; this indicated that the State considered the function of the district to be that of a political subdivision. Finally, the State's highest court had held that districts such as the one involved herein were political subdivisions of the State. In the court's view, the issue was primarily one of municipal law rather than of labor law, and the decision of the State's highest court on this issue was binding on the Board.

In another case,[5] the District of Columbia Circuit held that the Board properly asserted jurisdiction over an employer whose employees performed service and maintenance functions at the World Bank,[6] even though the Bank was a joint employer of the employees in question, and was an international organization not subject to the Board's jurisdiction. The court concluded that there was ample foundation for the Board's interpretation of the contract between the employer and the Bank as contemplating a completely independent relationship between the parties. Under the contract the employer was declared to be an independent contractor which was solely responsible for the conduct of its employees and had to indemnify the Bank against loss or liability arising out of the employees' conduct. The Bank did not reserve the right to determine wage rates, set hours of work, discharge or hire employees, or otherwise exercise authority over the employees' conditions of employment. It did, however, agree to reimburse the employer for all reasonable costs, including wages of employees. In practice, the employer did most of the hiring of employees, although applicants with police records were first cleared with the Bank. Discharges were generally cleared with the Bank to avoid displeasing its officials, but the employees worked under the employer's immediate supervision and promotions and yearend wage increases were routinely approved by the Bank. In general, the employer had permitted the Bank to participate in the hiring, discharge, and assignment of employees only to the extent which any service

[5] *Herbert Harvey, Inc* v. *N.L.R B.*, 424 F.2d 770.

[6] The International Bank for Reconstruction and Development located in Washington, D.C.

company would do to please its clients, and the Bank participated in promotions and the setting of wage scales only to the extent necessary to exercise its right to police the costs being incurred under the contract. The cost-plus-fixed-fee method of reimbursing and compensating the employer gave the Bank some control, in the form of cost ceilings periodically agreed to by the parties, over monetary rewards to the employees, but no more so than similar provisions in contracts with the Federal Government, and the Board had always asserted jurisdiction over such government contractors. Accordingly, the Board was warranted in finding that the contract gave primary control over the employees to the employer, that the employer actually exercised such control, and that it could bargain effectively about the employee's working conditions. Nor was the Board's action in this case inconsistent with its prior decisions declining jurisdiction over employers furnishing services to exempt institutions. The Board had consistently held that the contractor would be exempt if, and only if, the services performed were intimately connected with the exempted operations of the institution. In this case, the maintenance functions performed by the employer's employees had no connection with the functions of the World Bank as an investment institution.

3. Section 10(b) Limitation

In the *Houston Maritime* case,[7] the Fifth Circuit held that the Board's finding that the union had violated section 8(b)(2) and (1)(A) of the Act by racial discrimination in the operation of a hiring hall was barred by the limitation on actions contained in section 10(b) of the Act.[8] Prior to the beginning of the 10(b) period, the union, which had never allowed Negroes to register for the hiring hall, instituted a "freeze" policy whereby no new applicants were accepted for registration. All attempts by the charging parties to register during the 10(b) period were rejected because of the "freeze" policy. The court found that the Board's finding that the institution of this policy was itself racially motivated was not supported by substantial evidence on the record as a whole. The Board's alternative finding, that the "freeze" policy had the effect of maintaining an illegal all-white pool of workers and that the maintenance of such a pool during the 10(b) period violated the Act, was rejected on the grounds that the pool could be found illegal only if it was created by racial discrimination and if such discrimination was an unfair labor practice. Since, in the instant case, the discrimination

[7] *N.L.R.B* v. *Houston Maritime Assn*, 426 F 2d 584.

[8] Section 10(b) provides, in relevant part, that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board"

had occurred prior to the 10(b) period, it could not be regarded as an unfair labor practice, and the Supreme Court's decision in *Bryan Mfg. Co.*[9] precluded the use of such discrimination to find the otherwise legal pool illegal. Accordingly, the court declined to decide whether the union's racially discriminatory practices would violate the Act if timely charged.

4. Production of Statements and Documents

A number of cases decided by the courts involved issues concerning the circumstances under which statements of the General Counsel's witnesses are to be made available to the respondent in Board proceedings for purposes of cross-examination. Under the Board's Rules and Regulations,[10] such statements are given to a respondent only after a witness has testified on direct examination. The Sixth Circuit, relying on its prior decision in the *Raser Tanning* case,[11] found no error in the refusal to provide, in advance of trial, affidavits and statements given by prospective witnesses, where the respondent's counsel was allowed, at the hearing, to examine affidavits and statements of witnesses who had testified.[12] Similarly, the Fifth Circuit, upon finding in one case [13] that the Board properly declined to hold an evidentiary hearing on an employer's objections to an election won by a union, held that the Board did not err in refusing to make employee affidavits taken by a Board investigator available either for inclusion in the record on appeal or for examination by the employer, since these affidavits were confidential and privileged against disclosure unless a hearing was required and the affiant was called to testify. The court quoted from an opinion by the Seventh Circuit: [14]

> Statements made during an investigation by employees to Board agents may and often do reveal an employee's and his co-workers' attitudes and activities in relation to a union and their employer. If an employee knows that statements made by him will be revealed to an employer, he is less likely, for fear of reprisal, to make an uninhibited and non-evasive statement, a circumstance complicating a determination of the actual facts in a labor dispute.
>
> There is, therefore, strong reason to maintain the confidentiality of the employee statements and good reason for the Board's policy of not disclosing such statements to employers.

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[9] *Loc. 1424, IAM* v. *N L R.B.*, 362 U S. 411, Twenty-fifth Annual Report (1960), p 125.

[10] Section 102.118 of the Board's Rules and Regulations, patterned after the Jencks Act (18 U S.C. § 3500), provides, *inter alia:* ". . after a witness called by the general counsel or by the charging party has testified in a hearing upon a complaint under section 10(c) of the Act, the trial examiner shall, upon motion of the respondent, order the production of any statement . . . of such witness in the possession of the general counsel which relates to the subject matter as to which the witness has testified."

[11] *Raser Tanning Co.* v. *N.L.R.B.*, 276 F.2d 80 (1960).

[12] *N.L.R.B.* v. *Automotive Textile Products Co*, 422 F.2d 1255 (C.A. 6).

[13] *N.L.R B.* v. *Golden Age Beverage Co.*, 415 F 2d 26.

[14] *N.L.R.B.* v. *National Survey Service*, 361 F.2d 199, 206 (1966).

In another case,[15] the employer contended that the Board's refusal to produce its Guide to the Conduct of Elections violated due process and the Freedom of Information Act.[16] The Second Circuit noted that, while the Freedom of Information Act requires an agency to make available administrative staff manuals and instructions to staff which affect a member of the public, it contains an exception for matters related solely to the internal personnel rules and practices of an agency, and that the House Report on the bill eventually enacted interpreted this exception to cover operating rules, guidelines, and manuals of procedure for government investigators or examiners. The court was also of the opinion that the Guide fell within the statutory exception for intraagency memorandums, since it was merely an internal advisory document for the use of Board personnel and played no significant role in the Board's adjudication of election disputes. Although, in the court's view, the Board's reason for refusing to produce the Guide was not clear, the Guide's relevance to the issues in the instant case was even less clear. In this context, the court declined to disturb the Board's refusal to produce the guide.

5. Other Rules of Evidence

In one case,[17] the Fifth Circuit sustained the Board's refusal to permit an employer to introduce evidence concerning the size of the appropriate bargaining unit after the employer had refused to comply with a subpena issued by the General Counsel requiring production of the employee-earnings records kept by the employer for the relevant period of time. The refusal was based on the ground that such records would tend to incriminate the president of the company. The court pointed out that the refusal to honor the subpena was unjustified, since an officer of a corporation cannot assert his privilege against self-incrimination to prevent the production of the books and records of the corporation. Since the employer had evidence in its possession which would have conclusively established the size of the bargaining unit, and had deliberately withheld this evidence from the General Counsel in the face of a *subpoena duces tecum* issued by the Board under section 11 of the Act, thereby making it necessary for the General Counsel to establish the size of the bargaining unit through secondary evidence, it would have been inequitable to allow the employer to contradict this evidence with more secondary evidence.

In another case,[18] the Ninth Circuit held that the Board properly admitted into evidence against an employer a memorandum taken

[15] *Polymers* v *N.L.R.B*, 414 F 2d 999 (C.A. 2).
[16] 5 U S C § 552, enacted in 1966
[17] *N.L R B* v *American Art Industries*. 415 F 2d 1223.
[18] *N.L.R.B* v. *South Bay Daily Breeze*, 415 F.2d 360

from the employer without permission by an employee. The court relied on the Supreme Court's decision in *Burdeau* v. *McDowell*,[19] holding that the use in a criminal prosecution of personal papers stolen from the accused by a private individual did not violate the accused's Fourth Amendment rights when the Government was in no way involved in the theft. In the instant case, there was no showing that the memorandum was taken for the purpose of aiding the Board; it had been taken some time before unfair labor practice proceedings were initiated. Accordingly, the reason for applying the exclusionary rule—to remove the Government's incentive to disregard the Fourth Amendment—was inapplicable, since the Government was not guilty of a violation of the employer's constitutional rights. Nor was the use of the evidence forbidden as contrary to the aim of the Act of fostering industrial peace; in the court's view, the Act was "designed to achieve industrial peace only through application of the provisions contained therein—not to provide a broad authorization for any and all reforms which particular courts might deem helpful toward that end." This did not leave employees or employers free to steal documents; they were still subject to civil and criminal sanctions. While the Board, in a prior case,[20] had held inadmissible copies of a union's papers where a Board agent was directly and knowingly involved in the copying, and knew that it was being done without the union's permission, it did not follow that the Act prohibited the Board from merely accepting and making use of relevant evidence illegally obtained by private individuals.

6. Other Issues

In a case[21] where the trial examiner had found that the employer had unlawfully assisted an employees' committee in violation of section 8(a)(2) of the Act, but did not find that the employer had dominated the committee because there was no allegation of domination in the complaint, the First Circuit sustained the Board's action in remanding the case to the trial examiner for a hearing on the issue of domination. The General Counsel, without moving to amend the complaint, had urged the Board to find domination, and the court, while rejecting the Board's conclusion that the allegation of unlawful assistance in the complaint was sufficient to include an allegation of domination, viewed the Board's remand action as amounting to a *sua sponte* amendment of the complaint. It found this action was not contrary to section 3(d) of the Act, which gives the General Counsel final authority to issue and prosecute complaints, since section 10(b)

[19] 256 U S. 465 (1921).
[20] *Hoosier-Cardinal Corp.*, 67 NLRB 49 (1946).
[21] *N.L.R.B.* v. *Dennison Mfg. Co.*, 419 F.2d 1080.

of the Act provides that any complaint "may be amended by . . . the Board in its discretion at any time prior to the issuance of an order based thereon." In this case, where the Board's action supported the position taken by the General Counsel, there was no conflict between the two statutory provisions, and no usurpation of the General Counsel's prosecutory function. Moreover, permitting *sua sponte* amendment of the complaint by the Board was, in the court's view, necessary to enable the Board to act in the public interest where, as here, the General Counsel indicated his position, but misconceived his procedural approach. Nor did the employer suffer any prejudice from the procedure followed in this case since it was fully aware that the union and the General Counsel sought a finding of domination. Moreover, a new hearing was had on the domination issue, and the employer was aware, as a result of the first hearing, of the evidence which might be weighed against it. The court found that under these circumstances the remand was for all practical purposes equivalent to an amendment of the complaint. Nor was the trial examiner's ruling, limiting the employer to introducing at the new hearing evidence not introduced at the first hearing, prejudical, since the hearing was, in effect, *de novo;* the only evidence actually excluded was irrelevant or repetitious. The first hearing made it clear what kind of evidence would have to be introduced to rebut the evidence of domination, and evidence of that nature was fully introduced at the second hearing.

In a case [22] where the Board entered into and subsequently set aside a settlement agreement with an employer who had discriminatorily discharged an employee in violation of section 8(a) (3) and (1) of the Act, the Fifth Circuit held that the Board properly set aside the settlement agreement when the employer made a speech and distributed a notice stating that he had entered into the settlement agreement and posted a notice saying that the discriminatee would be reinstated with backpay only because he had learned that the discriminatee did not desire reinstatement and would not be entitled to any backpay. The court, while agreeing with the decisions of two other courts [23] which upheld notices wherein the respondents stated that they were not admitting any wrongdoing and had accepted the settlement agreement only to avoid the expense of litigation, found these cases distinguishable in that there the respondents merely stated a common reason for accepting a settlement agreement. Such agreements are often prompted by a desire to reach an amicable disposition of the matter without the need for expensive and time-consuming hearings and court review; they do not constitute an admission of past liability, but

[22] *News-Texan* v. *N.L.R.B.*, 422 F 2d 381.

[23] *N.L.R.B.* v. *Bangor Plastics*, 392 F.2d 772 (C.A. 6, 1968); *N.L.R.B* v *Teamsters & Chauffeurs Union, Loc 627 [Standard Oil Co.]*, 241 F.2d 428 (C.A. 7), Twenty-second Annual Report (1957), p. 153.

serve to regulate future responsibilities of the parties. Thus, the supplementary notices in those cases had little, if any, effect on the substantive portions of the settlement agreements. Here, the supplementary notice effectively nullified the settlement agreements by destroying its crucial terms. The court found that, in effect, the employer had breached the settlement agreement by deleting substantial portions thereof. The Ninth Circuit in another case [24] sustained the Board's action in refusing to continue a case until a state criminal proceeding against a witness who refused, on the ground of self-incrimination, to testify in the Board proceeding was disposed of, and in refusing to reopen the proceeding after the witness was acquitted on the state charge so that he could testify. In the court's view, the witness' fear that his testimony in the Board proceeding could have been used against him in the criminal proceeding in the state court was not justified, since section 11(3) of the Act [25] extends complete immunity from prosecution on the basis of testimony given at a Board hearing. The failure of the Act to state specifically that such testimony shall not be used as evidence against the witness in any criminal proceeding in any court does not limit the statutory grant of immunity. The Supreme Court's holding, in *Murphy* v. *Waterfront Commission*,[26] that "the constitutional privilege against self-incrimination protects a state witness against incrimination under Federal as well as state law and a Federal witness against incrimination under state as well as "Federal law" made it clear that, had the witness in this case testified, the resulting immunity under section 11(3) of the Act would have fully protected him in his subsequent state prosecution.

In the *Marriott* case,[27] the Fourth Circuit held that it was error to refuse to permit an employer to use a tape recorder to take live testimony, where the employer's counsel offered to pay for it and established that there was no other practical way to obtain a daily transcript. In the court's view, tape was especially appropriate for the recording of live testimony where, as in Board proceedings, credibility was often an issue. Conceivably, the Board might benefit in some cases from listening to brief excerpts for intonation and inflection, which could not appear in the typed record. The Board's contention that the use of tape might frighten or adversely affect witnesses was rejected, the court being of the view that a tape recorder would be no more

[24] *N L.R B.* v. *ILWU, Loc. 6* [*Eureka Chemical Co.*], 420 F.2d 957.

[25] Section 11(3) of the Act provides, in relevant part: "No person shall be excused from attending and testifying or from producing . . . evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him . . . but no individual shall be prosecuted . . . for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence . . ."

[26] 378 U S 52 (1964).

[27] *Marriott Corp.* v. *N L.R.B.*, 417 F.2d 176.

intimidating than a stenotype machine or a person mumbling inaudibly into a mask. It noted that the trial examiner could condition the use of the tape recorder on the avoidance of abuses such as playing the tape over the radio or plant loudspeaker to embarrass a witness, and could prevent the use of tape from interfering with or slowing down the hearing; for example, testimony need not be delayed while tapes were changed or repairs effected. However, to the extent that electronic tape could be used without interfering with or slowing down the hearing, the refusal to permit its use was arbitrary and capricious. Because the case did not turn on close questions of credibility and conflicting evidence, the court found it unnecessary to decide whether the employer had the burden of showing that prejudice had, in fact, resulted.

B. Representation Proceeding Issues

In some of the cases reaching the courts after proceedings under section 8(a)(5), the enforcement of bargaining orders was resisted on the basis of asserted errors by the Board in representation proceedings antecedent to the unfair labor practice proceeding. Among these were cases involving contentions that the Board erred in failing to review the regional director's decision in the representation proceeding before finding an unfair labor practice, in denying an evidentiary hearing on objections to an election, in determining the unit appropriate for bargaining, or in ruling on issues pertaining to election propaganda.

1. Procedural Issues

a. Board Review of Regional Director's Decision

In three cases decided during the year, courts considered the application of the Second Circuit's decision in *Pepsi-Cola*,[28] which held that, before finding that an employer had committed an unfair labor practice by refusing to bargain with a certified union, the Board must review the record which was before the regional director in the underlying representation proceeding and determine whether the regional director's decision was correct. The Second Circuit itself declined to apply *Pepsi-Cola* in a case [29] where the Board had refused to review the regional director's overruling of the employer's objections to the election on the grounds that sick employees should have been allowed to vote by absentee ballot and that one employee, whose vote in the election would have been decisive, had been improperly excluded from

[28] *Pepsi-Cola Buffalo Bottling Co.* v. *N.L.R B.*, 409 F.2d 676, Thirty-fourth Annual Report (1969), p. 120, cert. denied 396 U.S 904.

[29] *N.L.R.B.* v. *Olson Bodies*, 420 F.2d 1187.

the unit. The court noted that *Pepsi-Cola* involved the question of whether certain individuals were employees or independent contractors, a difficult decision which required a fine-drawn balancing of facts and law, while the instant case involved issues on which the Board, like an appellate court, would properly defer to the judgment of the tribunal of first instance, and where the desire of Congress to help the Board with its workload, which had led to the amendment of section 3(b) of the Act to empower the Board to delegate the regional directors its authority to make unit determinations in representation proceedings, would apply with peculiar force. Accordingly, to remand the case to the Board for review of the regional director's decision would be an idle and useless formality, accomplishing nothing except further delay.

On the other hand, the First Circuit, in a case [30] where the Board declined to review the regional director's finding that three assistant foremen were not supervisors, rejected the holding in *Pepsi-Cola* altogether. In the First Circuit's view, the legislative history of the amendment to section 3(b) made it clear that the regional director's decision in the representation proceeding, when not set aside by the Board, would be entitled to the same weight in a subsequent unfair labor practice proceeding that the Board's own determination would have been accorded; if the Board had resolved an issue in the representation proceeding, it would not be required to reconsider the same issue and evidence in the unfair labor practice proceeding. The legislative history also made it clear that Congress intended to expedite not only the holding of elections, but also the disposition of issues resolved in representation proceedings. Moreover, Congress apparently had concluded that the regional directors have an expertise concerning unit determinations sufficiently comparable to that of the Board that such determinations may be left primarily to the regional directors, subject to the Board's discretionary review. In the court's view, it was unnecessary for the Board to review the record before the regional director, since the regional director's determinations, if adopted by the Board in the unfair labor practice proceeding, would be as reviewable by the court of appeals as if they had been made by the Board. Nor did the court regard the Second Circuit's attempt to limit the application of *Pepsi-Cola* to cases involving difficult questions as satisfactory; for the court to remand the case to the Board because it found the question involved to be a close one would frustrate, rather than foster, the expeditious disposition of cases intended by Congress. Accordingly, the court held that the procedure followed in this case satisfied the requirements of the National Labor Relations

[30] *N.L.R.B.* v. *Magnesium Casting Co.*, 427 F.2d 114.

Act and the Administrative Procedure Act and the demands of procedural fairness.[31]

In another case,[32] the Fourth Circuit, while citing *Pepsi-Cola* with approval, denied enforcement of the Board's order on the ground that the Board had failed to set forth reasons, either in the representation proceeding or in the unfair labor practice proceeding, for directing an election in an expanding unit at a time when only 40 employees out of an anticipated work force of 180 or 190 had been hired. In granting summary judgment in the unfair labor practice proceeding, the Board stated that this issue had been decided in the representation proceeding and could not be relitigated. In the representation proceeding, the Board had denied review of the regional director's decision on the ground that the request for review raised no substantial issues warranting review. The court pointed out that this action could not be sustained as an adoption of the reasons supplied by the regional director, since the regional director gave no reasons, but merely made the conclusory statement that the employer's operations were sufficiently manned and stabilized and were manned by a substantial and representative segment of the employer's ultimate working complement. In the court's view, these statements were insufficient to satisfy the requirements of the Administrative Procedure Act.[33] The Board, when finding an unfair labor practice, must state reasons for its conclusion; there is no exception to this rule for cases in which critical elements of the controversy were determined by the regional director in representation proceedings not subject to the Administrative Procedure Act, since the Board, not the regional director, had the responsibility of deciding whether unfair labor practices had been committed. Without a statement of reasons, a reviewing court could not tell whether the Board's order was rational or arbitrary. The court stressed that the Board need not state reasons in representation proceedings, since such proceedings, including the Board's decision to grant or deny review of the regional director's decision, are specifically excluded from the requirements of the Administrative Procedure Act. In the unfair labor practice case, the Board need not grant a *de novo* hearing, and may grant a motion for summary judgment, but, in so doing, it must explain why the facts found in the representation proceeding justify the finding of an unfair labor practice.

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[31] The employer's petition to the Supreme Court for writ of certiorari was granted 400 U S 818.

[32] *N.L R B* v. *Clement-Blythe Companies*, 415 F.2d 78.

[33] 5 U.S.C. § 557(c) provides, in relevant part, "all decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record."

b. Circumstances Requiring Evidentiary Hearing

Judicial decisions have long recognized that the Board is not always required to hold an evidentiary hearing to resolve issues raised by objections to election conduct or challenges to ballots. Section 102.69 (c) of the Board's Rules and Regulations permits the disposition of such issues on the basis of an administrative investigation unless "substantial and material factual issues exist which can be resolved only after a hearing." Moreover, no hearing is required in an unfair labor practice proceeding on matters litigated in a representation proceeding, unless newly discovered or previously unavailable evidence is presented.[34] In one case[35] where the employer's "new evidence" concerning the appropriateness of the unit consisted of facts purporting to show that a similar unit found appropriate by the Board in a prior proceeding[36] was unstable, the Seventh Circuit found that the Board, in granting summary judgment "upon the entire record in this case," had considered the alleged "new facts" and had made its own determination of the crucial issues, so that the decision in *Pepsi-Cola* did not require that the Board's order be set aside.

In another case,[37] however, the First Circuit disapproved the Board's refusal to consider evidence concerning the propriety of excluding seasonal employees from the bargaining unit which, while unavailable at the time of the hearing in the representation proceeding, became available after the proceeding had been transferred to the Board but before the Board's decision, and was presented for the first time in the unfair labor practice proceeding. The court pointed out that the evidence could not have been presented at a postelection hearing, since questions concerning the appropriateness of a bargaining unit may not be raised in support of objections to an election, nor could the evidence be presented in a request to review the regional director's unit determination, since the regional director had transferred the case to the Board for initial decision without making a unit determination. A petition for unit clarification could have been filed only after a bargaining representative had been certified, and the unit clarification procedure was not, in any event, intended as a method for obtaining review of the appropriateness of a newly created bargaining unit. The Board's published Rules and Regulations make no provision for reconsideration or reopening of a Board order in a representation proceeding, and, while the Board had frequently granted motions for reconsideration or reopening, the court declined

[34] *Pittsburgh Plate Glass Co.* v. *N L.R B.*, 313 U.S 146 (1941).
[35] *State Farm Mutual Auto Ins Co* v *N.L R.B* , 413 F 2d 947.
[36] *State Farm Mutual Auto Ins. Co* , 158 NLRB 925 (1966) ; 163 NLRB 677 (1967), enfd. 411 F.2d 356 (C A. 7, 1969) (*en banc*)
[37] *N.L.R.B.* v. *Maine Sugar Industries,* 425 F.2d 942.

to charge the employer with knowledge of Board decisions embodying procedural practices not mentioned in the Board's Rules and Regulations. Moreover, the only case [38] in which the Board refused to consider new evidence because of a party's failure to move for reconsideration in the representation proceeding was not decided until after the end of the representation proceeding in the instant case. Accordingly, the court held that the new evidence had been offered at the first opportunity contemplated by the Board's Rules and Regulations, and that such evidence should have been considered.

The Ninth Circuit held that the Board properly declined to hold an evidentiary hearing in a case [39] where the employer alleged that, after the regional director's unit determination in the representation proceeding, the facts on which the determination was based had been changed. The court agreed with the Board that the employer had intentionally altered the facts on which the unit determination was based and that the initial determination could not be circumvented by a general allegation of changed circumstances, since this would prolong litigation and deny bargaining rights to the employees in the certified unit. Accordingly, the Board properly held that the unit determination in the representation proceeding was entitled to some degree of finality in the subsequent unfair labor practice proceedings. This would not indefinitely foreclose the employer from asserting the significance of the alleged changes, but would impart some stability to the bargaining relationship by requiring the employer to bargain with the union for a reasonable time before seeking reexamination of the unit issue.

2. Unit Issues

In general, the courts continued to affirm Board unit determinations as within the broad area of the Board's discretion. Thus, in the *Westinghouse* case,[40] the Seventh Circuit sustained the Board's finding that field engineers who installed and serviced steam turbine equipment were not supervisors and hence could constitute an appropriate bargaining unit. While the lead engineer on any project may have given instructions to the field engineers, and the field engineers gave instructions to other employees, this did not make the engineers supervisors, as the term is defined in the Act, unless they were acting as representatives of the employer rather than as employees with specialized technical competence who had to give detailed instructions to other employees to enable the latter to perform their work effectively. The court also sustained the Board's decision that field engineers who ad-

[38] *Westinghouse Electric Corp*, 171 NLRB No. 164 (1968).
[39] *N.L.R.B.* v. *Red-More Corp.*, 418 F.2d 490.
[40] *Westinghouse Electric Corp* v. *N.L.R B*, 424 F.2d 1151.

mittedly had supervisory authority when acting as lead engineers should be included in the bargaining unit if they had spent more than half of their working time during the preceding year performing non-supervisory duties. In the court's view, while the employer was entitled to have employees who were really supervisors excluded from the bargaining unit, the statutory definition of supervisor should not be construed too broadly, lest employees be denied their statutory rights. There was no perfect answer for all cases involving part-time supervisors, and the Board's formula, combined with its stipulation that no union could represent any engineer with respect to his supervisory duties, struck a reasonable balance between the legitimate interests of the employer and those of the employees.

In another case,[41] however, the District of Columbia Circuit rejected the Board's finding that a unit including all of the employer's retail drugstores in one State, not all of which were in the same metropolitan area, but excluding stores outside the State which were in the same metropolitan area as some of the stores included in the unit, was appropriate. Finding that the Board's choice of bargaining unit in this case represented a substantial departure from its practice in prior cases and was not justified by the factors relied on in such cases, including the correspondence of the unit to the employer's administrative structure, the distance between stores, and the extent of interchange of employees between stores, the court found no substantial jusification for the Board's action in drawing the unit boundary at the state line. The State's regulation of the retail drug industry did not constitute such justification, since it dealt mainly with pharmacists, who were excluded from the unit certified, and there was no showing as to how the state laws affected the wages, hours, or working conditions of the unit employees in such a way as to give them a special community of interest apart from the out-of-state employees. Nor could the unit be sustained on the basis of geographic proximity, since it did not include all the stores in a metropolitan area and did include at least one store outside the metropolitan area, whereas, in prior decisions, the Board had refused to expand a unit beyond a metropolitan area to include one store outside that area and included in a metropolitan area unit stores in more than one State. In light of the Board's departure from prior decisions, its failure to consider the criteria developed in those decisions, and its failure to show substantial reasons for overruling the regional director and bypassing several alternative units which were clearly appropriate, the court concluded that the Board's unit determination could be justified only

[41] *Local 1325, Retail Clerks [Adams Drug Co.] v. N.L.R.B.*, 414 F.2d 1194.

on the basis of extent of organization, which, under section 9(c)(5) of the Act, could not be the controlling factor.

