THIRD ANNUAL REPORT
OF THE
NATIONAL LABOR RELATIONS BOARD

For the Fiscal Year Ended
June 30, 1938

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NATIONAL LABOR RELATIONS BOARD

J. WARREN MADDEN, *Chairman*

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GEORGE O. PRATT, *Chief Trial Examiner*

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LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., January 3, 1939.

SIR:

I have the honor to submit to you the Third Annual Report of the National Labor Relations Board, for the fiscal year ended June 30, 1938, in compliance with the provisions of section 3 (c) of the National Labor Relations Act, approved July 5, 1935.

J. WARREN MADDEN, *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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THIRD ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

I. INTRODUCTION

A. WORK OF THE BOARD

In its Second Annual Report for the fiscal year ended June 30, 1937, the National Labor Relations Board was compelled to report that at the end of that period the Board was falling seriously behind in its work. The Board is now in a position to report that as a result of an increase in staff it was able to handle and close an increasing percentage of its total cases as the year covered by this report progressed. As of June 30, 1938, therefore, the Board was in a much better position to dispose of its work expeditiously than it had been the year before, although there was still much lost ground to recover.

The statistics of the Board's work during the year show that the Board was able to dispose of most of the charges of unfair labor practices which were filed without formal hearing, and that more than half of the cases were closed by adjustments in substantial compliance with the act and voluntarily accepted by all parties. A large number of the representation cases filed were settled by means of elections held by consent of all the parties, making hearings unnecessary and resulting in collective bargaining between the employers and the labor organizations winning the elections. The Board is particularly gratified to report that although its agents conducted scores of elections, participated in by tens of thousands of workers, the secrecy of its ballots was never questioned and the high efficiency of its election machinery won frequent and enthusiastic praise from employers and