The voting eligibility formula employed by the Board in *Hondo Drilling*,[42] whereby roughnecks engaged in drilling oil wells in the Permian Basin, but not on the employer's payroll at the time an election was directed among roughnecks employed by the employer, would be eligible to vote in the election if they had been employed for at least 10 days during the 90-day period prior to the direction of election and had not been terminated for cause or voluntarily quit prior to the completion of the last job for which they were employed, was approved by the Fifth Circuit in the lead case.[43] The employer's contention that the Board had exceeded its authority by extending the franchise to nonemployees was rejected; the court pointing out that the Board was not bound by a classical definition of employee, but could extend voting rights to individuals who, because they had a reasonable expectation of reemployment within a reasonable time in the future, had a sufficient interest in the terms and conditions of employment in the bargaining unit to warrant their participation in the selection of a collective-bargaining agent. The employees eligible to vote under the Board's formula had a reasonable expectation of future employment with the company; they were eligible for reemployment under the company's policies and had a recent history of substantial employment with the company. Moreover, the formula was consistent with prior Board practice regarding units containing intermittent employees.

The court also rejected the employer's contention that the eligibility formula was promulgated in violation of the rule-making requirements of the Administrative Procedure Act. In *Wyman-Gordon*,[44] relied on by the employer, the Board's promulgation of the *Excelsior* requirement was held to be an invalid attempt to promulgate a rule because the requirement, although binding on the affected public generally, was not applied to the parties in the case before the Board. The court found that the eligibility formula established by the Board in the instant case did not purport to be a general standard to regulate future elections, but was applied to the election there directed and hence constituted adjudication rather than rule-making. The fact that the same formula was later applied to other elections in the Permian Basin was not controlling, since, as the Supreme Court recognized in *Wyman-Gordon*, adjudicated cases may and do serve as vehicles for the formulation of agency policies which are announced and applied therein and may serve as precedent for other decisions.

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[42] 164 NLRB 416, Thirty-second Annual Report (1967), pp 66–67

[43] *N L R B* v *Hondo Drilling Co*, 428 F 2d 943

[44] *N L R B* v *Wyman-Gordon Co*, 394 U S 759, Thirty-fourth Annual Report (1969), p. 111.

3. Objections to Election

Among the cases involving objections to the manner in which representation elections were conducted was one [45] in which election ballots were provided only in English, although one-third of the employees in the unit spoke and understood only Spanish, and both the union and the employer had requested that ballots in Spanish be provided. The Fifth Circuit held that the refusal to provide such ballots precluded the holding of a fair election. It noted that all of the Board's regional offices except the one in which this case arose had policies of providing foreign language ballots when the need therefor arose, and that Board policy called for providing foreign language ballots as well as bilingual election notices. In the court's view, there was no justification for failing to apply this policy in one region, thereby denying non-English speaking employees in that region the rights enjoyed by such employees in other regions. Moreover, the court was of the opinion that an election in which one-third of the electorate had no access to ballots in a language which it could understand failed to meet the minimum laboratory standards of fairness and should be set aside regardless of whether the party challenging the election could show actual prejudice to the outcome. The election was not saved by the use of bilingual election notices, which contained no sample ballot in Spanish and which might not be read, or by the presence of Spanish-speaking officials at the polls or the simple "yes-no" choice on the ballot, since voters might be too embarrassed about their unfamiliarity with English to come to the polls or to ask the officials for help, and the ballot contained not only the words "yes" and "no," but the question and instructions which were not so easy to read.

In another case,[46] the Fifth Circuit sustained the Board's action in conducting a representation election while there was an outstanding order against the employer based on its unlawful assistance to one of the two unions appearing on the ballot. The court rejected the employer's contention that the 8(a)(2) order "tainted" the allegedly assisted union and gave the union which won the election an unfair advantage. In the court's view, the policy announced in *Carlson Furniture Industries*,[47] whereby the Board will conduct an election despite the pendency of charges under section 8(a)(2) of the Act if the charging union agrees that the allegedly assisted union may appear on the ballot and that if a majority of the ballots are for that union in a valid election it may be certified and no further action need be taken on the

[45] *Marriott In-Flite Services* v *N L R B*, 417 F 2d 563 (C A 5)
[46] *N L.R B* v *Keller Aluminum Chairs Southern*, 425 F.2d 709
[47] 157 NLRB 851 (1966)

8(a)(2) charges, was not an abuse of discretion, since the possibility of undesirable consequences did not overwhelm the obvious advantages of securing an early resolution of the question concerning representation of the employees.

Another case[48] involved the alteration of a few Board leaflets which were found on the day of the election with union stickers on them. The Fifth Circuit, in agreement with the Board, rejected the employer's contention that any alteration of a Board document to convey a partisan message as *per se* a ground for setting aside the election and held that it was necessary to consider in each case whether the objectionable conduct was attributable to either of the parties to the election and whether it was likely to have had a substantial impact on the voters. In this case, there was no indication of who was responsible for altering the Board leaflets, almost all of the leaflets were untouched, and only two employees were known to have seen the altered leaflets. While it was the Board's policy to set aside an election whenever the successful party had altered a Board leaflet, it would not set aside an election because of conduct not attributable to the successful party unless it was so aggravated that a free expression of choice of representative was impossible. The court noted that any other rule would invite any party dissatisfied with the results of an election to create incidents anonymously and then attempt to use them to set aside the election. Similarly, although the Board would consider immaterial the number of instances of misconduct and the number of employees involved when the misconduct could be attributed to one of the parties to the election, its action in upholding the election because the misconduct did not influence enough voters to affect the outcome of the election was not arbitrary where there was no proof that the objectionable conduct was attributable to the union which won the election.

In the *Maine Sugar Industries* case,[49] the First Circuit held that a letter sent by a union to employees on the day before the election, citing the benefits obtained by "American Unions" at the nearby plant of another employer, constituted misrepresentation sufficient to require that the election be set aside. The court noted that the benefits at the nearby plant had been obtained, not by the union involved in this election, but by another union, and that the employer had had no opportunity to point out this fact to the employees. In the court's view, the use of the term "American," which was also the union's name, appeared to be a deliberate attempt to convey the impression that the union involved had negotiated the listed benefits, especially in view of references elsewhere in the letter to accomplishments achieved in the specific industry through "union representation." That these

[48] *Bush Hog* v *N L R B*, 420 F.2d 1266 (C.A 5)

[49] *N L R.B* v *Maine Sugar Industries,* 425 F.2d 942 Another aspect of this case is discussed at p 87, *supra.*

statements referred to a different union, or to unions generally, was far from obvious, especially to employees in an industrial enterprise new to the area who had no previous union background and were thus more likely to be misled by such propaganda than employees with a long and varied union background.

In another case,[50] the Eighth Circuit sustained the Board's holding that the union's offer to waive initiation fees for employees joining the union prior to the election if the union won the election did not so impair the employees' freedom of choice as to require setting aside the election. The court pointed out that, as a practical matter, the waiver of the initiation fee would be useful to an employee only if the union won the election, that an employee who accepts such a waiver is not bound to vote for the union at the election, that unions traditionally offer to reduce initiation fees during organizational campaigns, and that such an offer serves the valid purpose of breaching an artificial barrier to union membership—the initial cost, a factor not ignored by employers when they oppose union organizational efforts. Accordingly, it was within the Board's discretion to decline to infer coercion merely because the union conditioned the waiver of initiation fees on the results of the election rather than promising unconditionally to waive fees for employees joining the union before the election.

C. Employer Interference With Employee Rights

A number of cases decided by courts of appeals during fiscal 1970 concerned employer actions which the Board had viewed as violating section 8(a)(1) of the Act because they interfered with employees' rights protected by section 7 of the Act. Of particular interest were decisions involving the validity of no-solicitation or no-distribution rules where the union had other means of communicating with employees or the employer contended that the area in which distribution by nonemployee organizers was forbidden was its private property, the liability of an employer in a small town for antiunion statements by the mayor of the town, the legality of a poll conducted by visits to employees' home, and the discharge of employees for concerted activities not involving unions.

1. No-Solicitation and No-Distribution Rules

In one case,[51] the Sixth Circuit sustained the Board's finding that the employer had violated section 8(a)(1) of the Act by maintaining a rule prohibiting employees from distributing literature on company

[50] *N L R B* v. *DIT-MCO Inc*, 428 F 2d 775
[51] *National Steel Corp* v. *N.L R.B*, 415 F.2d 1231

parking lots during nonworking hours, and rejected the employer's contention that, in view of his having supplied the union with a list of employee names and addresses as required by the Board's decision in *Excelsior*,[52] the union had an alternative means of communicating with the employees and the no-distribution rule should be upheld. The court pointed out that most other courts had held that the availability of other avenues of communication is irrelevant in determining the validity of a no-distribution rule as applied to employees; such a rule, insofar as it prohibits employees from distributing union literature on their own time in nonworking areas of the employer's property, is invalid in the absence of circumstances necessitating such a prohibition in the interest of plant production and discipline. "The availability of one channel of communication," said the court, "does not permit the employer to block other channels without good reason. What is involved is not only the union's desire to reach employees, but also the right of employees to communicate with other employees." Moreover, the no-distribution rule here was applied from the outset of the organizational campaign, thereby hampering the union's efforts to obtain the showing of interest necessary to petition for an election and bring the *Excelsior* rule into play.

In another case,[53] the Seventh Circuit sustained the Board's finding that the employer violated section 8(a)(1) of the Act by refusing to permit nonemployee union organizers to distribute union literature on the shoulder of a highway outside the employer's plant. The court pointed out that the shoulder, although on the employer's property, was impressed with an easement for purposes of a public highway; since pedestrians used the shoulder, and that use was among the purposes of a public highway, the easement could not be limited to travel by vehicular traffic. In reality, the court found the shoulder was equivalent to an unimproved sidewalk, and, under the Supreme Court's decision in *Logan Valley*,[54] its use by union agents to distribute literature was protected by the First Amendment, and the employer could not threaten to have the organizers arrested for criminal trespass.

2. Threats of Reprisal

A number of cases decided during the year involved application of the Supreme Court's decision in *Sinclair*,[55] holding that an employer's prediction of dire consequences of unionization may amount to an un-

[52] *Excelsior Underwear Inc.*, 156 NLRB 1236, Thirty-first Annual Report (1966), pp 28, 61–63

[53] *N L R B* v *Monogram Models*, 420 F 2d 1263

[54] *Amalgamated Food Employees Union, Loc. 590* v. *Logan Valley Plaza*, 391 U S. 308 (1968); Thirty-third Annual Report (1968), p 136

[55] *N L R B.* v. *Gissel Packing Co.*, 395 U S 575, 618 (1969), affg *N.L R B* v. *Sinclair Co.*, 397 F.2d 157 (C.A. 1, 1968)

lawful threat of reprisal if it is an "implication that the employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him," rather than being "carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control." In one,[56] the First Circuit sustained the Board's finding that questions asked by an employer in a letter to his employees concerning the employment conditions which might exist if the union were selected as representative amounted to threats of reprisal. The court noted that while a question is not as strong as a positive statement, the posing of a question indicates that there is some reason for asking it. In the instant case, it found the Board was warranted in finding that some of the questions were so phrased as to suggest unpleasant results from the advent of the union.

In another case,[57] the Sixth Circuit sustained the Board's finding that the mayor of a small town acted as the agent of an employer whose employees he threatened with reprisals, so that the threats violated section 8(a)(1) of the Act. The court pointed out that the mayor, both as an individual and in his official capacity, had a vital interest in the success of the employer's plant. He had sponsored the bond issue which provided the funds for construction of the plant. The company president told the employees that the opening of the plant had been a cooperative venture, in the nature of a partnership, between the company and the town, thereby making it clear to the employees that the mayor spoke for the company as well as the town. Moreover, the mayor was a personal friend of the company's vice president, who gave him a list of the employees' names and addresses which he used to send copies of an antiunion newspaper editorial and an antiunion advertisement which he had placed in the newspaper to the employees. The mayor also had copies of the advertisement distributed in the company parking lot. Meanwhile, the employer, who had given the employee list to the mayor without asking why he wanted it, refused to give it to the union. Finally, the approach taken by the mayor was very similar to that taken by company officials in their antiunion speeches. In the court's view, such similarity could not be mere coincidence. Accordingly, the mayor, as an agent of the employer, could be held liable for his threats of reprisal. However, those portions of the Board's order requiring affirmative action by the mayor were deleted, since he was no longer mayor and had been named in the Board's order only as an agent of the employer.

[56] *N L.R B* v *C J Pearson Co.*, 420 F 2d 695
[57] *Henry I Siegel Co* v *N L R B*, 417 F 2d 1206

3. Polling of Employees

In one case,[58] the Seventh Circuit reversed the Board's finding that an employer had violated section 8(a)(1) of the Act by having an impartial research firm interview its employees in their homes to determine whether the incumbent union still represented a majority of the employees in the bargaining unit. The court noted that, since the poll took place prior to the Board's decision in *Struksnes*,[59] the secret ballot requirement set forth in that case, but given prospective effect only, was inapplicable, and that all of the requirements set forth in the Board's earlier *Blue Flash* [60] doctrine were met; there was no atmosphere of antiunion hostility, the employees were informed of the legitimate purpose of the poll and assured that no reprisals would be taken against them, and the votes of individual employees would not be reported to the employer. While the employees were visited in their homes by strangers without advance warning, and their answers were recorded verbatim, these facts could not, in the court's view, give an interview by neutral professional poll-takers a coercive overtone.

4. Discharge for Protected Activity

A number of cases decided by courts during fiscal 1970 involved questions of the extent to which concerted activities by employees, not on behalf of unions but for the purpose of affecting terms and conditions of employment, were protected by section 7 of the Act, so that the discharge of the employees for engaging in such activities violated section 8(a)(1) of the Act. In one,[61] after several employees had individually protested the employer's unilateral decision not to contribute to its profit-sharing plan but rather invest that portion of the profits in new machinery, the employer called a meeting at which two employees subsequently discharged had endorsed suggestions made by other employees and continued after the meeting to express their dissatisfaction with the employer's action. The Third Circuit sustained the Board's finding that these employees' activities were "concerted" within the meaning of section 7 and that their discharge for engaging in such activities was therefore unlawful. The court recognized that mere griping about a condition of employment is not concerted activity, and that some form of group action must, at least, be intended or contemplated, but was of the opinion that the expressions of dissatisfaction in the instant case amounted to group action.

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[58] *N L R B* v *H P Wasson & Co*, 422 F 2d 558

[59] *Struksnes Construction Co*, 165 NLRB 1062, Thirty-second Annual Report (1967), pp. 81–82

[60] *Blue Flash Express*, 109 NLRB 591 (1954), Twentieth Annual Report (1955), pp 67–68

[61] *Hugh H. Wilson Corp* v *N L R B*, 414 F 2d 1345 (C A 3).

It was clear that dissatisfaction among the employees was widespread and that the discharged employees were expressing the feelings of the employees generally, rather than merely stating their individual views. The fact that the employees were volunteers and had not been formally chosen as spokesmen for the other employees was viewed by the court as immaterial, since it was clear that they were speaking on behalf of other employees. Similarly, in another case,[62] the Seventh Circuit sustained the Board's finding that a walkout for which employees were discharged was protected activity, since it was motivated by the employees' common grievance over having to work overtime as well as by a desire to support one employee's demand for a higher rate of pay. The court noted that even if the latter demand had been the sole purpose of the walkout, it would have been protected, since concerted action in support of a fellow employee's individual grievance is entitled to the same protection as concerted action in furtherance of a common grievance.

In another case,[63] the Tenth Circuit, in agreement with the Board, held that a spontaneous walkout by employees to protest the employer's refusal to pay them double time for work on Christmas did not lose its protected character because the walkout caused delays in the employer's process of converting the milk to cheese, thereby diminishing the quality and value of the cheese. The court pointed out that this was not a case involving real danger to the employer's property; the employer was able to complete the process with the aid of family members. In any event, strikes usually result in economic loss to the employer, and such loss is not cause for discharge. Nor could the walkout be regarded as an unprotected partial strike because the employees intended to return to work the next day. Before the employees left, they were told that they would be discharged, blackballed, and denied reference to future employers. Under these circumstances, the employees, in leaving to protest working conditions, assumed the status of economic strikers and could not be discharged.

In another case,[64] the Eighth Circuit agreed with the Board that a walkout by five employees of a bank at the close of the normal working day to protest being required to work overtime was a protected strike rather than an unprotected partial strike. The court pointed out that, while the employees could not refuse to work overtime while continuing to work during regular working hours, they had as much right to engage in concerted activity, including a strike, to bring about a change in overtime policy as they had to bring about a change in any other working conditions. As long as the employees unequivo-

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[62] *B & P Motor Express* v *N L R B*, 413 F 2d 1021

[63] *N L R B.* v. *Leprino Cheese Co*, 424 F.2d 184.

[64] *First Natl Bank of Omaha* v *N L R B*, 413 F 2d 921.

cally assumed the status of strikers, with the resulting loss of pay and risk of replacement, their strike did not have to begin at any particular time of day or continue for any particular period of time to be protected by the Act. Here, the bank clearly did not regard the employees' action as a mere refusal to work overtime; when they returned to work the following morning they were informed by their supervisor that the bank considered that they had quit their jobs. Accordingly, the Board properly regarded them as economic strikers and, since they had not been replaced when they offered to return to work, their discharge violated section 8(a)(1) of the Act. The fact that the walkout was by a minority of the bank's employees did not render it unprotected. The employees were not represented by a union or covered by a collective-bargaining agreement. All were united in a desire to improve the overtime situation, but no detailed plan had been established for achieving that end. While the employees had selected a spokesman to present a grievance to their immediate supervisor, they had not authorized the spokesman to bargain for them or bind them to a settlement, nor had thy agreeed not to take further action until the bank had an opportunity to correct the situation.

On the other hand, in a case [65] where the employees were represented by a union which had a collective-bargaining agreement with the employer, the Ninth Circuit held, contrary to the Board, that section 9(a) of the Act [66] rendered unprotected the activity of two discharged employees who had picketed the employer to protest its failure to hire Negroes, where the employees had made no effort to seek action by their bargaining representative on this matter. In the court's view, the desire for nondiscriminatory hiring, while a proper subject for collective bargaining, was not a proper basis for a grievance under the proviso to section 9(a), since racial discrimination affected the entire bargaining unit. The court viewed section 9(a) as contemplating the airing of employee sentiment within the union, followed by a majority decision, so that the employer could deal with a union knowing that its position reflected the desires of a majority of its members. The Board had taken the position that, in view of the union's duty of fair representation, it would have been unlawful for it not to op-

[65] *N L R B* v *Tanner Motor Livery,* 419 F 2d 216

[66] Sec 9(a) provides "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment

pose racial discrimination. However, the court deemed the possibility that the majority decision would produce a legally impermissible result insufficient to justify the employees' failure even to try to obtain action by a union majority. Accordingly, the employees' activity was unprotected, regardless of whether the contract contained an antidiscrimination clause.

The Fifth Circuit sustained the Board's finding in another case[67] that the employer violated section 8(a)(1) of the Act by discharging a confidential secretary, not eligible for membership in the union representing other office employees, for crossing a picket line set up by the union representing the employer's maintenance employees. The court held that the secretary's confidential status and her ineligibility for union membership did not deprive her of the protection accorded employees under the Act. Accordingly, by refusing to cross the picket line, she assumed the status of an economic striker and was entitled to the same protection as any other economic striker; she was entitled to reinstatement at the end of the strike unless the employer could show legitimate and substantial business justification for not reinstating her. There was no such justification here; the employee had not been permanently replaced at the time the strike was terminated. The court rejected the employer's contention that the Supreme Court's decision in *N.L.R.B.* v. *Rockaway News Supply Co.*[68] had erased the distinction between permanent replacement of an employee who refused to cross a picket line, which was concededly lawful, and discharge of such an employee, as in the instant case. The employees in *Rockaway* were working under a contract with a no-strike clause, so that any economic striker, whether he refused to cross a picket line or struck in a more conventional manner, would have been engaged in unprotected activity and could be discharged. Here, the employee in question was engaged in protected activity and was not subject to discharge. In view of her discharge, it would have been futile for her to apply for reinstatement at the end of the strike, and the employer had an affirmative duty to offer her reinstatement.

D. Employer Discrimination in the Employment Relationship

Many of the cases reviewed by courts of appeals involved issues of discrimination by employers against union adherents or strikers in violation of section 8(a)(3) of the Act. Among these were decisions by two courts of appeals approving the Board's ruling in *Laidlaw*[69]

[67] *N.L.R.B.* v *Southern Greyhound Lines*, 426 F 2d 1299.
[68] 345 U.S. 71, Eighteenth Annual Report (1953), pp. 53–54.
[69] *Laidlaw Corp.*, 171 NLRB No. 175, Thirty-third Annual Report (1968).

that permanently replaced economic strikers remain employees and, absent legitimate and substantial business justification for failing to reinstate them, are entitled to full reinstatement when vacancies arise after their unconditional application for reinstatement. In affirming the Board's decision in *Laidlaw* itself,[70] the Seventh Circuit, citing the Supreme Court's decision in *Fleetwood* [71] as holding that strikers are entitled to reinstatement when and if jobs for which they are qualified become available unless there are legitimate and substantial business justifications for not doing so, pointed out that, while refusing to discharge replacements to make room for strikers is justified by the employer's need to assure the replacements of permanent employment in order to obtain the labor force necessary to maintain operations during a strike, there is no such justification for not reinstating the strikers once the replacements have departed. In *American Machinery*,[72] the Fifth Circuit stressed that in *Fleetwood* the Supreme Court found that a refusal to reinstate unreplaced strikers merely because no jobs were available on the day they applied for reinstatement inherently discouraged employees from exercising their rights to organize and strike, and was thus unlawful, regardless of motivation, unless the employer could meet his burden of establishing legitimate and substantial business justification for his conduct. In the court's view, the Board properly exercised its statutory authority in applying the same principle to permanently replaced economic strikers and in finding that the employer in this case did not show the necessary justification. The difficulty of seeking out strikers after a substantial lapse of time did not constitute such justification; while the employer could have told the strikers when they applied for reinstatement that, after a specified reasonable time, they would have to take affirmative action to keep their applications current, this employer, although having the strikers' names and addresses, never reinstated any of them, although vacancies began to arise as early as a day after the strikers applied for reinstatement. Furthermore, the number of new employees hired within 6 months after the application for reinstatement substantially exceeded the number of strikers.[73]

In another case,[74] the Fifth Circuit rejected the Board's finding that a stevedores' association was liable for discrimination by gang

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[70] *Laidlaw Corp* v *N L R B*, 414 F 2d 99

[71] *N L R B* v *Fleetwood Trailer Co*, 389 U S 375 (1967). Thirty-third Annual Report (1968), pp 133–134

[72] *American Machinery Corp* v *N L R B*, 424 F 2d 1321.

[73] Both courts also sustained the Board's alternative holding that the employers were discriminatorily motivated in refusing to reinstate the strikers and held that the Board did not abuse its discretion in awarding the strikers backpay, although the refusals to reinstate took place prior to the Board's decision in *Laidlaw* and, if nondiscriminatorily motivated, would have been lawful under prior Board decisions

[74] *N.L R B.* v *Master Stevedores Assn of Texas*, 418 F.2d 140

foremen in the operation of a hiring hall. The court pointed out that employers are responsible only for the acts of those who, under common law principles, act as their agents. In the court's view, the gang foremen here were not supervisors, even though they had authority to hire. To be supervisors, they would have had to act, in effect, as a part of management in hiring. In this case, there was no showing of any identity of interest between the gang foremen and the employers; the gang foremen were nominated in the first instance by the union from its membership to fulfill its obligation under its contract with the employers. Since the employers had to rely on the union to supply their widely varying labor requirements, the court declined to hold them responsible for the union's discriminatory acts unless they knew, or could reasonably have been expected to know, of such acts. There was no showing here of any circumstances which should have alerted them to the union's discriminatory actions. The hiring hall agreement was not discriminatory on its face; in fact, it expressly forbade discrimination. Accordingly, there was no basis for attributing the union's discriminatory refusal to hire nonunion employees to the employers for whom they hired.

In one case,[75] the District of Columbia Circuit affirmed the Board's dismissal of a complaint alleging that an employer had violated section 8(a)(3) and (1) of the Act by locking out its employees at a time when no bargaining impasse had been reached. In the court's view, the Supreme Court's holdings in the *Great Dane* case,[76] that employer conduct inherently destructive of employee rights is an unfair labor practice regardless of motivation and that even conduct which has a comparatively slight adverse effect on employee rights may be found unlawful without proof of antiunion motivation unless the employer can show legitimate and substantial business justification for his conduct, did not undermine the *American Ship* decision[77] in which the Supreme Court held that a bargaining lockout after impasse did not violate section 8(a)(3) or (1) in the absence of antiunion motivation. Applying the *Great Dane* standards to this case, the court reached the same conclusion. The employer concededly bargained in good faith both before and after the lockout and made numerous concessions to the union. The main area of disagreement was an issue which had been the subject of a long strike several years earlier, and over which the union, which was strong and had been organized for a substantial period, had announced its intention to strike "at a time of its own choosing." The company, engaged in a highly seasonal busi-

[75] *Lewis Lane* v *N L R B*, 418 F 2d 1208

[76] *N L R B* v *Great Dane Trailers*, 388 U S 26, Thirty-second Annual Report (1967), pp 136–137

[77] *American Ship Bldg Co* v *N L R B.*, 380 U S. 300, Thirtieth Annual Report (1965), pp 119–120

ness, would have suffered unusual harm if a strike had occurred during its peak season. Thus, there were legitimate and substantial business considerations sufficient to justify whatever comparatively slight impact the lockout may have had on employee rights; clearly, the lockout was not inherently destructive of employee rights. Since there was no evidence of antiunion motivation, no unfair labor practice could be found.

E. The Bargaining Obligation

1. Validity of Authorization Cards

A number of cases decided by courts of appeals involved questions as to whether union authorization cards were valid designations of unions as employee representatives and could therefore be relied on in determining the unions' majority status. In *American Cable* [78] the Fifth Circuit was called on to review a Board decision on the issue of whether the union's cards were invalid because of misrepresentations by the solicitor as to their purpose. In light of the Supreme Court's decision in *Gissel*,[79] holding that this issue should be decided in accordance with the rule laid down by the Board in *Cumberland Shoe* [80]—namely, that unambiguous cards which expressly authorize the union to represent the signer and do not mention an election will be invalidated only if the signer is told that the only purpose of the card is to obtain an election, and rejecting any requirement of inquiry into the subjective intent of employees—the court overruled its prior decisions holding that the General Counsel had the burden of proving that the employees' subjective intent to authorize union representation was not vitiated by misrepresentation. It therefore sustained the Board's holding that the union's cards were valid.[81]

2. Withdrawal of Recognition From Incumbent Union

In several cases decided during fiscal 1970, courts of appeals considered the circumstances under which an employer is entitled to withdraw recognition from an incumbent union because of his doubt of the union's majority status. In one,[82] the Fourth Circuit sustained the Board's finding that the employer did not meet his burden of over-

[78] *N L R B* v *American Cable Systems*, 414 F 2d 661

[79] *N L R B.* v *Gissel Packing Co*, 395 U S 575, Thirty-fourth Annual Report (1969), p 116

[80] 144 NLRB 1268 (1963), enfd 351 F 2d 917 (C A 6, 1965), Thirty-first Annual Report (1966), pp 136–137

[81] The case was remanded to the Board to determine the appropriateness of its bargaining order in light of the standards set forth in *Gissel* The court's subsequent decision on this issue after the Board reaffirmed its bargaining order is discussed *infra*, p 123

[82] *Terrell Machine Co.* v *N L R B*, 427 F 2d 1088.

coming the rebuttable presumption that the incumbent union's majority status continues after the expiration of its certification year. It agreed with the Board that the fact that less than a majority of the employees in the bargaining unit were members of the union or paid union dues did not show that the union no longer enjoyed majority support; in a "right-to-work" State, many employees, while still supporting the union and desiring representation by it, would be content to enjoy the benefits of union representation without joining the union or giving it financial support. In any event, the court pointed out, the employer could not rely on the union's lack of membership to support a claim of good-faith doubt of the union's majority status, since it did not know of this fact when it withdrew recognition. It had relied on isolated reports of loss of union strength from vague and unidentified sources, which could not give rise to doubt of the union's majority status, since the employer had simultaneously received other reports indicating continued employee support for the union. It had also affirmatively indicated its own bad faith by rejecting the union's offer to prove its majority status by exhibiting its record of members and authorizations, and by unilaterally granting a wage increase after having stated before withdrawing recognition that it could not consider such an increase. Accordingly, the court affirmed the Board's conclusion that the withdrawal of recognition violated section 8(a)(5) and (1) of the Act.

In another case,[83] the Third Circuit held that the Board had properly applied the rebuttable presumption of continued majority status to a union which had been voluntarily recognized without a Board certification. The employer's contention that, while a certified union is entitled to an irrebuttable presumption of continued majority status for 1 year and a rebuttable presumption thereafter, an employer should be able to withdraw recognition from an uncertified union after a reasonable time without showing reasonable grounds for doubting its majority status, was rejected. The court pointed out that while the Supreme Court, in *Gissel*,[84] referred to the certification year as an advantage enjoyed by certified unions, it did not thereby preclude the Board from extending to voluntarily recognized unions the benefits of either the rebuttable or irrebuttable presumptions of continued majority status or both. The question was one of weighing two conflicting goals of national labor policy: preserving employees' free choice of bargaining representatives, and providing stability for established bargaining relationships. In the court's view, the Board should be left free to utilize its administrative expertise in striking the proper

[83] *N L R B* v *Frick Co*, 423 F 2d 1327

[84] *N L R B* v. *Gissel Packing Co*, 395 U S 575, Thirty-fourth Annual Report (1969), pp 113–114

balance between these competing interests. Indeed, a number of courts had upheld the Board's application of the irrebuttable presumption of majority status to voluntarily recognized unions for a reasonable time. These cases supported the view that the presumption should continue, although becoming rebuttable, after a reasonable time. Accordingly, since the employer had failed to show a rational good-faith basis for doubting the union's majority status, the Board properly found that it had violated section 8(a)(5) and (1) of the Act by withdrawing recognition.

On the other hand, in a case[85] where, after the certification year of a union which had won an election by one vote had expired, a majority of the employees in the bargaining unit, without encouragement or intervention by the employer, signed a petition indicating that they no longer desired union representation, the Second Circuit held, contrary to the Board, that the employer was justified, not only in withdrawing recognition from the union, but in dealing directly with the employees and granting their demand for a wage increase. Stressing that it did not intend to "open doors long since closed" or to permit employers to discourage and destroy employees' interest in union representation by unilaterally instigating negotiations with their employees under the thin guise that they were simply dealing with an endemic disaffection with the union, and that an employer who wishes to negotiate with a new bargaining representative must obtain reliable proof that it represents a majority of his employees, the court expressed the view that, where, as here, the certification year and the union's contract with the employer had expired, a majority of the employees had plainly and on reliable evidence indicated that they no longer wanted the union to represent them and this rejection of the union was not instigated, encouraged, or influenced by the employer or inspired by any outside source, but was a spontaneous, grass-roots movement by the employees themselves, the employees should be free to present demands and the employer to consider and answer them. Otherwise, employees who had repudiated the union would be left in a state of suspended animation, with no one to negotiate or speak on their behalf until a time-consuming decertification proceeding had been completed.

3. Successor Employer's Obligation To Bargain

In a number of cases decided during the past fiscal year, courts were called on to consider whether successor employers were obligated to bargain with unions which had represented their predecessors' employees. In one such case,[86] the Fifth Circuit rejected the successor employer's contention that its changes in the organizational manage-

[85] *N L R B* v. *Gallaro Bros*, 419 F 2d 97
[86] *N L R B* v *Zayre Corp*, 424 F 2d 1159

ment of a retail department store so destroyed the identity of the employing industry as to relieve it of its obligation to bargain. After the takeover, instead of operating the store as one of a chain of retail stores each of which was an independent unit, with virtual autonomy over many personnel and pricing decisions and its own purchasing departments, the store was operated as one of an integrated national chain with all purchasing and personnel policies controlled centrally, as well as central control of personnel operations of the employer's licenses. There was also a continuation of the same types of product lines, departmental organization, identity of employees and supervisors, and job functions. The number of employees and the basic size of the operation remained the same, and the same kind of business was operated; one large national company simply replaced another as the operator of the store and made changes in the type of internal organization. A discount department store continued to be operated on the same premises as before; as far as shoppers were concerned, only the name of the store had changed. Accordingly, the court held that the Board had properly found that the purchaser was the successor to the seller's obligation to bargain with the representative of his employees.

In another case,[87] the Seventh Circuit sustained the Board's finding that a bus company which provided service formerly provided by a now defunct company was a successor to that company even though it did not take over any of such company's assets or deal directly with it, but obtained new buses and garage and terminal facilities and changed bus routes, time schedules, and fares. The court pointed out that, if the old company had made these changes, they would not have essentially changed the employment aspect of the business; the fact that a new company made them was outweighed by the fact that the basic operations and services remained the same. The new company had received an exclusive franchise, similar to the one formerly held by the old company, for the express purpose of continuing the public transportation service which the old company had been furnishing. A majority of the new company's employees had worked for the old company. In the court's view it was thus clear that the employing industry remained the same, and the new company was required to bargain with the respresentative of the old company's employees. Its duty to bargain was based, not on a private contract or on the acquisition of assets or assumption of obligations, but on a public obligation arising from national labor policy. To allow the new employer to refuse to recognize the union without having a good-faith doubt of its majority status would merely encourage industrial strife.

[87] *Tom-A-Hawk Transit* v *N L R B*, 419 F 2d 1025

4. Bargaining Conduct

In the *General Electric* case,[88] the Second Circuit sustained the Board's finding that the totality of the employer's conduct amounted to bad-faith bargaining in violation of section 8(a) (5) and (1) of the Act, even though the employer desired to reach, and did reach, an agreement, albeit on its own terms. In the court's view, the employer, in effect, ignored the legitimacy and relevance of the union's position as statutory representative of the employees by engaging in several acts, notably a refusal to furnish information, which were independently violative of the Act, by maintaining untenable positions simply to avoid yielding to the union and, above all, by a massive publicity campaign emphasizing to the employees that it was making a "firm, fair offer" which would not be modified. The court emphasized that although a "take-it-or-leave-it" offer would not, without more, constitute bad faith, the employer here had made firmness an end in itself, thereby painting itself into a corner where it had to reject every compromise to avoid embarrassment. Moreover, by publicizing its policy of never making concessions to the union, the employer created in the employees' minds the idea that it, rather than the union, was their true representative. As the Board had put it, the employer was trying to deal with the union through the employees when it should have dealt with the employees through the union.

The court rejected the employer's contention that section 8(c) of the Act[89] precluded consideration of its publicity in evaluating the legality of its bargaining conduct. It found that section 8(c) was not intended to prohibit consideration of statements which would be deemed relevant and admissible in courts of law to determine the employer's state of mind, but only to prevent the Board from inferring an unfair labor practice from a totally unrelated speech or opinion delivered by an employer. The fact that the employer was willing to reach an agreement did not automatically make its conduct lawful; if it did, a party could force a meaningless contract on the other party by outrageous tactics making it impossible for the other party to continue to exist without signing the contract. What the Act required was that the parties make a serious effort to resolve their differences and reach a common ground; for one party deliberately to make it virtually impossible for him to respond to the other was no more consistent with this requirement than going through the motions of bargaining with a predetermined resolve not to budge from one's initial position.

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[88] *N L R B* v *General Electric Co*, 418 F.2d 736

[89] Sec 8(c) of the Act 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 another case,[90] the District of Columbia Circuit sustained the Board's finding that an employer was not guilty of bargaining in bad faith, either before or after the union called a strike. While the Board had discussed separately, and found lawful, each allegedly unlawful act by the employer, it had not, as contended by the union, failed to consider the totality of the employer's conduct in finding that the employer had bargained in good faith. Even after the strike began, the employer met with the union at regular intervals, submitted serious proposals, reached agreement on some matters, and narrowed some areas of disagreement. Although it engaged in a course of hard bargaining, the court found that it did not engage in dilatory tactics, foreclose negotiation on any mandatory subject of bargaining, or insist on any nonmandatory subject; the proposals it insisted on were the same ones it had lawfully insisted on prior to the strike. It was not required to increase its wage offer merely because the Union lowered its demand, especially since the union was still demanding a very substantial increase and the employer was already paying a wage rate equal to that being paid by its competitors. The court concluded that while there were isolated statements by company officials which, standing alone, might seem inconsistent with good faith, they could not outweigh the totality of conduct, including the many years of prior bargaining between the employer and the union. which indicated compliance with the requirements of the Act.

5. Subjects of Bargaining

The recurrent problem of defining the subject matter concerning which bargaining must take place was considered by the courts in several cases, one of them a case[91] where the Board had found that two firms constituted a single-integrated employer, so that the closing of one of them for economic reasons was a partial closing of a common enterprise. The Eighth Circuit, adhering to the precepts of its decision in *Adams Dairy*,[92] rejected the Board's holding that the employer was required to bargain with the union about the decision to partially shut down its operations. In the court's view, this case was clearly distinguishable from *Fibreboard*,[93] where the Supreme Court held that an employer's decision to subcontract work formerly

[90] *Sign & Pictorial Union Loc 1175 [Webster Outdoor Advertising Co]* v *N.L R B*, 419 F 2d 726

[91] *N L R B* v *Drapery Mfg. Co*, 425 F 2d 1026 (C A. 8)

[92] *N L R B* v *Adams Dairy*, 350 F 2d 108 (1965), Thirty-first Annual Report (1966), p 140, cert denied 382 U S 1011 (1966)

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

done by his employees was a mandatory subject of bargaining. In *Fibreboard*, there was merely a substitution of one set of employees for another to do the same work on the same premises, whereas here, the court emphasized, there was a major shift in capital investment; the machinery of the closed company was dismantled and removed from the premises, and the work was no longer controlled in any way by the remaining company. Accordingly, the court held that there was no obligation to bargain over the decision to close. However, it sustained the Board's finding that the employer violated section 8(a)(5) and (1) of the Act by refusing to bargain about the effects of the closing on the employees, and enforced the Board's award of backpay to the terminated employees from the date of the closing to the date on which the employer offered to bargain about the effects of the closing.

In another case,[94] the Seventh Circuit, in agreement with the Board, held that the employers' refusal to bargain with the union certified as the bargaining representative of their employees was not justified by the possibility that the union might propose a price-fixing agreement which would violate the antitrust laws. In the court's view, denying recognition to the union would be a "sweeping and drastic sanction" which would interfere with the Act's policy favoring the freedom of employees to choose a bargaining agent and which was not necessary to carry out the policy of the antitrust laws. It would nullify past efforts at organiaztion, impede future effective exercise of the employees' rights to organize and engage in concerted activities protected by section 7 of the Act, and foreclose not only a potentially illegal arrangement, but also legitimate negotiation and settlement of disputes over wages and conditions of employment. As the court viewed the situation, the employers and the public could be protected from illegal price-fixing without such disruption of labor-management relations. The employers were not compelled to enter into any agreement which would violate the antitrust laws; if they felt that the union was insisting on such an agreement, they could file charges against it under section 8(b)(3) of the Act. In the instant case, the court found it unnecessary to decide whether the proposal in question would be a mandatory subject of bargaining or a violation of the antitrust laws.[95] The employers had refused to bargain on any subject before the union had presented any proposal on any subject

[94] *Schmeiler Ford* v *N L R B*, 424 F 2d 1355

[95] This case was decided by a three-judge panel, with one judge dissenting on the ground that reference to the price-fixing proposal in the union's campaign propaganda required that the elections which it had won be set aside Another judge, concurring, would have specifically held that the price-fixing proposal would be illegal and that the employers would not be required to bargain about it

of bargaining, legal or illegal, mandatory or nonmandatory. Such a refusal was clearly unjustified.[96]

In the *Pittsburgh Plate Glass* case,[97] the Sixth Circuit rejected the Board's finding that the employer violated section 8(a)(5) and (1) of the Act by proposing improvements in retirement health plans directly to individual retirees without having bargained with the union over such improvements. In the court's view, the broad definition of "employee" in section 2(3) of the Act[98] was inapplicable to cases arising under section 8(a)(5), which only requires an employer to bargain collectively with representatives of "his employees." The court concluded that retired employees are not employees of the employer for the purposes of section 8(a)(5), since retirement is a complete and final severance of employment. Upon retirement, employees were completely removed from the payroll and seniority lists and thereafter performed no services for the employer, were paid no wages, were under no restrictions as to other employment or activities, and had no rights to, or expectations of, reemployment. The fact that they continued to receive pensions after retiring did not make them employees; it only further emphasized the finality of the termination of their employment. The court pointed out that, prior to this case, the Board had always excluded retirees from bargaining units and declared them ineligible to vote in representation elections, since they lacked a substantial community of interest with employees in the active service of their employers. It rejected the Board's holding that changes in retirement benefits of employees already retired should nevertheless be a mandatory subject of bargaining because they vitally affected active employees in the bargaining unit. Section 301 of the Taft-Hartley Act provided a means for employees to enforce their right to have negotiated retirement benefits paid and administered in accordance with the terms and intent of their contracts; it was not necessary to extend the bargaining obligation to employees already retired to assure active employees the right to bargain about their own retirement benefits to take effect after their retirement. While changes in retirement benefits for retired employees would affect the availability of employer funds for active employees, so would many types of employer expenditures which concededly were not mandatory subjects of bargaining. To the court, the appropriate bargaining unit had economic incidents which "the Board simply cannot modify by

[96] In a companion case, *Borek Motor Sales* v *N.L.R.B.*, 425 F 2d 677 (C A. 7), the court held that the possibility that the union might make an illegal proposal did not justify the employer in resisting its organizational campaign by engaging in conduct violative of sec 8(a)(1) and (3) of the Act

[97] *Pittsburgh Plate Glass Co* v *N L R B*, 427 F 2d 936

[98] Sec 2(3) of the Act provides, in relevant part, "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise."

fiat or enlarge by sympathy." It viewed the Board's position as contrary to the purpose of the Act, which was designed to reconcile and, as far as possible, equalize the power of competing economic forces, not artificially to create or manufacture new forces. Retired employees had no economic or bargaining power; their financial security derived from the exercise of past economic power. Once retirement benefits had been bargained for, been earned, and become payable, the employer could not recant on his contractual obligation to pay them but neither could the retirees demand that they be increased. Changing economic facts relating either to the particular employer's business or to the general economy after an employee had retired could neither enhance nor depreciate the value of his prior services, and did not justify periodic postretirement negotiations. While the practice in industry of bargaining about retired employees' benefits was commendable, it did not form a basis for making such bargaining mandatory.[99]

6. Duty to Furnish Information

In one case,[1] the Eighth Circuit sustained the Board's finding that the employer violated section 8(a)(5) and (1) of the Act by refusing to grant the union access to the plant for the purpose of making an independent timestudy of the employer's operations. The union sought to make time and motion studies to determine the propriety of new piecework quotas and pay rates established by the employer prior to the commencement of bargaining. The court held that, while the union had no absolute right to obtain its own independent timestudies of the employer's operations, the union here had shown that such information was necessary for intelligent negotiation about wages and other conditions of employment. The union's need for timestudy information was not necessarily fulfilled by the employer's disclosure of the results and underlying data of its own engineers' time and motion studies, which it had used as a basis for changing its incentive wage system and establishing new wage rates, work quotas, and standards for piecework production for most of its employees. In the court's view, the union was entitled to verify independently all factors underlying piecework incentive pay rates and to evaluate allowances computed for variable criteria.

[99] The Board filed a petition for certiorari to the Supreme Court on November 12, 1970

[1] *Hamburg Shirt Corp* v. *N L R B* , 419 F 2d 1275

7. Other Aspects

In the *Minnesota Mining* case,[2] the Eighth Circuit sustained the Board's finding that the employer violated section 8(a) (5) and (1) of the Act by refusing to bargain with the union which represented employees at two of its plants because the union's negotiating committee included two employees who worked at other plants of the employer and were members of different unions which represented the employees at those plants in separate bargaining units. The court rejected the employer's contention that its refusal to bargain was justified because the union intended to force the employer to negotiate major economic items on a companywide basis. As in the *General Electric* case,[3] which the court cited with approval, the negotiators were appointed to engage in negotiations solely on behalf of the two plants constituting the appropriate bargaining units, and the union never insisted on negotiations concerning any matter other than renewal of the bargaining agreements at those two plants. Indeed, it could not have done so, since contracts at the employer's other plants had not expired and were not open for bargaining or extension. The court found it significant that the employees from other plants had no vote or control over negotiations; they were to serve as consultants and were included on the committee only to facilitate the exchange of information among the different unions. It viewed this kind of cooperation between unions as no more improper than exchanges of information between members of the bargaining committee and representatives of other unions immediately before and after bargaining sessions. It was true that, while the union could propose bargaining for employees outside the unit and the employer could agree to such bargaining, the union could not insist on it to the point of impasse. Here, however, the court concluded that the employer had "emitted a cry of pain before it sustained any injury." Its anticipatory refusal to bargain could not be justified by the mere possibility of abuse. The mere presence of outsiders on a bargaining committee did not create such a danger that the union would pursue unlawful objects or improper methods in bargaining as to justify the employer's action.

In another case,[4] the District of Columbia Circuit sustained the Board's finding that the employers had violated section 8(a) (5) and (1) of the Act by refusing to bargain with the union certified as the

[2] *Minnesota Mining & Mfg Co* v *N L R B*, 415 F.2d 174

[3] *General Electric Co* v. *N L R B*, 412 F 2d 512 (C A 2), Thirty-fourth Annual Report (1969), p. 140.

[4] *Cap Santa Vue* v. *N L R.B*, 424 F 2d 883

representative of their employees, notwithstanding the employers' contention that their religious beliefs precluded them from dealing with a labor union, and that compelling them to do so would violate the First Amendment. The court pointed out that, while the freedom to hold religious beliefs is absolute, the freedom to act in accordance with such beliefs may be restricted in furtherance of a compelling public interest. In the instant case, it found there was a compelling public interest in applying the requirement of good-faith collective bargaining uniformly to all employers and labor unions to preserve industrial peace. Contrary to the employers' contention, the statutory requirement that bargaining be performed in good faith did not require them to believe in the Act; they could continue to believe that collective bargaining was wrong and even devoted their time, influence, and resources to a campaign for a repeal of the Act. They were only required to act in compliance with the obligations of the Act by recognizing, meeting, and conferring with their employees' bargaining representatives, honestly attempting to reach an agreement, and, if an agreement was reached, reducing it to writing and signing it.

The Seventh Circuit in the *Smith Steel Workers* case [5] sustained the Board's finding that the union violated section 8(b)(3) of the Act by insisting that the employer continue to recognize it as the representative of employees whom the Board, in a unit clarification proceeding, had excluded from its unit and included in a unit represented by another union. The court pointed out that a union has the same bargaining obligation under section 8(b)(3) of the Act that an employer has under section 8(a)(5). Thus, since an employer is required to bargain only with the proper representative of an appropriate bargaining unit, the union has a comparable duty not to insist on recognition unless it is the appropriate representative of the employees involved. It was immaterial that there was an existing contract which had not yet expired, so that there was no actual interference with the bargaining process. The union's duty to bargain, like the employer's, was not limited to negotiations for a new collective-bargaining agreement, but required a continuing good-faith relationship during the term of the existing agreement. The union's continued insistence on representing the disputed workers undermined not only this relationship, but the company's relationship with the proper representative of those employees.

The court further held that the Board properly used the unit clarification procedure to resolve the representational dispute and determine the correct bargaining unit. A clarification order, like any other unit determination made by the Board under section 9(c) of the Act, would be subject to judicial review if it formed the basis for an unfair

[5] *Smith Steel Workers, Directly Affiliated Loc 19806 [A O Smith]* v. *N L R B*, 420 F 2d 1

labor practice charge after a refusal to bargain. Such a proceeding made it possible to minimize the disruption of orderly bargaining and the conduct of business which would result from continued conflict between opposing unions, without forcing the union to picket in violation of section 8(b)(7) of the Act—thereby undermining the value of the clarification petition as an alternative procedure and defeating the statutory policy of furthering industrial peace and harmonious labor relations—in order to obtain review of the Board's order.

The court rejected the union's contentions that it was merely seeking to exhaust its contractual grievance procedures in order to demand arbitration as a necessary precondition for commencing an action under section 301 of the Taft-Hartley Act to enforce its bargaining agreement. While the court was of the view that the Board could not base an unfair labor practice finding on the filing of a suit under section 301, or on the taking of steps to exhaust contract grievance procedures as a prerequisite to a suit undertaken in good faith, it could, as it did here, make such a finding on the basis of the union's insistence on recognition and bargaining for a unit which the Board had found inappropriate in its unit clarification decision. That decision precluded any recourse by the union to arbitration or other grievance procedures by leaving no contractual issues which could be arbitrated. The court could not compel arbitration or enforce an arbiter's award in conflict with the Board's unit clarification order.[6] Since the unit clarification order deprived the union of its status as bargaining agent for the disputed employees, it was immaterial that the union's contract with the employer was still in effect; the contract could not continue to cover employees which the Board had declared were in another unit represented by a different union. Since the unit clarification proceeding was designed to remove the friction resulting from having two unions claiming to represent the same employees, the Board did not abuse its discretion by making its order effective before the expiration date of the contract.

F. Union Interference With Employee Rights and Employment

In one case[7] decided during the report year, the Eighth Circuit sustained the Board's finding that the union violated section 8(b)(1)(A) of the Act by maintaining in its collective-bargaining agreement with the employer a provision prohibiting distribution of

[6] For this reason, the court affirmed the district court's dismissal of the union's suit to compel the employer to arbitrate the representation question. 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

[7] *IAM, Dist 9 [McDonnell Douglas]* v *N L R B*, 415 F 2d 113

literature on company property at all times, while under the agreement the incumbent union was permitted to use bulletin boards on company property to post notices of its meetings and other activities. Rejecting the views of the Sixth [8] and Seventh [9] Circuits, which had upheld similar clauses on the theory that the union could waive the rights guaranteed to employees by section 7 of the Act, the court followed instead the Fifth Circuit [10] and held that the employees' right to distribute literature in nonworking areas during nonworking time was a personal right which the union could not totally waive. This case, the court stressed, did not involve a limited no-distribution clause which would permit distribution of literature only during those periods when an election petition could be filed. It involved a clause which went beyond the objective of promoting stability in collective-bargaining relationships by prohibiting employees from exercising their right to attempt to obtain a new bargaining agent, or remove their current bargaining agent, through the distribution of literature in nonworking areas during nonworking time. In the court's view, such a prohibition was contrary to both the letter and the spirit of the Act.

In another case,[11] the Seventh Circuit sustained the Board's finding that the union violated section 8(b)(1)(A) of the Act by excluding two employees from a pension plan which it had negotiated with an employer, because the employees had been expelled from the union for accepting employment with an employer whose employees were represented by another union. The union's contention that it was merely enforcing an internal union rule, as authorized by the proviso to section 8(b)(1)(A),[12] was rejected by the court. While a union could drop an employee from membership for accepting a job with an employer not under contract with it, it could not deprive employees of employment benefits to compel them to fulfill their membership obligations or to punish them for failing to do so. The Board's order here did not require the union to restore the employees to membership or to permit them to participate in union affairs, but only to restore them to eligibility under the terms of the pension plan upon tender of monthly service fees in an amount equal to reduced dues, as would be done with employees who went to work in another industry or retired. To deny pension eligibility to employees who changed unions when

[8] *General Motors Corp* v *N L R B*, 345 F 2d 516, and *Armco Steel Corp* v *N L R B*, 344 F 2d 621, Thirtieth Annual Report (1965), p 132

[9] *N L R B* v *Gale Products*, 337 F 2d 390 (1964), Thirtieth Annual Report (1965), p 131

[10] *N L R B* v *Mid-States Metal Products*, 403 F 2d 702 (1968), Thirty-fourth Annual Report (1969), p 133.

[11] *Loc 167, Progressive Mine Workers [Peabody Coal Co]* v *N L R B*, 422 F.2d 538

[12] Section 8(b)(1)(A) makes it an unfair labor practice for a union "to restrain or coerce employees in the exercise of 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"

they changed jobs was inherently destructive of the employees' rights under section 7 of the Act; the rejection of the service fees tendered by the two employees in this case served as a warning of what would happen to other employees if they joined a rival union. Accordingly, it was not necessary to show that employees were actually restrained and coerced or that the two employees in question actually suffered a loss of wages or welfare benefits.

In another case,[13] the Seventh Circuit sustained the Board's finding that the union violated section 8(b)(2) and (1)(A) of the Act by causing the discharge of an employee who, after having resigned from the branch local of a union, tendered an amount equal to its initiation fee as a reinstatement fee, only to be told that the reinstatement fee was equal to the much higher initiation fee for the main local, which this employee was not eligible to join. The latter initiation fee was also used as the maximum reinstatement fee for former members whose delinquency in back dues exceeded that amount. The court agreed with the Board that this demand was discriminatory and that the union had dealt unfairly with the employee by not making clear to him the basis for its demand. Since the demand was erroneous and ambiguous, the court found the employee's failure to comply with it did not justify the termination of his employment. However, the court did not agree with the Board's further finding that the reinstatement fee was unlawful because geared to the amount of back dues owed by the employee. In the court's view, the reinstatement fee was actually geared to the initiation fee for the main local. That figure had been chosen to adjust to a practical level the reinstatement fee for employees who could not afford to pay all of the back dues they owed. As to the employees to whom it applied, the maximum reinstatement fee was uniform and nondiscriminatory. While the union could not condition employment on the payment of back dues for a period when the employee was not required to be a union member, it could charge a reinstatement fee greater than the initiation fee as long as the difference was reasonable and nondiscriminatory; there was no contention here that the difference was excessive or that it was not rational. The union had to have some basis for setting the reinstatement fee; in the court's view, the mere fact that the fee was in some way related to the amount of back dues did not make it *per se* unlawful.

[13] *N L R B* v. *Intl Union of Operating Engineers, Loc 139* [*Camosy Construction Co*], 425 F.2d 17

G. Prohibited Boycotts and Boycott Agreements

The Eighth Circuit had occasion during the report year to determine the applicability of the Supreme Court's decision in *Tree Fruits* [14] to a union's picketing of the general contractor of a housing project at which the primary employer's cabinets were purchased for installations in kitchens and bathrooms. The court held,[15] in agreement with the Board, that the picketing was violative of section 8(b)(4)(ii)(B) of the Act, since it was not limited to following the primary employer's product, as was the picketing in *Tree Fruits*, but was designed to induce a total consumer boycott of the secondary employer—the general contractor on the housing project—thereby creating a separate dispute with him. The court pointed out that the test of the legality of the picketing under *Tree Fruits* was its probable effect upon the consumer. Here, the picket signs referred only to cabinets installed on "this job," and the picketing took place at the secondary employer's construction and sales sites. The picket signs did not identify the primary employer, nor were any handbills disseminated to explain the controversy. Indeed, the union specifically instructed its pickets not to volunteer additional information. Thus, although the union contended that it only wanted customers to ask the general contractor to install other cabinets in its homes, it omitted dissemination of any information which would enable the consumers to know that this response, rather than a general boycott of the secondary employer, was desired. In *Tree Fruits*, on the other hand, the union had clearly requested consumers not to buy the primary product.

Under these circumstances, the court concluded that the Board was warranted in finding that the union here sought to induce a total boycott of the secondary employer and that its conduct was therefore unlawful under *Tree Fruits*.

In the *Canada Dry* case,[16] the Sixth Circuit held, in agreement with the Board, that a union and several retail food chains did not violate section 8(e) of the Act by including in their collective-bargaining agreement a clause prohibiting persons outside the bargaining unit from performing work customarily performed by store clerks in the unit, thereby terminating the practice whereby outside vendors shelved certain brand-named products which they delivered to the supermarkets. Applying the test laid down in *National Woodwork* [17] where the Supreme Court held that the test of the legality of an agreement

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

[15] *N L R B v Twin City Carpenters Dist Council [Red Wing Wood Products]*, 422 F 2d 309 (C A 8)

[16] *N L R B v Canada Dry Corp*, 421 F 2d 907

[17] *National Woodwork Manufacturers Assn v N L R B*, 386 U S 612 (1967)

was whether it was designed to preserve work for unit employees or to satisfy union objectives elsewhere, the court noted that there was no evidence of a secondary objective here; there was no indication that the union had a dispute with the outside vendors, wanted to organize their employees, or would allow them to shelve their own products if it represented their employees. The employers' contention that the agreement was unlawful because it provided for work acquisition, rather than work preservation, was rejected by the court. Although the shelving of the particular brand-name products in issue had not been traditionally performed by the store clerks, they had the skills and experience to do so and had shelved goods differing from such products only in brand name. It would be unrealistic, the court observed, to make the legitimacy of the clerks' job protection efforts depend on the brand name or supplier of a product. Accordingly, the court held that the agreement constituted no more than a lawful attempt to preserve work opportunities which the union had a right to protect for its members.[18]

H. Jurisdictional Disputes

The District of Columbia Circuit in the *Plasterer's Loc. 79* case [19] held that the Board was without power to conduct a hearing under section 10(k) of the Act [20] in the situation where both unions claiming the disputed work had agreed to be bound by the decision of the National Joint Board for the Settlement of Jurisdictional Disputes, and that body had awarded the work to the union which the Board found had violated section 8(b)(4)(D) of the Act by striking to obtain the work. Rejecting the Board's contention that it was entitled to hold a 10(k) hearing because the employer had not agreed to be bound by the Joint Board determination, the court took the position that section 10(k) requires abstention whenever the parties to the dispute have agreed on a method for adjusting it, and that only the unions claiming the work are parties to the dispute within the meaning of the

[18] In *Preformed Metal Products Co* v *N L R B*, 413 F 2d 1032, the Sixth Circuit sustained the Board's finding that a union's work stoppage for the purpose of forcing an employer on a construction project to cease using precut aluminum jacketing made by another employer had a unlawful secondary objective, since the employer on the construction project did not manufacture such jacketing, no contractual provision reserved such work for his employees, and such manufacturing was not work traditionally performed by employees at the construction site

[19] *Plasterers Loc 79 [Texas State Tile & Terrazzo Co]* v *N L R B*, 74 LRRM 2575

[20] Sec. 10(k) provides that, when a union is charged with violating sec 8(b)(4)(D) of the Act by engaging in a jurisdictional strike, the Board shall hear and determine the underlying jurisdictional dispute "unless, within ten days after [the filing of the unfair labor practice charge], 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 "

statute. In the court's view, Congress had not intended to resolve all work assignment disputes, but only to protect neutral employers, who did not care how the dispute was decided as long as it was decided, from pressure by unions unable to resolve their dispute, as was indicated by the fact that the employer was not bound by the Board's 10(k) determination. To hold a 10(k) hearing merely because an employer, who would not be bound by the Board's award of the work, was dissatisfied with the Joint Board's decision, would create a lack of mutuality; the Act was not intended to protect employers who favored one side in the jurisdictional dispute. The Joint Board was composed of employer as well as union representatives and would not ignore the interest of the employer in such factors as efficiency and economy. On the other hand, the employer could be protected against work stoppages prior to the Joint Board's decision, since the Board could still seek injunctive relief under section 10(e) of the Act.

The court considered the legislative history of section 10(k), and the Supreme Court's reasoning in the *CBS* case,[21] as attaching overriding importance to the voluntary settlement of jurisdictional disputes by the unions involved. In the court's view, the use of voluntary, binding arbitration would make possible a permanent resolution of the jurisdictional dispute, since the union awarded the work by the Joint Board could bring suit under section 301 of the Taft-Hartley Act to enforce the award. To permit the other union to litigate the issue again in a 10(k) proceeding merely because the employer preferred to have it do the disputed work would only prolong the jurisdictional battle.[22]

I. Organizational and Recognitional Picketing

A number of cases decided by courts of appeals during fiscal 1970 involved issues concerning the legality of union picketing under section 8(b)(7) of the Act. In one,[23] the Sixth Circuit held that the Board, in finding a violation of the Act, properly declined to pass on the legality of the employer's recognition of, and signing a contract with, a rival union, where the filing of an unfair labor practice charge alleging that the recognition was unlawful would be barred by the limitations period of section 10(b) of the Act. The court noted that, as far as could be determined from events occurring within 6 months of the filing of the charge in this case, the employer's recognition of the rival union was lawful, and the resulting contract was a bar to the raising of a question concerning representation, so that the union's

[21] *N L R B* v *Radio & Television Broadcast Engineers Union, Loc 1212*, 364 U S 573, Twenty-sixth Annual Report 1961, pp 152–153

[22] The Board's petition for certiorari was filed December 30, 1970

[23] *N L R B* v *Dist 30, NMW [Blue Diamond Coal Co]*, 422 F 2d 115

recognitional picketing violated section 8(b)(7)(A) of the Act. In attempting to defend its picketing by litigating the legality of the employer's time-barred conduct, therefore, the union was not merely trying to shed light on the true character of matters occurring within the limitations period, which would have been permissible under the Supreme Court's decision in *Bryan Mfg. Co.*,[24] but was seeking to make otherwise unlawful conduct lawful by relying on alleged unfair labor practices prior to the limitations period. In the court's view, this attempt was as destructive of the policies underlying section 10(b) as was the finding of an unfair labor practice which depended on a finding that a time-barred event constituted an unfair labor practice, which the Supreme Court condemned in *Bryan Mfg. Co.* as an attempt to revive a legally defunct unfair labor practice.

In another case,[25] the Ninth Circuit sustained the Board's finding that a building and construction trades council violated section 8(b)(7)(A) of the Act by picketing the general contractor of a construction project to force him to execute an agreement with the council at a time when he had contracts with two unions which were members of the council. The court noted that, while section 8(b)(7)(A) was primarily designed to protect employees' freedom of choice in selecting their bargaining agent from the coercive effect of picketing by a "stranger" union, it did not, in terms, distinguish between picketing by a union allied or affiliated with the incumbent union and picketing when the employer had lawfully recognized *any* other labor organization. The legislative history of section 8(b)(7)(A) did not indicate that Congress intended to permit picketing by an allied or affiliated labor organization in the construction industry; it did indicate that section 8(b)(7)(A) was intended to protect both parties to a lawful bargaining relationship—the employer as well as his employees. Accordingly, the court concluded, as had the District of Columbia Circuit in a similar case,[26] that Congress, in enacting section 8(b)(7)(A), intended to protect the employer from pressure from all outside unions, even those allied or affiliated with the incumbent union, with regard to matters properly subject to settlement by agreement between the employer and the exclusive bargaining agent of his employees. Similarly, the council's contention that its picketing was lawful because it did not seek recognition as the exclusive representative of the employees involved was rejected as incompatible with the clear purpose of section 8(b)(7)(A) to prevent any infringement of the recognized union's representative status; it would permit any

[24] *Loc 1424, IAM* v *N.L.R.B.*, 362 U.S 411, Twenty-fifth Annual Report (1960), p 125

[25] *Lane-Coos-Curry-Douglas Counties Bldg & Construction Trades Council [Jens Horstrup]* v *N.L.R.B.*, 415 F 2d 656

[26] *Dallas Bldg & Construction Trades Council [Dallas County Construction Employers Assn]* v *N.L.R.B.*, 396 F 2d 677, Thirty-third Annual Report (1968), p 162

union to avoid the statutory ban on recognitional picketing simply by limiting its demands on the employer to something less than the full range of bargainable subjects. The court therefore held, in agreement with the Board, that the union could not picket if a purpose of its picketing was to establish a continuing contractual relationship with the employer with regard to matters which could substantially affect the working conditions of his employees, and which would be a proper subject of bargaining by the lawfully recognized exclusive representative of those employees. Since the trades council here sought to compel the employer to execute a formal contract which would have modified in several respects the contracts between the employer and the incumbent unions, the Board properly held that the picketing intruded upon the area reserved to collective bargaining between the employer and the unions lawfully recognized as the representatives of his employees.

In another case,[27] the Fifth Circuit sustained the Board's finding that a union's picketing violated section 8(b)(7)(C) of the Act, notwithstanding the fact that the union had been certified by the National Mediation Board as the representative of certain employees of the employer who formerly operated the business now operated by the picketed employer. The former employer, upon leasing the business to the new employer, discharged all of its employees. The new employer invited the employees who had been represented by the union to apply for jobs, but only one of them did; he was hired. The court held that, in view of the change in personnel, the new employer was not a successor and was not bound by the NMB certification. There was no evidence that the change in ownership was motivated by union animus or a desire the avoid the certification, nor was there a refusal to hire the former employees, all of whom were invited to apply for jobs. Thus, the employees themselves were responsible for the change in personnel; it was not a case where the successor had tried to escape his bargaining obligation by refusing to hire the predecessor's employees. However, since the employees had been discharged, the employer did not take over any of them, and there was, therefore, no unit to which the NMB certification could attach. Accordingly, the Board properly held that the picketing union was not "currently certified" as the bargaining representative of the new employer's employees, and, therefore, was not entitled to picket for recognition as their representative without petitioning for an election.

J. Remedial Order Provisions

In several cases decided by courts of appeals during the year, the validity of the remedial provisions of Board orders was in issue.

[27] *N L R B* v *United Industrial Workers, SIUNA* [*Port Richmond Elevator*], 422 F 2d 59

Among the issues considered were whether the Board properly ordered employers to bargain with unions which had obtained authorization cards from a majority of employees in the appropriate bargaining units and had been refused recognition by the employers, and whether the Board should have ordered employers to make their employees whole for any loss of pay suffered because of the employers' unlawful refusals to bargain.

1. Bargaining Orders Based on Authorization Cards

In a number of cases decided during fiscal 1970, courts of appeals sought to resolve questions concerning the issuance of bargaining orders on the basis of authorization card majorities which the courts found to be left unanswered by the Supreme Court's decision in *Gissel*.[28] In one,[29] the Fifth Circuit, while sustaining the Board's finding that the employer had committed extensive violations of section 8(a)(3) and (1) of the Act, and that such violations were sufficient to justify a bargaining order, declined to enforce the Board's bargaining order because the union, after obtaining an authorization card majority, did not demand recognition, but petitioned for an election which it lost because of the employer's unfair labor practices. In the court's view, allowing the union to wait until it lost an invalid election before claiming a card majority "could result in tremendous damage to the representation process, throwing it into disarray and uncertainty, results clearly not authorized or contemplated by the Act." However, it recognized that the employer would not be prejudiced by the union's failure to claim a card majority if it knew that such a majority existed. Accordingly, it remanded the case to the Board with instructions to enter a bargaining order only if it found that the employer acted with knowledge of the union's card majority.

Similarly, in *L. B. Foster*,[30] the Ninth Circuit enforced the Board's bargaining order, issued as a remedy for the employer's violations of section 8(a)(1) of the Act, although there was such rapid turnover of the employer's personnel that it was doubtful that any of the employees who had been eligible to vote in the election which the union had lost because of the employer's unfair labor practices remained with the employer. In the court's view, the rapid turnover of employees was itself a reason to enforce the Board's order, lest there be an added inducement to the employer to engage in unfair labor practices in order to defeat the union in an election, since, in addition to the

[28] *N L R B* v *Gissel Packing Co*, 395 U S 575, Thirty-fourth Annual Report (1969), p 116.

[29] *N L R B* v *Lu'l General Stores*, 422 F 2d 571

[30] *N L R.B* v. *L B. Foster Co*, 418 F 2d 1

attrition of union support inevitably resulting from delay in the union's achievement of results, the employee turnover itself would help him, so that the longer he held out the greater would be his chances of being able to avoid bargaining altogether. Thus, in the instant case, if the employer had not unlawfully interfered with the election, one of two things would have happened. The union might have lost the election and that would have been the end of the matter. On the other hand, the union might have won the election, in which case the employer would have been required to recognize and bargain with it. The union in such a case would have been far more likely to maintain its strength, even in the face of rapid employee turnover, than a union which had lost the election, was not recognized, and could do nothing whatever for the employees. Moreover, in the words of the court:

> The delay is not the fault of the union; if it is anyone's fault, it is that of the employer. But regardless of fault, it is an unfortunate but inevitable result of the process of hearing, decision and review prescribed in the Act And to deny enforcement, with or without remand for reconsideration on the basis of facts occurring after the Board's decision, is to put a premium upon continued litigation by the employer; it can hope that the resulting delay will produce a new set of facts, as to which the Board must then readjudicate Suppose that the Board does so, and again finds against the employer. There can then be a petition to this court, a decision by it, and a petition for certiorari to the Supreme Court. By that time there will almost surely be another new set of facts. When is the process to stop?

The court also noted that there was no hint in *Gissel*, where the Supreme Court affirmed the Board's bargaining order in one case and remanded three cases for further consideration, that the cases should be reconsidered in light of possible employee turnover since the Board's original decisions.

On the other hand, in a case [31] remanded by the Supreme Court for further consideration in light of *Gissel*, the Sixth Circuit held that the fact that the delay in deciding the case was occasioned, not by procrastination or delaying tactics on the part of the employer, but by the Board and its trial examiner, took the case out of the contemplation of *Gissel*. The court further noted that the record indicated that personnel changes in the store involved in this case were frequent, and expressed the view that nothing in *Gissel* permitted the issuance of a bargaining order where, because of personnel turnover, the employees affected thereby had not selected the union as their bargaining agent, and where the period for personnel turnover had been extended by

[31] *Clark's Gamble Corp* v *N L R B*, 422 F 2d 845, on remand from 396 U S 23, vacating and remanding 407 F 2d 199 (1969)

delay in the Board's processes.[32] Accordingly, the court reaffirmed its prior order, remanding the case to the Board to determine the extent of personnel turnover since the union's demand for recognition and, if substantial turnover was found, to conduct an election.[33]

In its second decision in *American Cable Systems*,[34] the Fifth Circuit held that a bargaining order would be appropriate only if, at the time the Board issued such an order, it found that the electoral atmosphere was such that a fair election was unlikely. In the court's view, *Gissel*, in holding that an election was preferable to authorization cards as the method of establishing a union's representative status, placed bargaining orders based on card majorities in a "special category"—an extraordinary remedy which could be used to overcome the effect of conduct which destroyed the atmosphere necessary for a fair election, and which was, therefore, not automatically entitled to enforcement at any time after the occurrence of the unfair labor practice. In the instant case, the Board had simply enumerated the employer's past unfair labor practices, without considering the present possibility of a fair election or the employer's contention that a complete turnover in employees and the departure of the only management official involved in the unfair labor practices made such an election possible. Since the court deemed the effect of the employer's conduct on the present electoral atmosphere, rather than its effect when the employer engaged in it, to be the decisive factor, the case was remanded to the Board for additional findings on this question.[35]

2. Compensatory Remedy for Refusal To Bargain

In a case [36] where an employer refused to bargain with a union which had won a representation election in order to obtain judicial review of the Board's overruling of its objections to the election, the Fifth Circuit held that the Board properly denied the union's request for compensatory relief for the unlawful refusal to bargain. The court pointed out that the employer had believed in good faith that the election was invalid; the Board considered two of its objections sufficiently substantial to warrant a hearing. Noting that the employer could obtain judicial review of the Board's adverse decision in the

[32] The court did not refer to *Franks Bros Co* v *N L R B.*, 321 U S. 702, Ninth Annual Report (1944), p 54, where the Supreme Court expressly held that the Board had the power to issue a bargaining order despite the union s loss of majority status due to employee turnover

[33] The Board's petition to the Supreme Court for a writ of certiorari was denied 395 U.S 575

[34] *N L R B* v. *American Cable Systems*, 427 F 2d 446. One aspect of the court's prior decision, which remanded the case to the Board for further consideration in light of *Gissel*, is discussed *supra* p 102

[35] The Board's petition to the Supreme Court for a writ of certiorari was denied 395 U.S 575

[36] *N L R B* v. *Crest Leather Mfg Corp.*, 414 F 2d 421

representation proceeding only by refusing to bargain, the court "attached no opprobrium" to its having done so.

On the other hand, in a case [37] where the employer's refusal to bargain was based on patently frivolous objections to the election won by the union, violated the consent-election agreement whereby the employer had agreed that the regional director's decision on objections to the election would be final, and was accompanied by extensive violations of section 8(a)(1) and (3) of the Act, the District of Columbia Circuit held that the Board had the power to order the employer to make the employees whole for losses of pay suffered as a result of the refusal to bargain. In the court's view, such a remedy would not be inconsistent with the Supreme Court's decision in *H. K. Porter*,[38] holding that the Board has no power to order a party to agree to a contract term, even when that party has bargained in bad faith. The proposed remedy would not impose contract terms on an employer, but would simply award damages, not on the basis of what the parties should have agreed to, but on the basis of what they would have agreed to if the employer had bargained in good faith. According to the court, this would impose no present or future contract obligations and would not limit future negotiations or assure employees the right to certain contract terms. The remedy could not be rejected as punitive, since it would be compensatory and would have a rational relation to the particular violation found, or as speculative, since the risk of uncertainty had to be placed upon the wrongdoer to prevent him from profiting by his own wrong and gaining an advantage over his law-abiding competitors.

The court went on to express the view that merely entering a bargaining order, with prospective application only, actually rewarded the employer for a flagrantly unlawful refusal to bargain, since, throughout the period of litigation, it did not have to bargain with the union, thereby obtaining an economic benefit. The court viewed section 10(c) of the Act, calling on the Board to order respondents "to take such affirmative action . . . as will effectuate the policies of [the Act]," not as a mere charter of authority which the Board could either exercise or ignore, but as a broad command. If the Board was unwilling to adopt the remedy requested by the union, it should on remand consider alternative remedies to insure meaningful bargaining.

3. Other Issues

In *Love Box Co.*[39] the Tenth Circuit, sitting *en banc*, had occasion to consider the propriety of the Board's order requiring the employer

[37] *I.U.E. [Tudee Products]* v. *N.L.R.B.*, 426 F.2d 1243.
[38] *H. K. Porter Co.* v. *N.L.R.B.*, 397 U.S. 99.
[39] *Love Box Co.* v. *N.L.R.B.*, 422 F.2d 232.

to post notices. The court noted that the Act does not expressly set forth a standard for review of Board remedial orders, but concluded, after reviewing the Supreme Court's decisions in *Gissel* and other cases, that essentially the same standards should be applied to such orders as to other Board findings. While the Board's expertise required that its choice of remedy be given special respect by reviewing courts, such courts still had to determine whether a remedy was appropriate, and, in the case of a notice, to make sure that it did not contain language which was unwarranted by the Board's findings or was obviously offensive or demeaning. Applying the standards to the instant case, the court concluded that the requirement of a notice was obviously proper, without the need of additional or special findings, since it had been contemplated in the legislative history of the Act. The court further held that the requirement that a representative of the company sign the notice was proper, since the representative, who could be any officer of the corporation or other person having express authority to bind the corporation to contracts, would not be signing it in an individual capacity, but would be making a statement of intention on behalf of the corporation and by its officers and agents on its behalf. This was the only way a corporation could indicate that it intended to carry out the court's order.

In another case,[40] the Ninth Circuit sustained the Board's finding that an employer violated section 8(a) (2) and (1) of the Act by recognizing and entering into a contract with a union on the basis of a card check by a state agency which indicated that the union had authorization cards from a majority of its employees, where many of these employees had also signed cards for another union, which revoked their prior authorizations, and the state agency, although aware of the other union's organizational activities, did not give it an opportunity to submit its cards and thereby show that duplications had occurred.

[40] *Intalco Aluminum Corp* v *N L R B*, 417 F.2d 36.

VII

Injunction Litigation

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

A. Injunctive Litigation Under Section 10(j)

Section 10(j) empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. District Court for appropriate temporary relief or restraining order in aid of the unfair labor practice proceeding pending before the Board. In fiscal 1970, the Board filed 17 petitions for temporary relief under the discretionary provisions of section 10(j)—9 against employers, 6 against unions, and 2 against both employer and union.[1] Injunctions were granted by the courts in 12 cases and denied in 2. Of the remaining cases, one was dismissed and three were pending at the close of the report period.[2]

Injunctions were obtained against employers in five cases, against unions in six cases, and ran against both employers and unions in two cases. The cases against the employers variously involved alleged refusals to bargain with labor organizations representing their employees, refusal to reinstate strikers, constructive discharges and termination of employees, threats, and unilateral wage increases. The cases against the unions involved allegations of refusals to bargain with employers, striking before the end of negotiations, coercing employers in the selection of representatives for collective bargaining, violence, and interference with employees at plant entrances. In the two instances where the injunction was directed against both employer and union, one situation involved the employer's recognition of a union alleged to have been assisted in violation of the Act, and other involved alleged interference, discrimination, and various acts of restraint and coercion directed against employees.

[1] In addition, one petition filed during fiscal 1969 was pending at the beginning of fiscal 1970

[2] See table 20 in appendix

In one of the cases involving an alleged refusal to bargain [3] the employer refused to furnish to the collective-bargaining representative of its employees requested information relative to the sex and the wage rate of each employee, from which merit raise information could be derived. It contended that the union had waived its right to the requested information by releasing to the employees, contrary to its contract commitment not to do so, previously supplied wage data, and that in any event the union could obtain the requested information from its members. The court found, however, that the requested information was admittedly relevant to the union's representation obligation, that the employer's charge of union misuse of wage data previously supplied was not supported, and that the regional director had reasonable cause to believe that the employer had violated the Act. Accordingly, the court granted the temporary injunction and ordered the employer to furnish the information. And in *Portage Realty*,[4] the court found that the regional director had reasonable cause to believe that the employer, after refusing to negotiate in good faith with the union representing its employees, had sought to bargain with them individually and unilaterally changed working conditions. Finding that under the circumstances injunctive relief was just and proper, the court enjoined the unfair labor practices and ordered the employer to bargain. Similarly, in the *Kelsey's Termite* case,[5] the court held that there was reasonable cause to believe that the employer refused to bargain in good faith with the collective-bargaining representative of its employees by refusing to comply with the terms of the contract negotiated with the union by the association of which the employer was a member. In addition, the employer interfered with the rights of the employees and constructively discharged several of them by insisting on their working under nonunion conditions of employment which they refused to do. Finding injunctive relief appropriate, the court enjoined the continuation of those practices and ordered the employer to bargain with the union and to offer reinstatement to the discriminatorily discharged employees.

In another case,[6] the employer was enjoined by the court from continuing to refuse, in violation of section 8(a) (1) and (5), to bargain with a union that had represented its employees for a number of years. The court found the employer's conduct, in response to the union's request for a reopening of negotiations, to have been dilatory

[3] *Squillacote* v *Generac Corp*, 304 F Supp 435 (D C Wis)

[4] *Little* v *Portage Realty Corp*, 73 LRRM 2971 (D C Ind.).

[5] *Allen* v *Kelsey's Termite & Pest Control Co*, No 52105 (D C.Calif), decided Sept. 15, 1969 (unreported).

[6] *Penello* v *General-Maintenance Service Co*, Civil No 540–70 (D C D C), decided Mar 31, 1970 (unreported)

and evasive and not in good faith. And in *Cast Optics* [7] the court found that the regional director had reasonable cause to believe that the employer violated section 8(a) (1), (3), and (5) of the Act by refusing to bargain with their duly selected bargaining representative and making unilateral changes in working conditions, by discharging employees for striking in protest of its unlawful conduct, by harassing and coercing them as strikers, and by refusing to reinstate them to their jobs upon their unconditional offer to return to work. Finding injunctive relief appropriate, the temporary injunction was entered to restrain continuation of that conduct.

Applications for temporary injunctions were denied in two cases. In the *Acker* case [8] the court concluded that the regional director did not have reasonable cause to believe that the employer was guilty of an unlawful refusal to bargain with the union by declining to participate in an authorization card count and by insisting on an election, since the charges of contemporaneous unfair labor practices, e.g., threats, granting of wage increases, discharges, and refusal to reinstate strikers, were not, in the court's view, supported by the evidence before it. The court therefore concluded that, since the employer had not engaged in any unfair labor practices precluding the holding of a fair election, such an election could have been held to resolve the issues raised by the union's demand for recognition, and there would be no frustration of the purposes of the Act if injunctive relief were denied. And in the *Fraser & Johnston* case [9] the court held that a temporary injunction was not appropriate in a plant transfer situation to require the employer to withdraw recognition from a new union, recognized as the collective-bargaining agent of the employees at the new location, and to abide by its earlier contracts with the unions at the former plant location. Although it appeared to the court that there was reasonable cause to believe that a statutory violation had occurred, in the court's view the harm which a temporary injunction under section 10(j) was designed to prevent had already occurred, and an injunction might compound an already confused situation.

Enforcement of a union's bargaining obligation was secured through section 10(j) proceedings in *Communications Workers of America* [10] where the court enjoined the union from striking for higher wages without complying with the notice provisions of section 8(d) of the Act.[11] The strike was called and began before the end of the statutory

[7] *Cuneo* v *Cast Optics Corp*, Civil No 147–70 (D C N J), decided Apr 23, 1970 (unreported).

[8] *Davis* v *Acker Industries*, 312 F Supp 1400 (D C Okla)

[9] *Hoffman* v. *Fraser & Johnston Co*, 73 LRRM 2348 (D C Calif)

[10] *Kaynard* v *Communications Workers of America* [*N Y Telephone Co*], 72 LRRM 2876 (D C N.Y.)

[11] Sec 8(d) conditions strike action to obtain a proposed modification or termination of a contract upon, *inter alia*, 60 days' notice of the other party to the contract and 30 days' notice to the Federal Mediation Service and state mediation agencies

negotiating period. And in the *Operating Engineers* case,[12] the court held that there was reasonable cause to believe that the union had violated the Act by striking certain employers of a multiemployer association, by insisting on bargaining in a unit other than the appropriate unit referred to in the certification, and by insisting that the struck employers observe the terms of an agreement negotiated by representatives other than those selected by it. Finding that injunction relief was appropriate and necessary under the circumstances, the court enjoined the union from continuing to engage in such conduct.

In three cases strike violence by unions was enjoined by courts acting on applications filed by the Board pursuant to section 10(j). In the first of these[13] the court found reasonable cause to believe that the union violated section 8(b)(1)(A) by blocking plant entrances, attempting to prevent the employees from entering the plant, and threatening to inflict bodily injury or to cause other harm to the employees and by other acts of restraint or coercion. A temporary injunction was granted. In the *Loc. 359, I.U.E.*, case[14] the court issued a temporary injunction enjoining similar 8(b)(1)(A) violations, and in the *I.L.G.W.U.* case[15] the court held that the union's actions in engaging in mass picketing, violence, and other conduct violative of section 8(b)(1)(A) warranted the issuance of a temporary injunction.

The actions of an employer and a union were enjoined by the court in the *Max-Pack* case[16] based on evidence that the parties executed a contract containing union-security provisions at a time when the union did not represent an uncoerced majority of the employees, and furthermore had committed other acts of restraint and coercion. Likewise in the *Pressmen's* case,[17] the court enjoined union and employer conduct upon finding that there was reasonable cause to believe that the union had violated section 8(b)(1)(A) and (2) by coercing employees to prevent their taking employment, and by causing the employer to discharge and refuse to hire certain employees because they were members of a sister local, and that the employer violated section 8(a)(1) and (3) by denying employment to and discharging these employees under threat from the union. The union's contention that no official of the local participated in or ratified the violence of its individual members

[12] *Kennedy* v *Intl. Union of Operating Engineers Loc 12*, Civil No 70-381-WPG (D C Calif), decided Mar 9, 1970 (unreported)

[13] *Vincent* v *Loc 301, Intl Union of Electrical, Radio & Machine Workers* [*G.E.*], 73 LRRM 2136 (D C N Y)

[14] *Vincent* v *Loc 359, Intl Union of Electrical, Radio & Machine Workers* [*G E*], 73 LRRM 2139 (D C N Y)

[15] *Davis* v *Intl. Ladies' Garment Workers Union*, Civil No 70-83 (D.C Okla.), decided Apr 24, 1970 (unreported).

[16] *Hoffman* v *Max-Pack, Inc*, Civil No 52098 (D C Calif), decided Sept 4, 1969 (unreported)

[17] *Samoff* v *Philadelphia Newspaper Printing Pressmen's Union 16* [*Bulletin Co*], 304 F Supp 677 (D C Pa.)

directed against members of the sister local who were hired by the employer, and soon released when the employer was incapable of protecting their safety, was rejected. The court found injunctive relief was appropriate in view of the irreparable harm which would result if because of the union's intimidation the employees might drift away or lose their determination to accept employment with the company.

B. Injunctive Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of section 8(b)(4) (A), (B), and (C),[18] or section 8(b)(7),[19] and against an employer or union charged with a violation of section 8(e),[20] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under section 8(b)(7), however, a district court injunction may not be sought if a charge under section 8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provision shall be applicable, "where such relief is appropriate," to violations of section 8(b)(4)(D) of the Act, which prohibits strikes and other coercive conduct in support of jurisdictional disputes. In addition, under section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days.

In fiscal 1970, the Board filed 211 petitions for injunctions under section 10(l). Of the total caseload, comprised of this number together with the 23 cases pending at the beginning of the period, 68 cases were settled, 21 dismissed, 4 continued in an inactive status, 30

[18] Sec 8(b)(4) (A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the inducement 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)

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

[20] 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

withdrawn, and 14 were pending court action at the close of the report year. During this period 97 petitions went to final order, the courts granting injunctions in 85 cases and denying them in 12 cases. Injunctions were issued in 40 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). Three cases involved violations of section 8(b)(4)(C) to require recognition where the Board had certified another union as representative. Injunctions were granted in 31 cases involving jurisdictional disputes in violation of section 8(b)(4)(D), of which 7 also involved proscribed activities under section 8(b)(4)(B). Injunctions were issued in 10 cases to proscribe alleged recognitional or organizational picketing in violation of section 8(b)(7). The remaining case in which an injunction was granted arose out of charges involving violations of section 8(e).

Of the 12 injunctions denied under section 10(l), 5 involved alleged secondary boycott situations under section 8(b)(4)(B), 5 involved alleged jurisdictional disputes under section 8(b)(4)(D) of which 1 also involved alleged proscribed activities under section 8(b)(4)(B), and 2 were predicated on alleged violations of section 8(b)(7)(C).

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.

Four of the cases decided during the year, however, are noteworthy. In the *Los Angeles Typographical* case,[21] the Ninth Circuit Court of Appeals set aside the judgment of the district court [22] in denying a temporary injunction on the ground that there was not reasonable cause to believe that an unfair labor practice had occurred since the case was premised upon unsettled issues of law and thus an injunction would not be just and proper. The union was charged with having committed a secondary boycott violation by picketing retail stores with signs urging the public not to buy goods advertised by the stores in the struck newspaper.

In holding that the district court was in error, the court of appeals stated that a preliminary injunction under section 10(l) should be granted "if the court finds that the factual allegations and the prop-

[21] *Kennedy* v *Los Angeles Typographical Union 174 [White Front Stores]*, 418 F.2d 6
[22] *Kennedy* v *Los Angeles Typographical Union 174 [White Front Stores]*, 71 LRRM 2134 (D C.Calif.)

ositions of law underlying the regional director's petition are not insubstantial and frivolous so that he has reasonable cause for believing the Act has been violated, and if the court finds that injunctive relief is appropriate." The fact that there are no prior decisions closely tailored to the facts of this case may make the regional director's legal propositions novel, said the court, but it does not automatically render them frivolous or insubstantial. Here the court concluded that the director's legal propositions were sufficiently sound to meet the "reasonable cause" requirement of section 10(l). Accordingly, the case was remanded to the district court for further consideration.

In the *Meat Cutters* case,[23] the court held, in granting a temporary injunction, that the regional director had reasonable cause to believe the respondents violated the secondary boycott provisions of the Act by threatening neutral employers that their employees would not handle products of the struck employer, and by enforcing the unlawful "hot cargo" provisions of the collective-bargaining agreement. The court also held, in rejecting respondents' contention that the court was without jurisdiction over the local union, that it had venue-jurisdiction over the local union even though the local's headquarters and activities were located in another State where the alleged secondary boycott occurred. This is so, said the court, because the alleged secondary boycott activities have consequences within the court's judicial district. Moreover, the local union is the agent of the International over which the court had venue-jurisdiction and the local's alleged boycott of neutral employers may not be divorced from the purpose and self-interest of the International in carrying on its strike against the primary employer.

In two cases the courts denied temporary injunctions. In the first case,[24] the court held that there was no evidence of a jurisdictional dispute in violation of section 8(b)(4)(D) as alleged, where the union members picketed an airline terminal building after the new maintenance contractor had filled the maintenance jobs held by members of the union with its own unrepresented employees. The court pointed out that the union which represented the contractor's employees at another location, disclaimed all interest in or jurisdiction over the jobs in question before the contract's starting date, that at the time the picketing began no other union claimed jurisdiction over the jobs in question, and that the picketing union members had held the jobs in question for a number of years under successive contractors holding maintenance contracts. Therefore, concluded the court,

[23] *Kaynard* v. *Amalgamated Meat Cutters & Butcher Workmen of North America [Iowa Beef Packers]*, 74 LRRM 2005 (D C N Y)

[24] *Kaynard* v *Transport Workers Union & Loc 504 [Triangle Maintenance Corp.]*, 306 F.Supp 344 (D.C N.Y.).

it was not illegal for the displaced workers to try to hold on to their jobs by picketing; the fact that they turned to their union for support or that the union supported the strike does not transmute a bona fide economic quarrel into a proscribed jurisdictional dispute. And in the *Chemical Workers* case,[25] the court denied injunctive relief on the ground that there was not reasonable cause to believe that the respondent violated the Act by picketing a warehouse in which the struck employer stored its products. The court held that under the standards of the Board decision, *Auburndale Freezer Corp.*, 177 NLRB No. 108, the warehouse constituted an integral and substantial part of the employer's operations so as to form a common situs of the respondent's dispute with the employer. Therefore the picketing was protected primary activity.

[25] *Samoff v Loc 8–732, Oil, Chemical & Atomic Workers Intl Union*, 307 F Supp. 434 (D C Del)

VIII

Contempt Litigation

During fiscal 1970, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 20 cases: 19 for civil contempt and 1 for both civil and criminal contempt. In 2 of these the petitions were granted and civil contempt adjudicated.[1] Five were discontinued, three upon full compliance[2] and the other two upon verification that the companies were defunct and utterly unable to comply with backpay decrees.[3] In three cases the courts referred the issues to Special Masters for trials and recommendations, two to United States district judges,[4] and one to a retired state court judge.[5] Three cases await referral to a Special Master.[6] Of the remaining seven cases, five remain before the courts in various stages of litigation,[7] in one a writ of attachment was issued

[1] *N L R B* v *Millwrights & Machinery Erectors, Loc. 1510, Carpenters,* order of June 19, 1970, No 23,839 (C A. 5), in civil contempt of 379 F 2d 679 *N L.R B* v *Mygrant Glass Co.,* order of May 15, 1970, in No 23,407 (C A. 9), in civil contempt of posting decree of Oct 29, 1968, and backpay supplemental decree of Oct 28, 1969

[2] Upon full reinstatement and good-faith bargaining in *N L R B.* v *Thermo-Rite Mfg Co , and Ken-Tool Mfg Co* in civil contempt of 406 F 2d 1033; upon execution of the collective-bargaining agreement in *N L R B* v *Rish Equipment Co* in civil contempt of 407 F 2d 1098, and upon dissolution of business and good-faith bargaining thereon with the Union in *N L R B* v *Shurtenda Steaks* in civil contempt of 397 F 2d 939 (C A. 10)

[3] *N L R B.* v *Pure Laboratories,* No 17,633 (C A 3), *N L R B* v. *Mooney Aircraft,* in civil and criminal contempt of 337 F 2d 605. During the course of the proceedings, the company was declared an involuntary bankrupt

[4] *N.L R.B.* v. *Kotarides Baking Co ,* in civil contempt of bargaining decree in 340 F 2d 587 (C A 4), referred to United States District Judge John A Mackenzie (D C Va); *N L R B* v. *Nickey Chevrolet Sales* in civil contempt of 8(a) (3) decree of May 4, 1965, in No 15,122 (C A. 7), referred to United States District Judge Richard B. Austin (D C.Ill.).

[5] *N.L R B* v *Construction & General Laborers Union, Loc. 270,* in civil contempt of 8(b) (4) (i) and (ii) (B) decree in 398 F 2d 86 (C A 9)

[6] *N.L.R.B.* v. *Loc. 254 Bldg Service Employees Intl. Union,* in civil contempt of 8(b) (4) (i) (B) decree in 359 F 2d 289 (C A 1) As in an earlier contempt case involving the same union (see 376 F.2d 131 (C.A. 1), 32d Annual Report, p 183), the court granted a temporary injunction pending deposition of the contempt petition; order of Apr 30, 1970, in No. 6626 Supp ; *N L.R.B* v. *Stafford Trucking* in civil contempt of bargaining decree issued Feb 8, 1967, in No. 15,709 (C A. 7) ; and *N.L R.B* v *Kay Electronics,* in civil contempt of 8(a) (1)–8(a) (3) decree in 410 F.2d 499 (C A 8).

[7] *N L R B.* v *Edward G Partin, Business Agent, IBT, Loc 5,* in civil contempt of backpay decree of Feb. 7, 1969, in No 21,970 (C A 5) ; *N L R B* v *Wayne Lee, d/b/a ABC Distributors,* in civil contempt of backpay decree of Oct 15, 1968, in No 18,438 (C.A 6), *N L R B* v *Ripley Mfg Co.* in civil contempt of backpay decree of May 17, 1964, in No 15,225 (C A 6) (see 30th Annual Report, p 148, for earlier proceeding) ; *N L R.B* v *Trans Ocean Export Packing,* in civil contempt of 8(a) (3) decree of Feb 27, 1969, in No 23,823 (C A 9) ; and *N L.R B* v *United Marine Services,* in civil contempt of backpay decree of Apr 3, 1969, in No 21,315 (C A. 9)

but later recalled upon the debtor's showing of financial inability,[8] and the seventh was dismissed on the merits.[9]

Turning to cases which were commenced prior to fiscal 1970 but were disposed of during this period, contempt was adjudicated in five civil proceedings.[10] Three proceedings were abated: one because of the dissolution of the business after the Special Master recommended a finding of contempt of the bargaining decree;[11] one upon the charging party's request in view of the resumption of good-faith relations and reparative bargaining;[12] and the third upon the signing of a collective-bargaining agreement.[13] In one case a writ of attachment was denied upon the Master's finding that withholding of vacation benefits was not discriminatory.[14] In another, the Board's petition was dismissed on the merits, the court finding that the Board did not sustain its burden of establishing surface bargaining by clear and convincing evidence.[15]

A number of opinions which were rendered during this fiscal period warrant comment. In *Intl. Shoe Corp.*[16] disapproving the failure of its Special Master to include the company's president in his contempt recommendations, the First Circuit found both the company and its president in civil contempt of a bargaining decree against the company. The court also validated the technique of employing short-form decrees in the enforcement of Board orders, and sustained the validity of its own decree although it did not repeat in *haec verba* the provisions of the Board's order being enforced. It held that where there is no question of lack of knowledge of the terms of the Board's order, Rule 65(d) of the Federal Rules of Civil Procedure, which requires an injunction to set forth the acts sought to be restrained without reference to any other document, is no impediment to contempt proceedings based on a short-form decree.

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[8] *N.L.R.B* v *August R Blase,* writ of attachment issued Apr 14, 1970, in Nos. 19,180, 20,759 (C A 9).

[9] *N L R B* v. *Dorn's Transportation Co* in civil contempt of reinstatement decree in 405 F 2d 706 (C A 2)

[10] *N L R B.* v *Intl Shoe Corp of Puerto Rico,* 423 F 2d 503 (C A 1) (bargaining decree); *N L.R.B* v. *Loc. 282, Teamsters [U S Trucking Corp.],* 428 F.2d 994 (C A 2) (8(b)(4)(i) and (ii) (B) decree); *N.L R B.* v *Local 825, Intl. Union of Operating Engineers, et al,* 430 F 2d 1225 (C A 3), cert pending (8(b)(4)(i) and (ii)(B) decree). *N L R.B.* v. *Brooks-Dodge Lumber Co.* in civil contempt of backpay decree of Mar 17, 1969, in No 21,903 (C.A 9); *N.L R.B.* v *Merrill Axle & Wheel Service,* 414 F.2d 1323 (C.A 10) (bargaining decree).

[11] *N L R B.* v *Chimes Brownie Co.* in civil contempt of bargaining decree of May 10, 1967, in No. 6908 (C.A 1).

[12] *N L R B* v. *Intl. Telephone & Telegraph Co* in civil contempt of bargaining decree in 382 F 2d 366 (C A. 3).

[13] *N L.R B* v *Diversified Industries* in civil contempt of bargaining decree of Aug. 2, 1968, in No. 19,385 (C A 10).

[14] *N L R B.* v. *Alamo Express Inc.,* 420 F.2d 1216 (C.A. 5).

[15] *N L R.B* v. *Laney & Duke Storage Warehouse Co,* 424 F 2d 109 (C.A 5).

[16] See fn. 10, *supra.*

In *Loc. 282, Teamsters*,[17] the court found the union in civil contempt for staging three unlawful secondary boycott campaigns in violation of a broad decree barring any conduct proscribed by section 8(b)(4)(i) and (ii)(B) of the Act. In doing so, it decided a number of interesting threshold issues. It held, as a matter of first impression, that since the decree embodied a permanent, as distinguished from a temporary, injunction, the union's challenge to its validity on the ground that it was overly broad was barred by *res judicata*. Moreover, the court held, even if relitigation were permissible, the breadth was justified by the union's history of proclivity for engaging in unlawful secondary boycotts. Turning to the union's contention that the Board may not invoke the court's contempt powers until a *prima facie* violation of section 8(b)(4)(B) was first established in preliminary section 10(l) proceedings, the court noted that such preliminary proceedings were neither requisite to the exercise of the court's contempt powers nor profitable since the purport of the secondary boycott provisions of the Act is well established. In connection with its consideration of the specific allegations of secondary boycotting charged by the Board, the court noted that the exclusivity of a gate, reserved for a neutral contractor engaged in new construction at a university with which the union was engaged in a primary dispute, was not undermined by the occasional use of that gate by employees of the university to inspect the site for security reasons or to keep informed of construction progress. However, contrary to its Master, the court indicated that the exclusivity of the gate would be impaired if students passed through, since the union was entitled to appeal to them in support of its dispute with the university.

A jurisdictional issue was also presented to the court in *Local 825, Operating Engineers* (cert. pending),[18] which also involved violations of broad 8(b)(4)(i) and (ii)(B) decrees. Here the challenge was based on the contention that, since the secondary boycott episodes had been concluded and the violations discontinued, civil contempt may not be adjudged because of its wholly remedial nature. The court, however, held that where there are repeated violations, civil contempt proceedings may be processed to conclusion for the purpose of adjudging civil contempt and imposing prospective fines and other sanctions "calculated to cause the Union to abandon a course of intermittent flouting of decrees whenever such misconduct may seem to serve its purposes."

In *Shurtenda Steaks*,[19] the charging union, which had not participated in the enforcement proceedings, sought to intervene in contempt

[17] See fn. 10, *supra*.
[18] See fn. 10, *supra*.
[19] *N.L.R.B.* v. *Shurtenda Steaks*, 424 F.2d 192 (C.A. 10).

proceedings against the Company for violation of the court's bargaining judgment. Upon the Board's objection, intervention was denied. The court held that absent extraordinary and unusual circumstances, intervention by a party which did not participate in the litigation giving rise to the underlying judgment should not be permitted. The court also relied on the absence of any danger of duplication of proceedings, a factor which influenced the Supreme Court in allowing the successful charging and charged party to intervene in enforcement proceedings in *Intl. Union, Auto Workers, Loc. 283* v. *Scofield*, 382 U.S. 205.

Adverse opinions were rendered in two cases. In *Laney & Duke Storage Warehouse Co.*[20] the court refused to adjudicate the company in civil contempt of a bargaining decree even though it found that the company had wrongfully refused to discuss a grievance involving a number of discharged employees. It reasoned that since the main thrust of the Board's case—that the company had engaged in surface bargaining—was found to lack merit, the incidental charge did not rise to the level of contempt. In *Alamo Express, Inc.*,[21] the court refused to issue a writ of attachment against an employer who had earlier been found in contempt, agreeing with its Special Master that, in denying vacation benefits to an economic striker, the company was not discriminatory, but acted in accordance with its policy of requiring a full year of actual employment as a prerequisite for such benefits.

[20] See fn 15, *supra*
[21] See fn 14, *supra*.

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APPENDIX A

Statistical Tables for Fiscal Year 1970

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 "determination" challenges are resolved informally by the parties by mutual agreement. No record is kept of nondeterminative challenges or determinative challenges which are resolved by agreement prior to issuance of the first tally of ballots.

Charge

A document filed by an employee, an employer, a union, or an individual alleging that an unfair labor practice has been committed. See "C Cases" under "Types of Cases."

Complaint

The document which initiates "formal" proceedings in an unfair labor practice case. It is issued by the regional director when he concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and 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 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 Petition

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 practices 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 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 case 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 collection-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

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.

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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.

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Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1970 [1]

	Total	Identification of Filing Party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	All cases						
Pending July 1, 1969	9,992	4,459	1,215	489	436	2,230	1,163
Received fiscal 1970	33,581	11,729	4,675	1,656	1,246	9,709	4,566
On docket fiscal 1970	43,573	16,188	5,890	2,145	1,682	11,939	5,729
Closed fiscal 1970	32,353	11,584	4,637	1,587	1,102	9,077	4,366
Pending June 30, 1970	11,220	4,604	1,253	558	580	2,862	1,363
	Unfair labor practice cases [2]						
Pending July 1, 1969	7,089	2,894	629	312	247	2,042	965
Received fiscal 1970	21,038	5,916	1,670	734	446	8,759	3,513
On docket fiscal 1970	28,127	8,810	2,299	1,046	693	10,801	4,478
Closed fiscal 1970	19,851	5,615	1,639	705	456	8,120	3,316
Pending June 30, 1970	8,276	3,195	660	341	237	2,681	1,162
	Representation cases [3]						
Pending July 1, 1969	2,781	1,519	583	172	180	145	182
Received fiscal 1970	12,077	5,661	2,984	890	777	786	979
On docket fiscal 1970	14,858	7,180	3,567	1,062	957	931	1,161
Closed fiscal 1970	12,000	5,801	2,977	849	615	785	973
Pending June 30, 1970	2,858	1,379	590	213	342	146	188
	Union-shop deauthorization cases						
Pending July 1, 1969	40	----	----	----	----	40	----
Received fiscal 1970	158	----	----	----	----	158	----
On docket fiscal 1970	198	----	----	----	----	198	----
Closed fiscal 1970	165	----	----	----	----	165	----
Pending June 30, 1970	33	----	----	----	----	33	----
	Amendment of certification cases						
Pending July 1, 1969	18	8	0	1	5	1	3
Received fiscal 1970	107	56	6	10	14	2	19
On docket fiscal 1970	125	64	6	11	19	3	22
Closed fiscal 1970	116	60	6	9	19	2	20
Pending June 30, 1970	9	4	0	2	0	1	2
	Unit clarification cases						
Pending July 1, 1969	64	38	3	4	4	2	13
Received fiscal 1970	201	96	15	22	9	4	55
On docket fiscal 1970	265	134	18	26	13	6	68
Closed fiscal 1970	221	108	15	24	12	5	57
Pending June 30, 1970	44	26	3	2	1	1	11

[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 1970[1]

	Total	Identification of Filing Party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	CA cases						
Pending July 1, 1969	5,155	2,835	612	298	179	1,219	12
Received fiscal 1970	13,601	5,822	1,634	668	373	5,086	18
On docket fiscal 1970	18,756	8,657	2,246	966	552	6,305	30
Closed fiscal 1970	12,815	5,520	1,596	648	355	4,684	12
Pending June 30, 1970	5,941	3,137	650	318	197	1,621	18
	CB cases						
Pending July 1, 1969	1,165	50	13	6	17	803	276
Received fiscal 1970	4,631	54	21	14	23	3,567	952
On docket fiscal 1970	5,796	104	34	20	40	4,370	1,228
Closed fiscal 1970	4,319	60	25	11	22	3,334	867
Pending June 30, 1970	1,477	44	9	9	18	1,036	361
	CC cases						
Pending July 1, 1969	411	1	2	5	11	10	382
Received fiscal 1970	1,596	9	1	45	33	62	1,446
On docket fiscal 1970	2,007	10	3	50	44	72	1,828
Closed fiscal 1970	1,491	10	3	40	28	56	1,354
Pending June 30, 1970	516	0	0	10	16	16	474
	CD cases						
Pending July 1, 1969	188	5	1	1	3	2	176
Received fiscal 1970	694	28	3	2	6	23	632
On docket fiscal 1970	882	33	4	3	9	25	808
Closed fiscal 1970	673	21	4	2	7	24	615
Pending June 30, 1970	209	12	0	1	2	1	193
	CE cases						
Pending July 1, 1969	30	0	0	0	1	3	26
Received fiscal 1970	107	1	10	0	3	3	90
On docket fiscal 1970	137	1	10	0	4	6	116
Closed fiscal 1970	83	1	10	0	2	3	67
Pending June 30, 1970	54	0	0	0	2	3	49
	CP cases						
Pending July 1, 1969	140	3	1	2	36	5	93
Received fiscal 1970	409	2	1	5	8	18	375
On docket fiscal 1970	549	5	2	7	44	23	468
Closed fiscal 1970	470	3	1	4	42	19	401
Pending June 30, 1970	79	2	1	3	2	4	67

[1] See "Glossary" for definitions of terms.

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1970 [1]

	Total	Identification of Filing Party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	RC cases						
Pending July 1, 1969	2,452	1,517	583	172	176	4	
Received fiscal 1970	10,332	5,653	2,982	890	772	35	
On docket fiscal 1970	12,784	7,170	3,565	1,062	948	39	
Closed fiscal 1970	10,254	5,792	2,975	849	606	32	
Pending June 30, 1970	2,530	1,378	590	213	342	7	
	RM cases						
Pending July 1, 1969	182						182
Received fiscal 1970	979						979
On docket fiscal 1970	1,161						1,161
Closed fiscal 1970	973						973
Pending June 30, 1970	188						188
	RD cases						
Pending July 1, 1969	147	2	0	0	4	141	
Received fiscal 1970	766	8	2	0	5	751	
On docket fiscal 1970	913	10	2	0	9	892	
Closed fiscal 1970	773	9	2	0	9	753	
Pending June 30, 1970	140	1	0	0	0	139	

[1] See "Glossary" for definitions of terms.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1970

	Number of cases showing specific allegations	Percent of total cases
A. CHARGES FILED AGAINST EMPLOYERS UNDER SEC 8(a)		
Subsections of Sec. 8(a) Total cases	13,601	100.0
8(a)(1)	1,064	7.8
8(a)(1)(2)	200	1.4
8(a)(1)(3)	7,359	54.1
8(a)(1)(4)	57	0.4
8(a)(1)(5)	2,909	21 4
8(a)(1)(2)(3)	199	1 5
8(a)(1)(2)(4)	1	0.0
8(a)(1)(2)(5)	70	0 5
8(a)(1)(3)(4)	225	1.6
8(a)(1)(3)(5)	1,364	10.0
8(a)(1)(4)(5)	7	0 1
8(a)(1)(2)(3)(4)	7	0.1
8(a)(1)(2)(3)(5)	105	0 8
8(a)(1)(2)(4)(5)	3	0 0
8(a)(1)(3)(4)(5)	24	0 2
8(a)(1)(2)(3)(4)(5)	7	0.1
RECAPITULATION [1]		
8(a)(1) [2]	13,601	100.0
8(a)(2)	592	4.5
8(a)(3)	9,290	68.3
8(a)(4)	331	2.4
8(a)(5)	4,489	33.0
B. CHARGES FILED AGAINST UNIONS UNDER SEC. 8(b)		
Subsections of Sec. 8(b). Total cases	7,330	100.0
8(b)(1)	2,300	31.4
8(b)(2)	178	2.4
8(b)(3)	366	5 0
8(b)(4)	2,290	31.2
8(b)(5)	8	0.1
8(b)(6)	13	0.2
8(b)(7)	409	5 5
8(b)(1)(2)	1,498	20.4
8(b)(1)(3)	146	2.0
8(b)(1)(5)	4	0.1
8(b)(1)(6)	4	0.1
8(b)(2)(3)	5	0.1
8(b)(3)(5)	1	0.0
8(b)(3)(6)	4	0.1
8(b)(5)(6)	1	0.0
8(b)(1)(2)(3)	92	1.3
8(b)(1)(2)(5)	4	0.1
8(b)(1)(2)(6)	1	0.0
8(b)(1)(3)(5)	1	0.0
8(b)(1)(3)(6)	1	0.0
8(b)(1)(2)(3)(5)	3	0.0
8(b)(1)(2)(3)(6)	1	0 0

	Number of cases showing specific allegations	Percent of total cases
RECAPITULATION [1]		
8(b)(1)	4,055	55.3
8(b)(2)	1,782	24.3
8(b)(3)	620	8.5
8(b)(4)	2,290	31.2
8(b)(5)	22	0.3
8(b)(6)	25	0 3
8(b)(7)	409	5.6
B1 ANALYSIS OF 8(b)(4)		
Total cases 8(b)(4)	2,290	100.0
8(b)(4)(A)	65	2.8
8(b)(4)(B)	1,429	62.4
8(b)(4)(C)	10	0.4
8(b)(4)(D)	694	30.3
8(b)(4)(A)(B)	66	2.9
8(b)(4)(A)(C)	1	0.0
8(b)(4)(B)(C)	17	0.8
8(b)(4)(A)(B)(C)	8	0.4
RECAPITULATION [1]		
8(b)(4)(A)	140	6 1
8(b)(4)(B)	1,520	66.4
8(b)(4)(C)	36	1.6
8(b)(4)(D)	694	30.3
B2. ANALYSIS OF 8(b)(7)		
Total cases 8(b)(7)	409	100.0
8(b)(7)(A)	110	26.9
8(b)(7)(B)	32	7 8
8(b)(7)(C)	256	62.6
8(b)(7)(A)(C)	4	1.0
8(b)(7)(B)(C)	1	0.2
8(b)(7)(A)(B)(C)	6	1 5
RECAPITULATION [1]		
8(b)(7)(A)	120	29.3
8(b)(7)(B)	39	9.5
8(b)(7)(C)	267	65.3
C CHARGES FILED UNDER SEC 8(e)		
Total cases 8(e)	107	100.0
Against unions alone	76	71.0
Against employers alone	0	0.0
Against unions and employers	31	29.0

[1] A single case may include allegations of violation of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases.

[2] 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 1970 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case										
		Total formal actions taken	CA	CB	CC	CD		CE	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional dispute	Unfair labor practices					
10(k) notices of hearings issued	134	106				106						
Complaints issued	2,757	2,147	1,474	260	147		7	6	21	87	111	34
Backpay specifications issued	74	38	31	4	0		0	0	0	1	2	0
Hearings completed, total	1,511	1,101	712	135	48	57	3	4	12	37	80	13
Initial ULP hearings	1,415	1,047	673	129	47	57	3	3	12	33	79	11
Backpay hearings	52	26	19	4	0		0	0	0	3	0	0
Other hearings	44	28	20	2	1		0	1	0	1	1	2
Decisions by trial examiners, total	1,281	934	647	115	43		2	2	9	33	73	10
Initial ULP decisions	1,188	894	615	111	43		2	2	9	31	71	10
Backpay decisions	53	20	16	3	0		0	0	0	1	0	0
Supplemental decisions	40	20	16	1	0		0	0	0	1	2	0
Decisions and orders by the Board, total	1,627	1,167	764	113	71	47	5	4	17	37	88	21
Upon consent of the parties:												
Initial decisions	194	111	48	19	26		0	0	3	3	2	10
Supplemental decisions	7	4	4	0	0		0	0	0	0	0	0
Adopting trial examiner's decisions (no exceptions filed):												
Initial ULP decisions	291	242	175	31	12		0	0	6	3	12	3
Backpay decisions	16	14	13	1	0		0	0	0	0	0	0
Contested:												
Initial ULP decisions	917	668	444	51	28	47	3	2	5	28	52	8
Decisions based upon stipulated record	26	18	4	5	4		2	0	2	1	0	0
Supplemental ULP decisions	148	[2] 97	66	4	1		0	2	1	1	22	0
Backpay decisions	28	13	10	2	0		0	0	0	1	0	0

[1] See "Glossary" for definitions of terms.
[2] Includes 67 proceedings reviewed in light of the Supreme Court's Decision in *N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1970 [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	2,467	2,247	2,045	92	110	9
Initial hearings	2,228	2,011	1,830	76	105	7
Hearings on objections and/or challenges	239	236	215	16	5	2
Decisions issued, total	2,093	1,932	1,760	73	99	7
By regional directors	1,910	1,795	1,639	65	91	7
Elections directed	1,696	1,593	1,458	56	79	5
Dismissals on record	214	202	181	9	12	2
By Board	183	137	121	8	8	0
After transfer by regional directors for initial decision	150	110	96	7	7	0
Elections directed	106	73	67	4	2	0
Dismissals on record	44	37	29	3	5	0
After review of regional directors' decision	33	27	25	1	1	0
Elections directed	24	18	17	0	1	0
Dismissals on record	9	9	8	1	0	0
Decisions on objections and/or challenges, total	1,011	995	937	39	19	9
By regional directors	312	300	283	13	4	8
By Board	699	695	654	26	15	1
In stipulated elections	647	645	606	26	13	1
No exceptions to regional directors' reports	400	400	372	21	7	1
Exceptions to regional directors' reports	247	245	234	5	6	0
In directed elections (after transfer by regional directors)	45	43	42	0	1	0
In directed elections after review of regional directors' supplemental decisions	7	7	6	0	1	0

[1] See "Glossary" for definitions of terms.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1970 [1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	103	10	82
Decisions issued after hearing	96	9	78
By regional directors	84	8	67
By Board	12	1	11
After transfer by regional directors for initial decision	12	1	11
After review of regional directors' decisions	0	0	0

[1] See "Glossary" for definitions of terms.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1970 [1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of trial examiner	Order of—			Agreement of parties		Recommendation of trial examiner	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved	[2] 6,223												
Notice posted	2,996	2,171	1,267	97	12	478	317	825	568	86	2	99	70
Recognition or other assistance withdrawn	102	102	60	6	0	10	26						
Employer-dominated union disestablished	37	37	15	2	0	8	12						
Employees offered reinstatement	952	952	718	16	7	130	81						
Employees placed on preferential hiring list	110	110	82	4	0	14	10						
Hiring hall rights restored	45							45	38	5	0	2	0
Objections to employment withdrawn	96							96	78	4	1	7	6
Picketing ended	677							677	603	37	1	18	18
Work stoppage ended	351							351	325	7	0	7	12
Collective bargaining begun	1,653	1,429	1,136	41	2	131	119	224	212	4	0	6	2
Backpay distributed	1,658	1,522	1,037	38	8	253	186	136	90	14	0	21	11
Reimbursement of fees, dues, and fines	141	57	41	3	0	6	7	84	64	2	1	4	13
Other conditions of employment improved	861	391	390	0	0	0	1	470	464	0	1	3	2
Other remedies	4	3	1	0	0	0	2	1	0	0	0	1	0

B. By number of employees affected. Employees offered reinstatement, total	3,779	3,779	2,731	67	14	513	454						
Accepted	2,723	2,723	2,140	50	10	300	223						
Declined	1,056	1,056	591	17	4	213	231						
Employees placed on preferential hiring list	628	628	575	11	0	34	8						
Hiring hall rights restored	68							68	51	14	0	3	0
Objections to employment withdrawn	147							147	116	8	10	8	5
Employees receiving backpay													
From either employer or union	6,801	6,679	4,051	201	16	1,043	1,368	122	82	11	0	20	9
From both employer and union	27	27	8	4	0	14	1	27	8	4	0	14	1
Employees reimbursed for fees, dues, and fines:													
From either employer or union	3,685	3,018	1,234	235	0	799	750	667	427	0	10	101	129
From both employer and union	854	854	148	0	0	335	371	854	148	0	0	335	371
C. By amounts of monetary recovery, total	$2,862,951	$2,696,411	$1,292,030	$102,160	$27,770	$48,161	$1,226,290	$166,540	$80,870	$8,940	$40	$28,980	$47,710
Backpay (includes all monetary payments except fees, dues, and fines)	2,748,781	2,639,421	1,264,300	96,450	27,770	34,011	1,216,890	109,360	48,000	8,940	0	24,800	27,620
Reimbursement of fees, dues, and fines	114,170	56,990	27,730	5,710	0	14,150	9,400	57,180	32,870	0	40	4,180	20,090

[1] See "Glossary" for definitions of terms. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1970 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 1970 [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	132	108	75	33	0	0	0	0	21	19	1	1	1	0	2
Food and kindred products	1,862	1,084	736	250	55	7	24	12	751	662	44	45	9	6	12
Tobacco manufacturers	27	20	18	2	0	0	0	0	7	6	0	1	0	0	0
Textile mill products	419	294	247	35	6	0	0	6	123	110	9	4	0	1	1
Apparel and other finished products made from fabric and similar materials	509	368	298	57	2	2	0	9	137	113	16	8	3	0	1
Lumber and wood products (except furniture)	469	245	172	47	16	5	2	3	215	185	12	18	3	1	5
Furniture and fixtures	443	271	222	42	6	1	0	0	168	143	11	14	2	0	2
Paper and allied products	537	320	231	68	17	2	0	2	199	178	9	12	2	1	15
Printing, publishing, and allied industries	957	534	378	114	18	11	7	6	402	338	27	37	4	7	10
Chemicals and allied products	857	498	366	90	27	13	0	2	345	293	19	33	2	5	7
Products of petroleum and coal	262	159	119	28	6	4	0	2	93	80	6	7	1	3	6
Rubber and plastic products	723	401	314	72	11	1	1	2	305	276	15	14	5	4	8
Leather and leather products	200	130	117	10	1	0	0	2	67	60	5	2	1	1	1
Stone, clay, and glass products	805	480	340	92	31	10	1	6	310	271	22	17	3	3	9
Primary metal industries	1,216	843	500	295	29	11	1	7	357	318	16	23	2	5	9
Fabricated metal products (except machinery and transportation equipment)	1,353	801	604	142	27	18	1	9	532	474	33	25	8	8	4
Machinery (except electrical)	1,581	890	688	165	25	8	0	4	660	556	48	56	8	7	16
Electrical machinery, equipment, and supplies	1,265	816	583	209	19	4	0	1	422	374	20	28	7	11	9
Aircraft and parts	421	331	214	111	4	2	0	0	74	68	4	2	0	14	2
Ship and boat building and repairing	198	142	89	43	9	0	0	1	54	46	2	6	0	0	2
Automotive and other transportation equipment	1,056	722	529	180	6	2	0	5	325	292	20	13	5	2	2
Professional, scientific, and controlling instruments	164	103	72	28	2	1	0	0	60	48	3	9	1	0	0
Miscellaneous Manufacturing	732	468	311	133	15	4	0	5	245	207	18	20	12	3	4
Manufacturing	16,188	10,028	7,223	2,246	332	106	37	84	5,872	5,117	360	395	79	82	127

Metal mining	61	38	28	10	0	0	0	0	21	21	0	0	1	0	1
Coal mining	187	160	79	64	11	4	1	1	27	22	4	1	0	0	0
Crude petroleum and natural gas production	35	12	11	0	1	0	0	0	23	21	1	1	0	0	0
Nonmetallic mining and quarrying	81	39	27	8	4	0	0	0	42	36	4	2	0	0	0
Mining	364	249	145	82	16	4	1	1	113	100	9	4	1	0	
Construction	4,135	3,660	1,216	934	832	501	18	159	463	358	93	12	4	1	7
Wholesale trade	1,804	902	699	118	52	10	5	18	882	735	88	59	11	3	6
Retail trade	3,672	1,869	1,422	245	114	4	14	70	1,762	1,455	208	99	20	4	17
Finance, insurance, and real estate	302	168	138	16	9	5	0	0	128	107	11	10	1	1	4
Local passenger transportation	303	215	150	50	11	0	1	3	83	73	3	7	2	2	1
Motor freight, warehousing, and transportation services	2,323	1,445	957	352	78	18	17	23	864	773	59	32	3	5	6
Water transportation	387	297	123	146	19	4	4	1	87	78	8	1	2	0	1
Other transportation	101	58	38	6	10	0	0	4	43	35	4	4	0	0	0
Communications	628	387	256	116	8	4	1	2	227	184	13	30	8	2	4
Heat, light, power, water, and sanitary services	482	259	148	52	32	21	0	6	210	174	7	29	2	3	8
Transportation, communication, and other utilities	4,224	2,661	1,672	722	158	47	23	39	1,514	1,317	94	103	17	12	20
Hotels and other lodging places	521	293	214	43	20	1	1	14	226	203	18	5	1	0	1
Personal services	218	105	75	21	4	0	2	3	108	93	8	7	3	0	2
Automobile repairs, garages, and other miscellaneous repair services	361	150	108	32	6	0	0	4	200	172	14	14	9	1	1
Motion pictures and other amusement and recreation services	243	173	97	51	13	3	5	4	65	51	7	7	1	0	4
Medical and other health services	518	225	191	26	5	0	0	3	280	247	12	21	6	1	6
Legal Services	3	2	1	0	1	0	0	0	1	1	0	0	0	0	0
Educational services	80	43	29	3	8	2	1	0	37	23	12	2	0	0	0
Museum, art galleries, and botanical and zoological gardens	1	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Nonprofit membership organizations	108	91	64	19	0	7	0	1	16	13	1	2	0	0	1
Miscellaneous services	839	419	307	73	26	4	0	9	409	339	44	26	5	2	4
Services	2,892	1,501	1,086	268	83	17	9	38	1,343	1,143	116	84	25	4	19
Total, all industrial groups	33,581	21,038	13,601	4,631	1,596	694	107	409	12,077	10,332	979	766	158	107	201

[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 1970 [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	CA	CB	CC	CD	CE	CP	All R	RC	RM	RD	UD	AC	UC
Maine	90	37	25	7	2	3	0	0	51	51	0	0	0	0	2
New Hampshire	67	32	22	6	2	2	0	0	33	28	3	2	0	0	2
Vermont	24	12	8	0	0	4	0	0	12	11	1	0	0	0	0
Massachusetts	761	440	258	90	54	17	2	19	314	273	20	21	2	0	5
Rhode Island	101	68	29	18	13	6	0	2	31	30	1	0	1	1	0
Connecticut	307	165	113	26	11	12	0	3	138	124	9	5	2	0	2
New England	1,350	754	455	147	82	44	2	24	579	517	34	28	5	1	11
New York	2,514	1,731	994	455	141	81	8	52	754	635	81	38	10	4	15
New Jersey	1,187	732	462	208	28	15	2	17	440	382	37	21	8	2	5
Pennsylvania	1,898	1,175	647	309	112	70	5	32	698	610	48	40	3	5	17
Middle Atlantic	5,599	3,638	2,103	972	281	166	15	101	1,892	1,627	166	99	21	11	37
Ohio	1,906	1,179	735	293	85	58	0	8	682	582	51	49	17	11	17
Indiana	1,125	744	490	180	33	36	0	5	375	326	31	18	3	1	2
Illinois	2,425	1,821	1,087	608	70	31	3	22	577	500	35	42	9	6	12
Michigan	1,775	1,081	730	212	72	19	35	13	654	549	48	57	21	9	10
Wisconsin	659	370	274	67	20	6	0	3	278	222	31	25	1	1	9
East North Central	7,890	5,195	3,316	1,360	280	150	38	51	2,566	2,179	196	191	51	28	50
Iowa	349	136	92	18	17	5	1	3	208	181	19	8	0	3	2
Minnesota	389	195	136	16	21	18	0	4	184	165	10	9	3	2	5
Missouri	1,484	1,067	694	242	86	23	0	22	397	347	18	32	9	4	7
North Dakota	53	25	19	0	6	0	0	0	28	25	2	1	0	0	0
South Dakota	80	35	28	1	3	1	0	2	45	35	7	3	0	0	0
Nebraska	159	96	67	12	13	3	0	1	59	54	2	3	0	0	4
Kansas	234	134	97	26	7	1	0	3	99	88	5	6	0	1	0
West North Central	2,748	1,688	1,133	315	153	51	1	35	1,020	895	63	62	12	10	18
Delaware	64	26	12	5	5	3	0	1	37	30	6	1	0	1	0
Maryland	536	282	166	72	33	5	4	2	250	235	5	10	2	0	2
District of Columbia	170	92	46	36	7	1	0	2	77	72	4	1	0	0	1
Virginia	380	220	180	26	12	1	0	1	155	134	14	7	1	1	3

West Virginia	302	206	114	44	35	12	0	1	89	84	2	3	2	1	4
North Carolina	449	288	259	16	7	3	0	3	159	143	9	7	0	1	1
South Carolina	199	131	116	6	9	0	0	0	68	58	4	6	0	0	0
Georgia	673	368	310	35	14	9	0	0	304	285	12	7	0	0	1
Florida	957	628	414	94	76	21	2	21	326	284	29	13	0	1	2
South Atlantic	3,730	2,241	1,617	334	198	55	6	31	1,465	1,325	85	55	5	5	14
Kentucky	450	287	187	43	28	11	13	5	159	136	11	12	3	1	0
Tennessee	740	475	341	77	34	16	1	6	258	246	5	7	0	4	3
Alabama	504	349	269	65	8	7	0	0	149	137	10	2	0	2	4
Mississippi	217	150	119	15	9	5	0	2	65	58	1	6	0	0	2
East South Central	1,911	1,261	916	200	79	39	14	13	631	577	27	27	3	7	9
Arkansas	243	125	95	22	4	3	0	1	113	101	10	2	0	3	2
Louisiana	592	337	186	92	33	17	0	9	160	148	4	8	0	1	4
Oklahoma	277	156	125	19	9	2	0	1	114	94	9	11	0	0	7
Texas	1,345	936	638	179	55	44	3	17	392	327	28	37	0	8	9
West South Central	2,367	1,554	1,044	312	101	66	3	28	779	670	51	58	0	12	22
Montana	157	95	67	13	5	5	0	5	60	41	9	10	2	0	0
Idaho	113	52	47	3	1	0	0	1	58	54	2	2	1	0	2
Wyoming	37	21	20	0	1	0	0	0	13	12	1	0	0	2	1
Colorado	512	333	223	43	40	12	1	14	177	139	27	11	1	0	1
New Mexico	207	144	82	24	18	12	4	4	62	55	7	0	1	0	0
Arizona	265	188	108	40	23	11	1	5	70	60	7	3	0	4	3
Utah	126	56	35	6	10	1	0	4	66	49	12	5	0	3	1
Nevada	229	119	89	19	5	4	0	2	109	101	6	2	0	0	1
Mountain	1,646	1,008	671	148	103	45	6	35	615	511	71	33	5	9	9
Washington	723	451	295	106	31	9	0	10	258	166	47	45	7	0	7
Oregon	439	229	134	36	39	12	0	8	200	140	36	24	4	2	4
California	4,363	2,682	1,670	640	237	48	21	66	1,616	1,308	180	128	36	17	12
Alaska	73	44	26	8	3	5	0	2	29	24	3	2	0	0	0
Hawaii	180	64	44	14	1	4	1	0	113	105	6	2	1	0	2
Pacific	5,778	3,470	2,169	804	311	78	22	86	2,216	1,743	272	201	48	19	25
Puerto Rico	542	219	169	37	8	0	0	5	304	278	14	12	8	5	6
Virgin Islands	20	10	8	2	0	0	0	0	10	10	0	0	0	0	0
Outlying Areas	562	229	177	39	8	0	0	5	314	288	14	12	8	5	6
Total, all States and areas	33,581	21,038	13,601	4,631	1,596	694	107	409	12,077	10,332	979	766	158	107	201

[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 1970 [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 closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	19,851	100 0	.....	12,815	100.0	4,319	100.0	1,491	100.0	673	100.0	83	100.0	470	100.0
Agreement of parties	4,834	24.4	100 0	3,185	24.9	808	18.7	688	46.1	1	.1	13	15.7	139	29.6
Informal settlement	4,645	23.4	96.1	3,085	24.1	774	17.9	646	43.3	1	.1	13	15.7	126	26.8
Before issuance of complaint	3,660	18.4	75.7	2,326	18.2	642	14.8	570	38.2	(2)	.....	9	10.9	113	24.0
After issuance of complaint, before opening of hearing	909	4.6	18.8	704	5.5	125	2.9	69	4.6	1	.1	3	3.6	7	1.5
After hearing opened before issuance of trial examiner's decision	76	.4	1.6	55	.4	7	.2	7	.5	0	.....	1	1.2	6	1.3
Formal settlement	189	1.0	3 9	100	.8	34	.8	42	2.8	0	.....	0	.....	13	2.8
After issuance of complaint, before opening of hearing	124	.7	2.6	61	.5	20	.5	30	2.0	0	.....	0	.....	13	2.8
Stipulated decision	10	.1	.2	6	.1	1	.0	3	.2	0	.....	0	.....	0	.....
Consent decree	114	.6	2 4	55	.4	19	.5	27	1.8	0	.....	0	.....	13	2.8
After hearing opened	65	.3	1.3	39	.3	14	.3	12	.8	0	.....	0	.....	0	.....
Stipulated decision	7	.0	.1	7	.1	0	.....	0	.....	0	.....	0	.....	0	.....
Consent decree	58	.3	1.2	32	.2	14	.3	12	.8	0	.....	0	.....	0	.....
Compliance with	995	5.0	100.0	820	6.4	89	2.1	59	4.0	7	1.1	3	3.6	17	3 6
Trial examiner's decision	16	.1	1 6	13	.1	1	.0	0	.....	1	.1	0	.....	1	.2
Board decision	579	2.9	58.2	478	3.7	54	1.3	32	2.2	2	.3	1	1.2	12	2.6
Adopting trial examiner's decision (no exceptions filed)	135	.7	13.6	104	8	19	.5	6	.4	0	.....	0	.....	6	1.3
Contested	444	2.2	44.6	374	2.9	35	.8	26	1.8	2	.3	1	1.2	6	1.3

Circuit court of appeals decree	348	1.7	35.0	281	2.2	33	.8	24	1.6	4	.7	2	2.4	4	.8
Supreme Court action	52	.3	5.2	48	.4	1	.0	3	.2	0	.....	0	.....	0	.....
Withdrawal	7,172	36.1	100.0	4,738	36 9	1,715	39.7	502	33.7	1	.1	13	15.7	203	43.2
Before issuance of complaint	6,980	35 2	97.3	4,616	36.0	1,680	38.9	475	31.9	(2)	.....	13	15.7	196	41.7
After issuance of complaint, before opening of hearing	144	.7	2.0	97	.8	27	.6	14	.9	0	.....	0	.....	6	1.3
After hearing opened, before trial examiner's decision	37	.2	.5	16	.1	8	2	12	.8	1	.1	0	.....	0	.....
After trial examiner's decision, before Board decision	6	.0	1	4	.0	0	.....	1	.1	0	.....	0	.....	1	.2
After Board or court decision	5	.0	.1	5	0	0	.....	0	.....	0	.....	0	.....	0	.....
Dismissal	6,179	31 1	100.0	4,065	31.7	1,707	39.5	242	16.2	0	.....	54	65.0	111	23.6
Before issuance of complaint	5,848	29.5	94 6	3,834	29.9	1,657	38.3	226	15.1	(2)	.....	22	26.5	109	23.2
After issuance of complaint, before opening of hearing	11	.1	.2	7	.1	3	.1	1	1	0	.....	0	.....	0	.....
After hearing opened, before trial examiner's decision	3	.0	.0	2	.0	0	.....	1	.1	0	.....	0	.....	0	.....
By trial examiner's decision	3	.0	.0	2	.0	1	0	0	.....	0	.....	0	.....	0	.....
By Board decision	229	1.1	3 7	173	1.3	40	1 0	14	9	0	.....	0	.....	2	.4
Adopting trial examiner's decision (no exceptions filed)	66	3	1 1	57	4	7	.2	1	1	0	.....	0	.....	1	.2
Contested	163	8	2.6	116	.9	33	.8	13	.8	0	.....	0	.....	1	.2
By circuit court of appeals decree	73	.3	1.3	35	.3	6	1	0	.....	0	.....	32	38.5	0	.....
By Supreme Court action	12	1	.2	12	.1	0	.....	0	.....	0	.....	0	.....	0	.....
10(k) actions (see table 7A for details of dispositions)	664	3 4	.....	.....	.....	.....	.....	.....	.....	664	98.7	.....	.....	.....	.....
Otherwise (compliance with order of trial examiner or Board not achieved—firms went out of business)	7	.0	.....	7	1	0	.....	0	.....	0	.....	0	.....	0	.....

[1] See table 8 for summary of disposition by stage See "Glossary" for definitions of terms.
[2] CD cases closed in this stage are processed as jurisdictional dispute under Sec. 10(k) of the Act. See table 7A.

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Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1970 [1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	664	100.0
Agreement of the parties—informal settlement:	364	54.8
Before 10(k) notice	330	49.7
After 10(k) notice, before opening of 10(k) hearing	33	5.0
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.1
Compliance with Board decision and determination of dispute	30	4.5
Withdrawal:	213	32.1
Before 10(k) notice	196	29.5
After 10(k) notice, before opening of 10(k) hearing	8	1.2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	----
After Board decision and determination of dispute	9	1.4
Dismissal:	57	8.6
Before 10(k) notice	52	7.8
After 10(k) notice, before opening of 10(k) hearing	0	----
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	----
By Board decision and determination of dispute	5	0.8

[1] See "Glossary" for definitions of terms.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1970 [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	19,851	100.0	12,815	100.0	4,319	100.0	1,491	100 0	673	100 0	83	100.0	470	100 0
Before issuance of complaint	17,152	86.4	10,776	84.1	3,979	92 1	1,271	85 2	664	98 8	44	53.0	418	88.9
After issuance of complaint, before opening of hearing	1,188	6.0	869	6.8	175	4.1	114	7 6	1	0 1	3	3.6	26	5.5
After hearing opened, before issuance of trial examiner's decision	181	0.9	112	0.9	29	0.7	32	2.2	1	0.1	1	1.2	6	1.3
After trial examiner's decision, before issuance of Board decision	25	0.1	19	0.1	2	0.0	1	0.1	1	0.1	0	.....	2	0.4
After Board order adopting trial examiner's decision in absence of exceptions	201	1.0	161	1.2	26	0.6	7	0.5	0	.....	0	.....	7	1.5
After Board decision, before circuit court decree	619	3.1	502	3.9	68	1.6	39	2.6	2	0.3	1	1.2	7	1.5
After circuit court decree, before Supreme Court action	421	2.1	316	2.5	39	0.9	24	1.6	4	0.6	34	41.0	4	0 9
After Supreme Court action	64	0.4	60	0.5	1	0.0	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 1970 [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	12,000	100.0	10,254	100 0	973	100.0	773	100.0	165	100.0
Before issuance of notice of hearing	5,426	45.2	4,297	41.9	663	68 1	466	60.3	93	56.4
After issuance of notice before close of hearing	4,341	36.2	3,955	38.6	183	18.8	203	26 3	6	3.6
After hearing closed before issuance of decision	114	1.0	90	0.9	17	1.7	7	0.9	0	
After issuance of regional director's decision	1,959	16.3	1,776	17.3	93	9 6	90	11.6	63	38.2
After issuance of Board decision	160	1.3	136	1.3	17	1.8	7	0.9	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 1970 [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	12,000	100.0	10,254	100.0	973	100 0	773	100.0	165	100.0
Certification issued, total	8,185	68.2	7,422	72.4	458	47.1	305	39.5	88	53.3
After:										
Consent election	2,183	18.2	1,937	18.9	141	14.5	105	13.6	9	5.5
Before notice of hearing	1,411	11.8	1,237	12.1	111	11.4	63	8.2	9	5.5
After notice of hearing, before hearing closed	761	6.3	689	6.7	30	3.1	42	5.4	0	----
After hearing closed, before decision	11	0.1	11	0.1	0	----	0	----	0	----
Stipulated election	4,397	36.6	4,044	39.4	223	22.9	130	16.8	15	9.1
Before notice of hearing	1,884	15.7	1,665	16.2	156	16.0	63	8.2	14	8.5
After notice of hearing, before hearing closed	2,474	20.6	2,343	22.8	65	6.7	66	8.5	1	0.6
After hearing closed, before decision	39	0.3	36	0.4	2	0.2	1	0 1	0	----
Expedited election	25	0.2	2	0.0	23	2.4	0	----	----	----
Regional director-directed election	1,489	12.4	1,357	13.3	64	6.6	68	8.8	61	36.9
Board-directed election	91	0.8	82	0.8	7	0.7	2	0.3	3	1.8
By withdrawal, total	2,865	23.9	2,256	22.0	334	34.3	275	35.5	60	36.4
Before notice of hearing	1,603	13.4	1,153	11.2	253	26.0	197	25.5	56	34.0
After notice of hearing, before hearing closed	1,000	8.3	869	8.5	63	6.5	68	8.8	4	2.4
After hearing closed, before decision	55	0.5	41	0.4	10	1.0	4	0.5	0	----
After regional director's decision and direction of election	187	1 5	174	1.7	8	0.8	5	0.6	0	----
After Board decision and direction of election	20	0.2	19	0.2	0	----	1	0.1	0	----
By dismissal, total	950	7.9	576	5.6	181	18.6	193	25.0	17	10.3
Before notice of hearing	503	4.2	240	2.4	120	12.3	143	18.5	14	8.5
After notice of hearing, before hearing closed	106	0.9	54	0.5	25	2.6	27	3.5	1	0.6
After hearing closed, before decision	9	0.1	2	0.0	5	0.5	2	0.3	0	----
By regional director's decision	283	2.3	245	2.4	21	2.2	17	2.2	2	1.2
By Board decision	49	0.4	35	0.3	10	1.0	4	0.5	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 1970

	AC	UC
Total, all	116	221
Certification amended or unit clarified	70	56
Before hearing	66	19
By regional director's decision	66	19
By Board decision	0	0
After hearing	4	37
By regional director's decision	4	30
By Board decision	0	7
Dismissed	18	85
Before hearing	13	35
By regional director's decision	13	35
By Board decision	0	0
After hearing	5	50
By regional director's decision	4	46
By Board decision	1	4
Withdrawn	28	80
Before hearing	28	79
After hearing	0	1

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1970 [1]

Type of Case	Total	Type of Election				
		Consent	Stipulated	Board-directed	Regional director-directed	Expedited elections under 8(b)(7)(C)
All types, total.						
Elections	8,161	2,159	4,346	94	1,532	30
Eligible voters	617,210	84,092	396,500	10,572	125,383	663
Valid votes	537,773	73,499	346,153	8,893	108,680	548
RC cases:						
Elections	7,426	1,924	4,055	88	1,357	2
Eligible voters	575,464	74,570	379,514	10,465	110,769	146
Valid votes	502,489	65,354	331,298	8,797	96,921	119
RM cases						
Elections	347	121	150	4	44	28
Eligible voters	12,750	3,268	7,616	65	1,284	517
Valid votes	10,913	2,717	6,704	54	1,009	429
RD cases·						
Elections	301	101	132	2	66	0
Eligible voters	20,344	5,625	8,676	42	6,001	0
Valid votes	18,000	4,905	7,735	42	5,318	0
UD cases·						
Elections	87	13	9	0	65	----
Eligible voters	8,652	629	694	0	7,329	----
Valid votes	6,371	523	416	0	5,432	----

[1] See "Glossary" for definitions of terms

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1970

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification [1]	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All types	8,437	66	297	8,074	7,774	63	285	7,426	356	3	6	347	307	0	6	301
Rerun required			206				195				5				6	
Runoff required			91				90				1				0	
Consent elections	2,217	13	58	2,146	1,988	12	52	1,924	126	1	4	121	103	0	2	101
Rerun required			38				32				4				2	
Runoff required			20				20				0				0	
Stipulated elections	4,512	29	146	4,337	4,223	27	141	4,055	153	2	1	150	136	0	4	132
Rerun required			111				106				1				4	
Runoff required			35				35				0				0	
Regional director-directed	1,572	24	81	1,467	1,461	24	80	1,357	45	0	1	44	66	0	0	66
Rerun required			50				50				0				0	
Runoff required			31				30				1				0	
Board-directed	105	0	11	94	99	0	11	88	4	0	0	4	2	0	0	2
Rerun required			6				6				0				0	
Runoff required			5				5				0				0	
Expedited—Sec. 8(b)(7)(C)	31	0	1	30	3	0	1	2	28	0	0	28	0	0	0	0
Rerun required			1				1				0				0	
Runoff required			0				0				0				0	

[1] The total of *representation* elections resulting in certification excludes elections held in UD cases, which are included in the totals in table 11.

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled Upon in Cases Closed, Fiscal Year 1970

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections [1]		Total challenges [2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	8,437	760	9.0	251	3.0	147	1.7	907	10.8	398	4.7
By type of case:											
In RC cases	7,774	710	9.1	226	2.9	141	1.8	851	10.9	367	4.7
In RM cases	356	39	11.0	19	5.3	4	1.1	43	12.1	23	6.5
In RD cases	307	11	3.6	6	2.0	2	0.7	13	4.2	8	2.6
By type of election:											
Consent elections	2,217	127	5.7	45	2.0	21	0.9	148	6.7	66	3.0
Stipulated elections	4,512	382	8.5	125	2.8	82	1.8	464	10.3	207	4.6
Expedited elections	31	7	22.6	0	------	0	------	7	22.6	0	------
Regional director-directed elections	1,572	222	14.1	75	4.8	41	2.6	263	16.7	116	7.4
Board-directed elections	105	22	21.0	6	5.7	3	2.9	25	23.8	9	8.6

[1] Number of *elections* in which objections were ruled on, regardless of number of allegations in each election.
[2] Number of *elections* in which challenges were ruled on, regardless of number of individual ballots challenged in each election.

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1970 [1]

	Total		By employer		By union		By both parties [2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	1,207	100.0	371	30.8	803	66.5	33	2.7
By type of case:								
RC cases	1,133	100.0	359	31.7	746	65.8	28	2.5
RM cases	53	100.0	9	17.0	41	77.3	3	5.7
RD cases	21	100.0	3	14.3	16	76.2	2	9.5
By type of election								
Consent elections	200	100.0	55	27.5	138	69.0	7	3.5
Stipulated elections	651	100.0	194	29.8	439	67.4	18	2.8
Expedited elections	7	100.0	0	.....	6	85.7	1	14.3
Regional director-directed elections	319	100.0	107	33.5	208	65.2	4	1.3
Board-directed elections	30	100.0	15	50.0	12	40.0	3	10.0

[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 1970 [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	1,207	300	907	631	69.6	276	30.4
By type of case:							
RC cases	1,133	282	851	589	69.2	262	30.8
RM cases	53	10	43	35	81.4	8	18.6
RD cases	21	8	13	7	53.8	6	46.2
By type of election:							
Consent elections	200	52	148	94	63.5	54	36.5
Stipulated elections	651	187	464	323	69.6	141	30.4
Expedited elections	7	0	7	6	85.7	1	14.3
Regional director-directed elections	319	56	263	189	71.9	74	28.1
Board-directed elections	30	5	25	19	76.0	6	24.0

[1] See "Glossary" for definitions of terms.
[2] See table 11E for rerun elections held after objections were sustained In 70 elections in which objections were sustained, 66 were subsequently withdrawn In 4 elections the outcome was decided by ruling on challenges, therefore, in these cases no rerun elections were conducted.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1970 [1]

	Total reruns 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	191	100 0	79	41.4	112	58.6	75	39 3
By type of case.								
RC cases	180	100.0	75	41 7	105	58.3	72	40.0
RM cases	5	100.0	1	20.0	4	80 0	1	20.0
RD cases	6	100.0	3	50.0	3	50 0	2	33 3
By type of election								
Consent elections	35	100.0	15	42.9	20	57.1	14	40.0
Stipulated elections	105	100.0	39	37.1	66	62.9	39	37.1
Expedited elections	1	100 0	0	----------	1	100.0	0	----------
Regional director-directed elections	47	100.0	23	48.9	24	51.1	22	46 8
Board-directed elections	3	100 0	2	66 7	1	33.3	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 15 rerun elections which were conducted and subsequently set aside pursuant to sustained objections The 15 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 1970

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	87	54	62.1	33	37.9	8,652	5,842	67.5	2,810	32.5	6,371	73 6	4,353	50 3
AFL-CIO unions	53	31	58.5	22	41 5	6,969	5,333	76 5	1,636	23.5	5,068	72.7	3,902	56.0
Teamsters	24	17	70.8	7	29.2	551	336	61.0	215	39 0	426	77.3	287	52.1
Other national unions	7	3	42 9	4	57.1	1,067	108	10 1	959	89 9	818	76 7	105	9 8
Other local unions	3	3	100 0	0	----------	65	65	100 0	0	----------	59	90 8	59	90 8

[1] Sec 8(a)(3) of the Act requires that to revoke a union-shop agreement, a majority of the employees eligible to vote must vote in favor of deauthorization

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1970 [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	4,267	51 6	2,201	2,201				2,066	305,223	113,951	113,951				191,272
Teamsters	2,136	52 2	1,115		1,115			1,021	73,286	29,571		29,571			43,715
Other national unions	643	56 5	363			363		280	52,565	23,566			23,566		28,999
Other local unions	265	56.2	149				149	116	12,053	6,359				6,359	5,694
1-union elections	7,311	52 4	3,828	2,201	1,115	363	149	3,483	443,127	173,447	113,951	29,571	23,566	6,359	269,680
AFL-CIO v. AFL-CIO	153	71.2	109	109				44	13,627	8,132	8,132				5,495
AFL-CIO v. Teamsters	175	83 4	146	61	85			29	23,509	19,615	10,058	9,557			3,894
AFL-CIO v. Natl	150	79 3	119	66		53		31	27,165	19,215	10,171		9,044		7,950
AFL-CIO v. Local	100	90.0	90	43			47	10	70,558	69,359	47,146			22,213	1,199
Teamsters v. Teamsters	6	66.7	4		4			2	167	134		134			33
Teamsters v Natl	38	92 1	35		20	15		3	5,623	5,607		4,493	1,114		16
Teamsters v. Local	40	92 5	37		15		22	3	6,036	5,928		2,324		3,604	108
Natl. v. Local	31	87 1	27			19	8	4	4,725	4,646			2,988	1,658	79
Natl. v Natl	13	100 0	13			13		0	1,359	1,359			1,359		0
Local v. Local	13	84.6	11				11	2	1,152	1,119				1,119	33
2-union elections	719	82 2	591	279	124	100	88	128	153,921	135,114	75,507	16,508	14,505	28,594	18,807
AFL-CIO v AFL-CIO v. AFL-CIO	3	33 3	1	1				2	430	31	31				399
AFL-CIO v AFL-CIO v. Teamsters	7	85 7	6	5	1			1	476	422	320	102			54
AFL-CIO v AFL-CIO v Natl	8	100 0	8	7		1		0	3,369	3,369	3,166		203		0
AFL-CIO v AFL-CIO v. Local	4	75 0	3	1			2	1	768	378	54			324	390
AFL-CIO v. Teamsters v Natl	5	100 0	5	1	2	2		0	2,931	2,931	720	2,067	144		0
AFL-CIO v. Teamsters v Local	6	100 0	6	2	2		2	0	1,625	1,625	442	367		816	0
AFL-CIO v. Natl. v Natl	1	0 0	0	0		0		1	338	0	0		0		338
AFL-CIO v Local v Local	2	100 0	2	1			1	0	281	281	112			169	0
AFL-CIO v. Natl v Local	1	100 0	1	0		1	0	0	140	140	0		140	0	0
Teamsters v Teamsters v Local	1	100 0	1		1		0	0	121	121		121		0	0
Teamsters v Local v. Local	3	100 0	3		0		3	0	175	175		0		175	0
AFL-CIO v AFL-CIO v. AFL-CIO v AFL-CIO	1	100 0	1	1				0	554	554	554				0

AFL-CIO v AFL-CIO v AFL-CIO v Natl	2	100 0	2	2		0		0	302	302	302		0		0
3 (or more)-union elections	44	88 6	39	21	6	4	8	5	11, 510	10, 329	5, 701	2, 657	487	1, 484	1, 181
Total representation elections	8, 074	55 2	4, 458	2, 501	1, 245	467	245	3, 616	608, 558	318, 890	195, 159	48, 736	38, 558	36, 437	289, 668

B. ELECTIONS IN RC CASES

AFL-CIO	3, 887	53. 2	2, 068	2, 068				1, 819	285, 673	104, 601	104, 601				181, 072
Teamsters	1, 963	53. 8	1, 056		1, 056			907	67, 482	27, 011		27, 011			40, 471
Other national unions	609	57. 1	348			348		261	50, 469	22, 233			22, 233		28, 236
Other local unions	247	58. 3	144				144	103	11, 542	6, 087				6, 087	5, 455
1-union elections	6, 706	53 9	3, 616	2, 068	1, 056	348	144	3, 090	415, 166	159. 932	104, 601	27, 011	22, 233	6, 087	255, 234
AFL-CIO v AFL-CIO	146	72. 6	106	106				40	13, 443	7, 989	7, 989				5, 454
AFL-CIO v. Teamsters	161	84. 4	136	57	79			25	21, 162	17, 618	9, 890	7, 728			3, 544
AFL-CIO v. Natl	148	79 1	117	65		52		31	27, 115	19, 165	10, 123		9, 042		7, 950
AFL-CIO v Local	92	91. 3	84	40			44	8	68, 691	67, 578	46, 162			21, 416	1, 113
Teamsters v. Teamsters	6	66. 7	4		4			2	167	134		134			33
Teamsters v. Natl	37	91. 9	34		20	14		3	5, 595	5, 579		4, 493	1, 086		16
Teamsters v. Local	38	92. 1	35		15		20	3	5, 976	5, 868		2, 324		3, 544	108
Natl v Local	30	90. 0	27			19	8	3	4, 707	4, 646			2, 988	1, 658	61
Natl v. Natl	7	100. 0	7			7		0	893	893			893		0
Local v. Local	12	83. 3	10				10	2	1, 141	1, 108				1, 108	33
2-union elections	677	82. 7	560	268	118	92	82	117	148, 890	130, 578	74, 164	14, 679	14, 009	27, 726	18, 312
AFL-CIO v AFL-CIO v AFL-CIO	3	33. 3	1	1				2	430	31	31				399
AFL-CIO v AFL-CIO v Teamsters	6	83 3	5	5	0			1	374	320	320	0			54
AFL-CIO v. AFL-CIO v. Natl	8	100. 0	8	7		1		0	3, 369	3, 369	3, 166		203		0
AFL-CIO v. AFL-CIO v. Local	4	75. 0	3	1			2	1	768	378	54			324	390
AFL-CIO v Teamsters v Natl	5	100 0	5	1	2	2		0	2, 931	2, 931	720	2, 067	144		0
AFL-CIO v. Teamsters v. Local	6	100. 0	6	2	2		2	0	1, 625	1, 625	442	367		816	0
AFL-CIO v. Natl v Natl	1	0 0	0	0		0		1	338	0	0		0		338
AFL-CIO v. Local v Local	2	100. 0	2	1			1	0	281	281	112			169	0
AFL-CIO v Natl v Local	1	100. 0	1	0		1	0	0	140	140	0		140	0	0
Teamsters v. Teamsters v. Local	1	100. 0	1		1		0	0	121	121		121		0	0
Teamsters v. Local v. Local	3	100. 0	3		0		3	0	175	175		0		175	0
AFL-CIO v AFL-CIO v. AFL-CIO v. AFL-CIO	1	100 0	1	1				0	554	554	554				0
AFL-CIO v AFL-CIO v. AFL-CIO v Natl	2	100. 0	2	2		0		0	302	302	302		0		0
3(or more)-union elections	43	88. 4	38	21	5	4	8	5	11, 408	10, 227	5, 701	2, 555	487	1, 484	1, 181
Total RC elections	7, 426	56. 8	4, 214	2, 357	1, 179	444	234	3, 212	575, 464	300, 737	184, 466	44, 245	36, 729	35, 297	274, 727

See footnotes at end of table.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1970 [1]—Continued

Participating unions	Total elections [2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL-CIO unions	Teamsters	Other national unions	Other local unions	
C. ELECTIONS IN RM CASES															
AFL-CIO	188	41.0	77	77				111	7,350	3,437	3,437				3,913
Teamsters	107	43 0	46		46			61	2,769	1,207		1,207			1,562
Other national unions	11	36.4	4			4		7	627	172			172		455
Other local unions	11	36.4	4				4	7	351	232				232	119
1-union elections	317	41 3	131	77	46	4	4	186	11,097	5,048	3,437	1,207	172	232	6,049
AFL-CIO v. AFL-CIO	6	50.0	3	3				3	165	143	143				22
AFL-CIO v. Teamsters	6	50.0	3	2	1			3	431	139	97	42			292
AFL-CIO v. Natl	2	100.0	2	1		1		0	50	50	48		2		0
AFL-CIO v. Local	4	75 0	3	1			2	1	322	320	27			293	2
Teamsters v. Natl	1	100.0	1		0	1		0	28	28		0	28		0
Teamsters v. Local	2	100.0	2		0		2	0	60	60		0		60	0
Natl v Local	1	0.0	0			0	0	1	18	0			0	0	18
Natl. v. Natl	6	100 0	6			6		0	466	466			466		0
Local v. Local	1	100.0	1				1	0	11	11				11	0
2-union elections	29	72 4	21	7	1	8	5	8	1,551	1,217	315	42	496	364	334
AFL-CIO v. AFL-CIO v Teamsters	1	100 0	1	0	1			0	102	102	0	102			0
3 (or more)-union elections	1	100.0	1	0	1	0	0	0	102	102	0	102	0	0	0
Total RM elections	347	44 1	153	84	48	12	9	194	12,750	6,367	3,752	1,351	668	596	6,383

D. ELECTIONS IN RD CASES

AFL-CIO	192	29.2	56	56				136	12,200	5,913	5,913				6,287
Teamsters	66	19.7	13		13			53	3,035	1,353		1,353			1,682
Other national unions	23	47.8	11			11		12	1,469	1,161			1,161		308
Other local unions	7	14.3	1				1	6	160	40				40	120
1-union elections	288	28.1	81	56	13	11	1	207	16,864	8,467	5,913	1,353	1,161	40	8,397
AFL-CIO v. AFL-CIO	1	0 0	0	0				1	19	0	0				19
AFL-CIO v Teamsters	8	87.5	7	2	5			1	1,916	1,858	71	1,787			58
AFL-CIO v. Local	4	75.0	3	2			1	1	1,545	1,461	957			504	84
2-union elections	13	76.9	10	4	5	0	1	3	3,480	3,319	1,028	1,787	0	504	161
Total RD elections	301	30.2	91	60	18	11	2	210	20,344	11,786	6,941	3,140	1,161	544	8,558

[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 1970 [1]

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
A ALL REPRESENTATION ELECTIONS													
AFL-CIO	271,593	66,440	66,440				33,787	59,662	59,662				111,704
Teamsters	65,308	18,345		18,345			7,807	12,884		12,884			26,272
Other national unions	47,633	14,032			14,032		7,321	10,119			10,119		16,161
Other local unions	10,292	3,787				3,787	1,479	1,610				1,610	3,416
1-union elections	394,826	102,604	66,440	18,345	14,032	3,787	50,394	84,275	59,662	12,884	10,119	1,610	157,553
AFL-CIO v. AFL-CIO	12,046	5,941	5,941				1,025	1,970	1,970				3,110
AFL-CIO v. Teamsters	20,639	16,362	8,119	8,243			867	1,217	516	701			2,193
AFL-CIO v. Natl	24,152	15,331	7,384		7,947		1,439	2,680	1,248		1,432		4,702
AFL-CIO v. Local	53,077	51,007	27,888			23,119	999	351	285			66	720
Teamsters v Teamsters	134	114		114			4	3		3			13
Teamsters v Natl	4,733	4,639		2,534	2,105		79	8		4	4		7
Teamsters v Local	5,439	5,112		2,720		2,392	223	27		24		3	77
Natl v. Local	4,255	4,067			2,423	1,644	114	21			15	6	53
Natl v. Natl	1,064	1,061			1,061		3	0			0		0
Local v Local	908	874				874	8	3				3	23
2-union elections	126,447	104,508	49,332	13,611	13,536	28,029	4,761	6,280	4,019	732	1,451	78	10,898
AFL-CIO v AFL-CIO v. AFL-CIO	415	27	27				2	129	129				257
AFL-CIO v. AFL-CIO v. Teamsters	376	263	209	54			60	20	14	6			33
AFL-CIO v. AFL-CIO v. Natl	2,993	2,969	1,846		1,123		24	0	0		0		0
AFL-CIO v AFL-CIO v Local	707	321	108			213	4	96	16			80	286
AFL-CIO v. Teamsters v. Natl	2,527	2,506	735	1,213	558		21	0	0	0	0		0
AFL-CIO v. Teamsters v. Local	1,408	1,287	424	336		527	121	0	0	0		0	0
AFL-CIO v. Natl v Natl	313	0	0		0		0	149	134		15		164
AFL-CIO v. Local v. Local	264	262	81			181	2	0	0			0	0
AFL-CIO v. Natl v. Local	103	103	32		62	9	0	0	0		0	0	0
Teamsters v. Teamsters v. Local	111	109		86		23	2	0		0		0	0
Teamsters v Local v. Local	88	87		6		81	1	0		0		0	0

AFL-CIO v AFL-CIO v. AFL-CIO v. AFL-CIO	544	357	357				187	0	0				0
AFL-CIO v AFL-CIO v AFL-CIO v. Natl	280	280	280		0		0	0	0		0		0
3(or more)-union elections	10,129	8,571	4,099	1,695	1,743	1,034	424	394	293	6	15	80	740
Total representation elections	531,402	215,683	119,871	33,651	29,311	32,850	55,579	90,949	63,974	13,622	11,585	1,768	169,191

B. ELECTIONS IN RC CASES

AFL-CIO	254,455	61,081	61,081				31,092	56,885	56,885				105,397
Teamsters	60,254	16,606		16,606			7,307	12,227		12,227			24,114
Other national unions	45,662	13,203			13,203		6,851	9,895			9,895		15,713
Other local unions	9,997	3,705				3,705	1,453	1,574				1,574	3,265
1-union elections	370,368	94,595	61,081	16,606	13,203	3,705	46,703	80,581	56,885	12,227	9,895	1,574	148,489
AFL-CIO v. AFL-CIO	11,877	5,814	5,814				1,023	1,957	1,957				3,083
AFL-CIO v Teamsters	18,525	14,594	7,403	7,191			823	1,106	449	657			2,002
AFL-CIO v. Natl	24,107	15,236	7,356		7,930		1,439	2,680	1,248		1,432		4,702
AFL-CIO v. Local	51,519	49,524	27,081			22,443	979	347	282			65	669
Teamsters v. Teamsters	134	114		114			4	3		3			13
Teamsters v. Natl	4,707	4,613		2,525	2,088		79	8		4	4		7
Teamsters v. Local	5,387	5,060		2,702		2,358	223	27		24		3	77
Natl v. Local	4,238	4,067			2,423	1,644	114	16			10	6	41
Natl v. Natl	694	691			691		3	0			0		0
Local v. Local	897	863				863	8	3				3	23
2-union elections	122,085	100,626	47,654	12,532	13,132	27,308	4,695	6,147	3,936	688	1,446	77	10,617
AFL-CIO v. AFL-CIO v. AFL-CIO	415	27	27				2	129	129				257
AFL-CIO v. AFL-CIO v Teamsters	283	206	203	3			24	20	14	6			33
AFL-CIO v. AFL-CIO v. Natl	2,993	2,969	1,846		1,123		24	0	0		0		0
AFL-CIO v. AFL-CIO v Local	707	321	108			213	4	96	16			80	286
AFL-CIO v. Teamsters v Natl	2,527	2,506	735	1,213	558		21	0	0	0	0		0
AFL-CIO v. Teamsters v. Local	1,408	1,287	424	336		527	121	0	0	0		0	0
AFL-CIO v Natl v. Natl	313	0	0		0		0	149	134		15		164
AFL-CIO v. Local v Local	264	262	81			181	2	0	0			0	0
AFL-CIO v Natl v Local	103	103	32		62	9	0	0	0		0	0	0
Teamsters v. Teamsters v. Local	111	109		86		23	2	0		0		0	0
Teamsters v. Local v. Local	88	87		6		81	1	0		0		0	0
AFL-CIO v AFL-CIO v AFL-CIO v AFL-CIO	544	357	357				187	0	0				0
AFL-CIO v. AFL-CIO v. AFL-CIO v. Natl	280	280	280		0		0	0	0		0		0
3 (or more)-union elections	10,036	8,514	4,093	1,644	1,743	1,034	388	394	293	6	15	80	740
Total RC elections	502,489	203,735	112,828	30,782	28,078	32,047	51,786	87,122	61,114	12,921	11,356	1,731	159,846

See footnote at end of table.

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Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed Fiscal Year 1970 [1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national union	Other local union		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
C. ELECTIONS IN RM CASES													
AFL-CIO	6,392	2,067	2,067				824	1,091	1,091				2,410
Teamsters	2,456	811		811			285	398		398			962
Other national unions	569	119			119		47	137			137		266
Other local unions	172	63				63	11	21				21	77
1-union elections	9,589	3,060	2,067	811	119	63	1,167	1,647	1,091	398	137	21	3,715
AFL-CIO v. AFL-CIO	150	127	127				2	5	5				16
AFL-CIO v. Teamsters	363	114	74	40			0	89	67	22			160
AFL-CIO v. Natl	45	45	28		17		0	0	0		0		0
AFL-CIO v. Local	197	192	28			164	3	0	0			0	2
Teamsters v. Natl	26	26		9	17		0	0		0	0		0
Teamsters v. Local	52	52		18		34	0	0		0		0	0
Natl v. Local	17	0			0	0	0	5			5	0	12
Natl v. Natl	370	370			370		0	0			0		0
Local v. Local	11	11				11	0	0				0	0
2-union elections	1,231	937	257	67	404	209	5	99	72	22	5	0	190
AFL-CIO v. AFL-CIO v. Teamsters	93	57	6	51			36	0	0	0			0
3 (or more)-union elections	93	57	6	51	0	0	36	0	0	0	0	0	0
Total RM elections	10,913	4,054	2,330	929	523	272	1,208	1,746	1,163	420	142	21	3,905

D ELECTIONS IN RD CASES

AFL–CIO	10,746	3,292	3,292				1,871	1,686	1,686				3,897
Teamsters	2,598	928		928			215	259		259			1,196
Other national unions	1,402	710			710		423	87			87		182
Other local unions	123	19				19	15	15				15	74
1-union elections	14,869	4,949	3,292	928	710	19	2,524	2,047	1,686	259	87	15	5,349
AFL–CIO v. AFL–CIO	19	0	0				0	8	8				11
AFL–CIO v. Teamsters	1,751	1,654	642	1,012			44	22	0	22			31
AFL–CIO v. Local	1,361	1,291	779			512	17	4	3			1	49
2-union elections	3,131	2,945	1,421	1,012	0	512	61	34	11	22	0	1	91
Total RD elections	18,000	7,894	4,713	1,940	710	531	2,585	2,081	1,697	281	87	16	5,440

[1] See "Glossary" for definitions of terms.

Table 15.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1970

Division and State [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Maine	43	21	15	6	0	0	22	3,718	3,362	1,330	1,239	91	0	0	2,032	641
New Hampshire	24	12	7	4	1	0	12	809	672	366	278	79	9	0	306	366
Vermont	8	8	5	1	2	0	0	375	355	299	150	8	141	0	56	375
Massachusetts	233	136	62	65	5	4	97	20,093	17,426	10,462	5,708	2,285	872	1,597	6,964	11,265
Rhode Island	23	13	8	4	1	0	10	2,593	2,326	1,147	1,013	54	80	0	1,179	1,634
Connecticut	92	51	20	24	3	4	41	4,366	4,030	1,946	1,288	487	107	64	2,084	2,097
New England	423	241	117	104	12	8	182	31,954	28,171	15,550	9,676	3,004	1,209	1,661	12,621	16,378
New York	423	260	112	87	30	31	163	75,871	58,310	47,536	26,839	2,355	1,781	16,561	10,774	61,595
New Jersey	257	143	68	46	16	13	114	13,124	11,477	6,659	3,710	1,879	553	517	4,818	6,590
Pennsylvania	440	248	140	59	40	9	192	34,450	31,329	16,980	9,990	1,550	4,498	942	14,349	16,548
Middle Atlantic	1,120	651	320	192	86	53	469	123,445	101,116	71,175	40,539	5,784	6,832	18,020	29,941	84,733
Ohio	465	280	162	60	49	9	185	37,151	33,116	20,005	10,109	2,438	6,047	1,411	13,111	20,736
Indiana	249	146	62	59	22	3	103	18,301	16,607	8,593	4,703	939	2,798	153	8,014	7,957
Illinois	405	221	143	43	20	15	184	28,953	25,255	13,553	9,663	1,492	1,839	559	11,702	12,287
Michigan	445	229	104	53	68	4	216	23,955	21,251	11,387	4,463	1,641	4,324	959	9,864	12,179
Wisconsin	196	106	75	24	7	0	90	9,114	8,208	4,925	3,734	385	372	434	3,283	5,159
East North Central	1,760	982	546	239	166	31	778	117,474	104,437	58,463	32,672	6,895	15,380	3,516	45,974	58,318
Iowa	149	94	54	26	11	3	55	6,402	5,872	3,460	2,004	595	817	44	2,412	3,474
Minnesota	186	107	43	29	6	29	79	5,914	5,221	2,645	1,731	452	160	302	2,576	2,214
Missouri	258	165	104	46	9	6	93	11,185	9,628	6,025	2,800	1,908	370	947	3,603	6,605
North Dakota	28	21	1	20	0	0	7	953	893	527	154	373	0	0	366	753
South Dakota	27	16	13	3	0	0	11	1,259	1,149	538	497	41	0	0	611	288
Nebraska	43	18	14	3	1	0	25	3,583	3,087	1,850	1,260	147	15	428	1,237	1,861
Kansas	80	40	29	6	5	0	40	3,754	3,310	1,381	1,098	155	102	26	1,929	989
West North Central	771	461	258	133	32	38	310	33,050	29,160	16,426	9,544	3,671	1,464	1,747	12,734	16,184
Delaware	23	11	2	6	1	2	12	2,713	2,395	1,085	494	116	108	367	1,310	672
Maryland	153	68	45	14	8	1	85	9,738	8,707	4,015	2,915	614	460	26	4,692	2,883
District of Columbia	49	23	15	7	0	1	26	1,749	1,554	765	475	179	0	111	789	960

Virginia	107	64	36	12	9	7	43	20,220	17,593	13,148	7,240	2,534	3,004	370	4,445	14,399
West Virginia	71	45	23	8	14	0	26	4,360	3,926	2,436	1,442	368	596	30	1,490	2,749
North Carolina	124	58	46	8	3	1	66	17,191	15,506	7,362	6,546	682	119	15	8,144	7,204
South Carolina	49	21	13	6	1	1	28	10,622	9,643	5,158	3,228	1,475	182	273	4,485	5,748
Georgia	211	106	62	28	11	5	105	19,322	17,260	8,218	5,511	1,390	1,111	206	9,042	7,671
Florida	211	100	62	26	7	5	111	15,489	13,070	7,403	4,493	1,299	666	945	5,667	8,478
South Atlantic	998	496	304	115	54	23	502	101,404	89,654	49,590	32,344	8,657	6,246	2,343	40,064	50,764
Kentucky	113	55	29	14	9	3	58	10,526	9,481	5,335	2,471	1,463	1,206	195	4,146	5,528
Tennessee	200	97	62	25	5	5	103	22,273	19,951	11,041	7,005	2,682	1,252	102	8,910	9,920
Alabama	114	61	45	13	3	0	53	13,513	11,945	6,568	5,185	691	692	0	5,377	7,964
Mississippi	63	32	24	6	2	0	31	6,986	6,219	3,021	2,695	164	162	0	3,198	2,444
East South Central	490	245	160	58	19	8	245	53,298	47,596	25,965	17,356	5,000	3,312	297	21,631	25,856
Arkansas	70	39	28	10	1	0	31	8,762	8,034	3,924	3,144	647	133	0	4,110	4,011
Louisiana	107	61	40	17	3	1	46	12,081	11,175	4,798	3,686	447	635	30	6,377	2,198
Oklahoma	99	51	33	12	6	0	48	7,306	6,795	3,140	1,522	260	1,358	0	3,655	1,928
Texas	283	170	123	36	9	2	113	21,830	19,433	10,206	7,839	1,655	283	429	9,227	9,675
West South Central	559	321	224	75	19	3	238	49,979	45,437	22,068	16,191	3,009	2,409	459	23,369	17,812
Montana	42	21	9	11	0	1	21	1,546	1,392	616	364	233	0	19	776	478
Idaho	46	22	12	10	0	0	24	2,973	2,612	1,118	488	622	8	0	1,494	1,175
Wyoming	7	6	3	2	1	0	1	398	362	263	155	13	95	0	99	257
Colorado	126	63	41	19	2	1	63	5,462	4,966	2,674	1,680	424	158	412	2,292	2,622
New Mexico	37	22	19	3	0	0	15	1,586	1,388	660	621	39	0	0	728	633
Arizona	52	38	24	13	1	0	14	3,569	3,225	1,647	1,193	418	36	0	1,578	1,440
Utah	42	23	13	8	1	1	19	837	733	382	242	121	12	7	351	462
Nevada	65	39	13	15	9	2	26	1,817	1,605	869	341	290	164	74	736	982
Mountain	417	234	134	81	14	5	183	18,188	16,283	8,229	5,084	2,160	473	512	8,054	8,049
Washington	164	88	58	27	2	1	76	6,961	5,869	3,618	2,366	702	32	518	2,251	3,877
Oregon	132	65	38	19	4	4	67	7,945	7,105	4,594	2,869	318	377	1,030	2,511	4,526
California	962	508	278	176	42	12	454	45,316	39,804	21,082	11,600	6,300	2,620	562	18,722	21,262
Alaska	7	5	3	2	0	0	2	109	96	72	62	10	0	0	24	72
Hawaii	66	44	24	5	13	2	22	1,878	1,664	1,103	455	237	391	20	561	1,296
Pacific	1,331	710	401	229	61	19	621	62,209	54,538	30,469	17,352	7,567	3,420	2,130	24,069	31,033
Virgin Islands	8	5	5	0	0	0	3	554	402	136	136	0	0	0	266	266
Puerto Rico	197	112	32	19	4	57	85	17,003	14,608	8,561	2,951	1,526	151	3,933	6,047	9,497
Outlying areas	205	117	37	19	4	57	88	17,557	15,010	8,697	3,087	1,526	151	3,933	6,313	9,763
Total, all States and areas	8,074	4,458	2,501	1,245	467	245	3,616	608,558	531,402	306,632	183,845	47,273	40,896	34,618	224,770	318,890

[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 1970

Industrial group [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Ordnance and accessories	22	12	5	2	5	0	10	2,833	2,463	1,378	329	35	1,014	0	1,085	1,246
Food and kindred products	518	306	161	114	14	17	212	38,469	33,549	20,791	11,314	5,981	1,481	2,015	12,758	22,528
Tobacco manufacturers	6	3	2	0	0	1	3	1,660	1,177	438	412	0	0	26	739	1,116
Textile mill products	73	34	25	3	2	4	39	11,605	10,532	5,229	4,075	115	298	741	5,303	4,370
Apparel and other finished products, made from fabric and similar materials	76	24	18	4	2	0	52	14,799	13,479	6,248	5,346	572	303	27	7,231	3,478
Lumber and wood products (except furniture)	169	85	60	17	6	2	84	14,580	13,253	6,976	5,546	1,155	161	114	6,277	7,092
Furniture and fixtures	124	63	36	21	3	3	61	11,670	10,404	5,780	4,256	918	493	113	4,624	4,943
Paper and allied products	136	81	52	20	8	1	55	17,430	15,874	11,160	7,936	1,875	749	600	4,714	10,017
Printing, publishing, and allied industries	297	160	131	16	4	9	137	10,900	9,583	4,935	3,890	456	286	303	4,648	4,209
Chemicals and allied products	255	145	75	31	31	8	110	20,493	17,736	11,625	4,642	3,149	3,170	664	6,111	12,740
Products of petroleum and coal	63	36	16	16	1	3	27	2,786	2,619	1,357	893	327	67	70	1,262	1,151
Leather and leather products	290	150	81	31	20	18	140	34,941	31,454	16,380	10,249	2,434	2,979	718	15,074	15,199
Stone, clay, and glass products	227	132	70	42	11	9	95	17,255	15,437	8,733	4,928	2,709	544	552	6,704	8,523
Primary metal industries	292	172	103	36	21	12	120	29,069	26,313	15,922	9,479	1,871	2,593	1,979	10,391	16,633
Fabricated metal products (except machinery and transportation equipment)	427	235	147	49	27	12	192	35,672	31,871	17,942	10,525	2,431	3,909	1,077	13,929	16,719
Machinery (except electrical)	537	289	176	32	73	8	248	48,693	44,180	23,214	15,487	1,446	5,789	492	20,966	21,904
Electrical machinery, equipment, and supplies	295	135	85	19	23	8	160	49,326	44,922	21,763	13,053	2,823	4,271	1,616	23,159	19,325
Aircraft and parts	60	37	17	4	13	3	23	9,245	8,387	4,114	1,890	418	1,537	269	4,273	4,118
Ship and boat building and repairing	37	21	12	4	1	4	16	12,108	10,506	5,601	3,651	299	262	1,389	4,905	4,368
Miscellaneous transportation equipment	248	138	57	28	52	1	110	21,689	19,734	10,807	4,458	1,206	3,713	1,430	8,927	11,442
Professional, scientific, and controlling instruments	51	17	12	3	1	1	34	8,173	7,417	3,683	2,369	702	545	67	3,734	2,927
Miscellaneous manufacturing	158	88	48	22	11	7	70	12,386	11,275	6,223	3,059	1,136	1,541	487	5,052	7,141
Manufacturing	4,361	2,363	1,389	514	329	131	1,998	425,782	382,165	210,299	127,787	32,058	35,705	14,749	171,866	201,189

Metal mining	19	13	8	2	3	0	6	1,246	1,128	644	368	96	180	0	484	783
Coal mining	31	18	2	0	10	6	13	1,900	1,676	1,027	133	67	542	285	649	972
Crude petroleum and natural gas production	6	4	3	0	0	1	2	191	149	90	74	0	0	16	59	104
Nonmetallic mining and quarrying	24	12	6	4	1	1	12	875	800	491	313	153	15	10	309	339
Mining	80	47	19	6	14	8	33	4,212	3,753	2,252	888	316	737	311	1,501	2,198
Construction	222	128	82	19	14	13	94	6,429	5,471	3,227	1,842	520	481	384	2,244	3,617
Wholesale trade	631	335	94	221	10	10	296	15,232	13,594	7,211	2,345	3,897	531	438	6,383	7,755
Retail trade	1,145	599	387	153	35	24	546	36,899	31,460	15,357	10,553	3,022	931	851	16,103	16,498
Finance, insurance, and real estate	70	36	30	2	0	4	34	2,341	2,137	940	792	34	0	114	1,197	925
Local passenger transportation	71	37	25	8	1	3	34	5,207	4,115	2,309	1,336	496	30	447	1,806	3,054
Motor freight, warehousing, and transportation services	427	252	38	198	8	8	175	12,277	10,629	6,094	1,738	3,826	133	397	4,535	7,215
Water transportation	33	25	20	0	4	1	8	1,176	1,025	667	574	13	58	22	358	830
Other transportation	27	17	11	5	1	0	10	3,601	3,185	1,362	585	654	123	0	1,823	1,000
Communications	171	113	104	3	0	6	58	58,476	42,783	38,950	23,130	81	0	15,739	3,833	54,282
Heat, light, power, water, and sanitary services	132	76	46	15	10	5	56	7,125	6,600	4,199	3,064	269	591	275	2,401	3,942
Transportation, communication, and other utilities	861	520	244	229	24	23	341	87,862	68,337	53,581	30,427	5,339	935	16,880	14,756	70,323
Hotels and other lodging places	109	68	42	8	15	3	41	6,553	5,075	2,977	2,262	217	382	116	2,098	3,906
Personal services	53	29	12	14	1	2	24	2,043	1,830	948	473	352	16	107	882	950
Automobile repairs, garages, and other miscellaneous repair services	86	56	15	36	3	2	30	1,679	1,491	904	291	457	133	23	587	926
Motion pictures and other amusement and recreation services	38	24	16	6	0	2	14	970	775	509	399	73	3	34	266	681
Medical and other health services	153	98	83	3	2	10	55	8,227	6,680	3,791	3,311	82	89	309	2,889	4,948
Educational services	6	6	6	0	0	0	0	159	135	97	97	0	0	0	38	159
Nonprofit membership organizations	6	4	2	0	0	2	2	153	137	43	16	0	15	12	94	19
Miscellaneous services	253	145	80	34	20	11	108	10,017	8,362	4,496	2,362	906	938	290	3,866	4,796
Services	704	430	256	101	41	32	274	29,801	24,485	13,765	9,211	2,087	1,576	891	10,720	16,385
Total, all industrial groups	8,074	4,458	2,501	1,245	467	245	3,616	608,558	531,402	306,632	183,845	47,273	40,896	34,618	224,770	318,890

[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 1970 [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	588,214	7,773	100.0	----------	2,441	100.0	1,227	100.0	456	100.0	243	100.0	3,406	100.0
Under 10	10,452	1,825	23.5	23.5	576	23.6	493	40.2	75	16.5	52	21.4	629	18.4
10 to 19	23,551	1,691	21.8	45.3	536	21.9	317	25.8	88	19.3	43	17.7	707	20.8
20 to 29	21,974	910	11.7	57.0	281	11.5	118	9.6	59	12.9	30	12 3	422	12.4
30 to 39	21,754	635	8.2	65.2	206	8.4	73	6.0	43	9.4	23	9.5	290	8 5
40 to 49	18,749	423	5.4	70.6	148	6 1	47	3.8	24	5.3	14	5.8	190	5.6
50 to 59	17,287	321	4.1	74.7	118	4.8	29	2.3	19	4.2	9	3.7	146	4.3
60 to 69	16,712	262	3 4	78.1	78	3.2	22	1.8	18	4.0	8	3.3	136	4.0
70 to 79	13,468	183	2.4	80.5	64	2.6	20	1.6	20	4.4	8	3.3	71	2.1
80 to 89	13,346	158	2.0	82.5	55	2 3	15	1.2	11	2.4	4	1.7	73	2 1
90 to 99	11,471	122	1.6	84.1	34	1 4	9	0.7	7	1.5	5	2.0	67	2.0
100 to 109	12,502	120	1 5	85.6	36	1.5	13	1 0	11	2.4	2	0.8	58	1.7
110 to 119	10,839	95	1.2	86.8	30	1.2	6	0.5	7	1.5	2	0.8	50	1.5
120 to 129	12,212	99	1.3	88.1	31	1 3	7	0.6	7	1.5	4	1.7	50	1.5
130 to 139	9,026	67	0.9	89.0	30	1 2	3	0.3	4	0.9	1	0.4	29	0.8
140 to 149	8,974	62	0 8	89.8	20	0.8	1	0.1	7	1.5	0	----------	34	1.0
150 to 159	7,417	48	0.6	90 4	11	0 5	4	0.3	4	0.9	1	0.4	28	0.8
160 to 169	8,217	50	0 6	91.0	10	0.4	3	0.3	5	1.1	3	1.2	29	0.8
170 to 179	8,206	47	0 6	91.6	16	0.7	4	0.3	4	0.9	4	1.7	19	0.6
180 to 189	5,524	30	0.4	92.0	11	0 5	3	0.3	0	----------	0	----------	16	0.5
190 to 199	7,991	41	0 5	92 5	3	0.1	4	0.3	1	0.2	1	0.4	32	0 9
200 to 299	56,643	235	3 0	95.5	62	2.5	18	1.5	17	3.7	7	2.9	131	3.8
300 to 399	44,280	128	1.7	97.2	31	1.3	5	0.4	10	2.2	6	2.5	76	2.2
400 to 499	27,389	61	0.8	98.0	14	0 6	4	0.3	4	0.9	3	1.2	36	1.1
500 to 599	23,061	42	0.5	98.5	16	0.7	1	0.1	2	0.4	3	1.2	20	0.6
600 to 799	32,182	47	0.6	99 1	6	0.2	5	0.4	4	0.9	4	1.7	28	0.8
800 to 999	22,399	25	0.3	99 4	4	0 2	0	----------	1	0.2	2	0.8	18	0.5
1,000 to 1,999	60,776	40	0.5	99.9	12	0.5	3	0.3	4	0.9	2	0.8	19	0.6
2,000 to 2,999	0	0	----------	99 9	0	----------	0	----------	0	----------	0	----------	0	----------
3,000 to 9,999	27,934	5	0.1	100.0	1	0 0	0	----------	0	----------	2	0 8	2	0.1
10,000 and over	33,878	1	0.0	100 0	1	0.0	0	----------	0	----------	0	----------	0	----------

B. DECERTIFICATION ELECTIONS (RD)

Total RD elections	20,344	301	100.0	----------	60	100.0	18	100.0	11	100.0	2	100.0	210	100.0
Under 10	423	76	25.2	25.2	6	10 0	2	11.0	1	9 1	0	----------	67	31.9
10 to 19	799	59	19.6	44.8	8	13.3	3	16.6	1	9.1	0	----------	47	22.4
20 to 29	963	39	13.0	57 8	6	10.0	2	11.0	1	9.1	0	----------	30	14.3
30 to 39	776	23	7.6	65 4	10	16.7	1	5.6	1	9.1	0	----------	11	5.3
40 to 49	431	10	3.3	68.7	0	----------	1	5.6	0	----------	1	50.0	8	3.8
50 to 59	766	14	4.6	73.3	2	3.3	0	----------	0	----------	0	----------	12	5.7
60 to 69	518	8	2.7	76.0	2	3.3	1	5.6	1	9.1	0	----------	4	1.9
70 to 79	980	13	4 3	80.3	4	6.7	0	----------	1	9.1	0	----------	8	3.8
80 to 89	414	5	1.7	82 0	2	3.3	1	5 6	0	----------	0	----------	2	0.9
90 to 99	99	1	0.3	82.3	1	1.7	0	----------	0	----------	0	----------	0	----------
100 to 109	519	5	1.7	84.0	2	3.3	0	----------	1	9.1	0	----------	2	0.9
110 to 119	338	3	1.0	85.0	0	----------	0	----------	1	9.1	0	----------	2	0 9
120 to 129	128	1	0.3	85.3	0	----------	0	----------	1	9.1	0	----------	0	----------
130 to 139	398	3	1.0	86 3	2	3.3	0	----------	0	----------	0	----------	1	0.5
140 to 149	291	2	0.7	87 0	1	1.7	0	----------	0	----------	0	----------	1	0 5
150 to 159	305	2	0 7	87.7	1	1.7	0	----------	0	----------	0	----------	1	0 5
160 to 169	645	4	1 3	89 0	2	3.3	1	5.6	0	----------	0	----------	1	0.5
170 to 199	1,222	7	2.3	91 3	3	5.0	0	----------	0	----------	0	----------	4	1.9
200 to 299	1,792	7	2.3	93 6	0	----------	3	16.6	1	9.1	0	----------	3	1.4
300 to 399	2,852	9	3.0	96.6	3	5.0	0	----------	1	9.1	0	----------	5	2.4
400 to 499	2,260	5	1.7	98.3	3	5.0	1	5 6	0	----------	0	----------	1	0.5
500 to 799	1,578	3	1.0	99.3	1	1.7	1	5.6	0	----------	1	50.0	0	----------
800 and over	1,847	2	0 7	100.0	1	1.7	1	5.6	0	----------	0	----------	0	----------

[1] See "Glossary" for definitions of terms.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishment, Fiscal Year 1970 [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]	18,051	100.0	.....	11,399	100.0	3,050	100.0	1,267	100.0	517	100.0	51	100.0	363	100.0	1,155	100.0	249	100.0
Under 10	4,323	23.9	23.9	2,649	23.2	736	24.1	391	30.9	115	22.2	19	37.3	105	28.9	239	20.7	69	27.7
10 to 19	1,703	9.4	33.3	1,137	10.0	202	6.6	143	11.3	63	12.2	3	5.9	61	16.8	67	5.8	27	10.8
20 to 29	1,323	7.3	40.6	887	7.8	148	4.9	118	9.3	38	7.4	3	5.9	52	14.3	53	4.6	24	9.6
30 to 39	948	5.3	45.9	611	5.4	121	4.0	94	7.4	30	5.8	1	2.0	31	8.5	52	4.5	8	3.2
40 to 49	675	3.7	49.6	459	4.0	88	2.9	49	3.9	18	3.5	2	3.9	11	3.0	39	3.4	9	3.6
50 to 59	775	4.3	53.9	489	4.3	119	3.9	61	4.8	34	6.6	0	-----	27	7.4	33	2.9	12	4.8
60 to 69	434	2.4	56.3	323	2.8	52	1.7	13	1.0	14	2.7	0	-----	9	2.5	20	1.7	3	1.2
70 to 79	405	2.2	58.5	260	2.3	65	2.1	16	1.3	14	2.7	1	2.0	8	2.2	31	2.7	10	4.0

80 to 89	316	1.8	60.3	221	1.9	50	1.6	20	1.6	7	1.4	0	-------	4	1.1	12	1.0	2	0.8
90 to 99	187	1.0	61.3	129	1.1	22	0.7	10	0.8	4	0.8	0	-------	9	2.5	11	1.0	2	0.8
100 to 109	753	4.2	65.5	451	4.0	142	4.7	59	4.7	20	3.9	10	19.6	7	1.9	51	4.4	13	5.2
110 to 119	121	0.7	66.2	92	0.8	21	0.7	2	0.2	5	1.0	0	-------	0	-------	1	0.1	0	-------
120 to 129	280	1.6	67.8	188	1.6	33	1.1	20	1.6	8	1.5	1	2.0	3	0.8	27	2.3	0	-------
130 to 139	110	0.6	68.4	82	0.7	15	0.5	2	0.2	1	0.2	2	3.9	0	-------	7	0.6	1	0.4
140 to 149	119	0.7	69.1	85	0.7	17	0.6	4	0.3	4	0.8	1	2.0	3	0.8	4	0 3	1	0.4
150 to 159	378	2.1	71.2	241	2.1	67	2.2	21	1.7	9	1.7	1	2.0	6	1.7	26	2.3	7	2.8
160 to 169	88	0.5	71.7	60	0.5	11	0.4	6	0.5	5	1.0	0	-------	3	0.8	3	0.3	0	-------
170 to 179	126	0.7	72.4	89	0.8	25	0.8	2	0.2	3	0.6	0	-------	1	0.3	4	0.3	2	0.8
180 to 189	69	0 4	72.8	46	0.4	13	0.4	8	0.6	0	-------	0	-------	0	-------	2	0 2	0	-------
190 to 199	29	0.2	73.0	23	0.2	2	0.1	2	0.2	0	-------	0	-------	0	-------	1	0.1	1	0.4
200 to 299	978	5.4	78.4	638	5.6	155	5.1	59	4.7	33	6.4	1	2.0	11	3.0	70	6.1	11	4.4
300 to 399	677	3.8	82.2	431	3.8	131	4.3	18	1.4	19	3.7	0	-------	0	-------	67	5.8	11	4.4
400 to 499	413	2.3	84.5	280	2.5	78	2.6	16	1.3	5	1.0	0	-------	2	0.6	28	2.4	4	1.6
500 to 599	382	2.1	86.6	229	2.0	81	2.7	13	1.0	12	2.3	0	-------	3	0.8	35	3.0	9	3.6
600 to 699	213	1.2	87 8	143	1.3	34	1 1	10	0 8	8	1.5	0	-------	1	0.3	15	1.3	2	0.8
700 to 799	153	0.8	88.6	104	0.9	23	0.8	7	0.6	6	1.2	0	-------	0	-------	13	1.1	0	-------
800 to 899	168	0.9	89.5	103	0.9	33	1.1	5	0.4	3	0.6	0	-------	2	0.6	18	1.6	4	1.6
900 to 999	74	0.4	89.9	49	0.4	11	0.4	4	0 3	2	0.4	0	-------	1	0.3	6	0.5	1	0.4
1,000 to 1,999	676	3.7	93.6	356	3.1	174	5.7	49	3.9	16	3.1	2	3.9	1	0 3	74	6.4	4	1.6
2,000 to 2,999	272	1.5	95.1	145	1.3	80	2.6	10	0.8	8	1.5	1	2.0	0	-------	27	2.3	1	0.4
3,000 to 3,999	184	1.0	96.1	82	0.7	71	2.3	5	0.4	5	1.0	1	2.0	0	-------	17	1.5	3	1.2
4,000 to 4,999	91	0.5	96.6	41	0.4	30	1.0	1	0 1	1	0.2	0	-------	0	-------	16	1.4	2	0.8
5,000 to 9,999	264	1.5	98.1	123	1.1	89	2.9	9	0.7	3	0.6	2	3.9	1	0.3	35	3.0	2	0.8
Above 9,999	344	1.9	100 0	153	1.3	111	3.6	20	1.6	4	0.8	0	-------	1	0.3	51	4.4	4	1.6

[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 1970; and Cumulative Totals, Fiscal Years 1936–70

	Fiscal year 1970									July 5, 1935–June 30, 1970	
	Number of proceedings [1]					Percentages					
	Total	Vs employers only	Vs unions only	Vs. both employers and unions	Board dismissal [2]	Vs. employers only	Vs unions only	Vs. both employers and unions	Board dismissal	Number	Percent
Proceedings decided by U.S. courts of appeal	338	297	35	2	6						
On petitions for review and/or enforcement	322	283	31	2	6	100.0	100.0	100.0	100.0	4,337	100.0
Board orders affirmed in full	219	188	24	2	5	66.4	77 4	100 0	83.3	2,548	58 8
Board orders affirmed with modification	32	29	3		0	10.2	9.7			835	19.2
Remanded to Board	20	19	1		0	6.7	3.2			185	4.3
Board orders partially affirmed and partially remanded	19	16	2		1	5 7	6 5		16.7	69	1 6
Board orders set aside	32	31	1		0	11.0	3 2			700	16.1
On petitions for contempt	16	14	2	0	0	100.0	100 0				
Compliance after filing of petition before court order	6	6	0	0	0	42 9					
Court orders holding respondent in contempt	7	5	2	0	0	35.7	100 0				
Court orders denying petition	3	3	0	0	0	21.4					
Proceeding decided by U.S. Supreme Court [3]	5	5	0	0	0	100 0				185	100 0
Board orders affirmed in full	2	2	0	0	0	50 0				113	61.1
Board orders affirmed with modification	0	0	0	0	0					14	7.6
Board orders set aside	1	1	0	0	0	16.7				29	15 7
Remanded to Board	0	0	0	0	0					12	6.5
Remanded to court of appeals	2	2	0	0	0	33 3				14	7.6
Board's request for remand or modification of enforcement order denied	0	0	0	0	0					1	0 5
Contempt cases remanded to court of appeals	0	0	0	0	0					1	0.5
Contempt cases enforced	0	0	0	0	0					1	0 5

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal year 1964. This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case." See "Glossary" for definitions of terms.

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the court of appeals.

[3] Board appeared as *amicus curiae* in two cases. *Intl. Longshoremen's Assn., Loc. 1416* v *Ariadne Shipping Co.*, 397 U.S. 195—Board's position sustained, and *Taggert* v. *Weinackers'*, 397 U.S. 223—court dismissed without ruling on merits. Also, the board appeared as respondent in a case involving an appeal by the charging party from the district courts' refusal to issue a 10(l) injunction. *Sears, Roebuck & Co.* v *Carpet Layers, Loc. 419, AFL-CIO, 397 U.S. 901*—Board's position sustained

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1970 Compared With 5-Year Cumulative Totals, Fiscal Years 1965 Through 1969[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1970	Total fiscal years 1965–69	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set Aside			
			Fiscal year 1970		Cumulative fiscal years 1965–69		Fiscal year 1970		Cumulative fiscal years 1965–69		Fiscal year 1970		Cumulative fiscal years 1965–69		Fiscal year 1970		Cumulative fiscal years 1965–69		Fiscal year 1970		Cumulative fiscal years 1965–69	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	322	1,353	219	68.0	795	58.8	32	9.9	286	21.1	20	6.3	57	4.2	19	5.9	20	1.5	32	9.9	195	14.4
1. Boston, Mass	15	69	11	73.3	48	69.6	0	0.0	8	11.6	1	6.7	4	5.8	1	6 7	1	1.4	2	13.3	8	11.6
2. New York, N.Y.	19	126	15	78.9	79	62.7	1	5.3	24	19.0	0	0.0	6	4.8	0	0.0	4	3.2	3	15.8	13	10.3
3. Philadelphia, Pa	17	59	14	82.4	42	71.2	0	0.0	3	5.1	2	11.8	6	10.2	1	5.9	0	0.0	0	0.0	8	13.5
4. Richmond, Va	16	129	10	62.5	78	60 5	3	18.7	35	27.1	2	12.5	1	0.8	0	0.0	0	0.0	1	6 3	15	11 6
5. New Orleans, La	74	246	56	75.6	132	53.6	4	5.4	77	31.3	1	1.4	10	4.1	5	6 8	2	0.8	8	10.8	25	10.2
6 Cincinnati, Ohio	55	209	34	61 8	108	51.7	5	9.0	52	24.9	2	3.7	5	2.4	3	5.5	3	1.4	11	20.0	41	19.6
7. Chicago, Ill	34	119	24	70 6	69	58.0	6	17.7	20	16.8	0	0.0	0	0.0	1	2.9	1	0.8	3	8.8	29	24.4
8. St Louis, Mo	23	82	12	52.3	22	26.8	7	30.4	30	36.6	3	13.0	4	4.9	0	0.0	2	2.4	1	4.3	24	29.3
9 San Francisco, Calif	29	146	21	72.4	104	71.2	2	6.9	14	9.6	3	10.3	9	6.2	2	6.9	1	0.7	1	3.5	18	12.3
10. Denver, Colo	11	62	8	72.7	36	58.1	2	18.3	13	20.9	1	9.0	4	6.5	0	0.0	1	1.6	0	0.0	8	12.9
Washington, D C	29	106	14	48.3	77	72.6	2	6.9	10	9.5	5	17.2	8	7.5	6	20.7	5	4.7	2	6.9	6	5.7

[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 1970

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court June 30, 1970
		Pending in district court July 1, 1969	Filed in district court fiscal year 1970		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under sec. 10(e), total	3	1	2	3	3	0	0	0	0	0	0
Under sec. 10(j), total	18	1	17	15	12	2	0	0	1	0	3
8(a)(1)(2)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2)(3); 8(b)(1)(A)(2)	1	1	0	1	0	0	0	0	1	0	0
8(a)(1)(2)(3)(5)	1	0	1	1	0	1	0	0	0	0	0
8(a)(1)(3)	1	0	1	0	0	0	0	0	0	0	1
8(a)(1)(3), 8(b)(1)(A)(2)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(3)(5)	3	0	3	3	2	1	0	0	0	0	0
8(a)(1)(5)	3	0	3	3	3	0	0	0	0	0	0
8(b)(1)(A)	3	0	3	3	3	0	0	0	0	0	0
8(b)(1)(B)(3)	2	0	2	0	0	0	0	0	0	0	2
8(b)(1)(B)(3), 8(a)(1)(5)	1	0	1	1	1	0	0	0	0	0	0
8(b)(3)	1	0	1	1	1	0	0	0	0	0	0
Under sec. 10(l), total	234	23	211	220	85	12	68	30	21	4	14
8(b)(4)(A)	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(A)(B)	2	0	2	2	2	0	0	0	0	0	0
8(b)(4)(A)(B), 8(e)	2	0	2	2	0	0	1	0	0	1	0
8(b)(4)(B)	112	6	106	107	38	5	36	12	14	2	5
8(b)(4)(B)(D)	16	1	15	16	7	1	4	4	0	0	0
8(b)(4)(B); 8(e)	1	0	1	1	0	0	0	1	0	0	0
8(b)(4)(C)	3	0	3	3	3	0	0	0	0	0	0
8(b)(4)(D)	66	11	55	58	24	4	15	10	5	0	8
8(b)(7)(A)	3	0	3	3	1	0	2	0	0	0	0
8(b)(7)(B)	9	3	6	9	5	0	1	1	2	0	0
8(b)(7)(C)	15	1	14	14	4	2	6	1	0	1	1
8(e)	4	1	3	4	1	0	2	1	0	0	0

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1970

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	36	30	6	18	15	3	18	15	3
NLRB-initiated actions	11	8	3	7	5	2	4	3	1
To enforce subpena	10	8	2	7	5	2	3	3	0
To restrain dissipation of assets by respondent	0	0	0	0	0	0	0	0	0
To defend Board's jurisdiction	1	0	1	0	0	0	1	0	1
Action by other parties	25	22	3	11	10	1	14	12	2
To restrain NLRB from	14	14	0	9	9	0	5	5	0
Proceeding in R case	9	9	0	5	5	0	4	4	0
Proceeding in unfair labor practice case	5	5	0	4	4	0	1	1	0
Proceeding in backpay case	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0
To compel NLRB to	11	8	3	2	1	1	9	7	2
Issue complaint	3	2	1	0	0	0	3	2	1
Seek injunction	0	0	0	0	0	0	0	0	0
Take action in R case	4	2	2	1	0	1	3	2	1
Other	4	4	0	1	1	0	3	3	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1970 [1]

	Total	Number of cases				
		Identification of petitioner				
		Individuals	Employer	Union	Courts	State boards
Pending July 1, 1969	2	0	1	1	0	0
Received fiscal 1970	6	2	2	2	0	0
On docket fiscal 1970	8	2	3	3	0	0
Closed fiscal 1970	6	2	2	2	0	0
Pending June 30, 1970	2	0	1	1	0	0

[1] See "Glossary" for definitions of terms

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1970 [1]

Action taken	Total cases closed
Total	6
Board would assert jurisdiction	2
Board would not assert jurisdiction	1
Unresolved because of insufficient evidence submitted	0
Dismissed	2
Withdrawn	1

[1] See "Glossary" for definitions of terms.

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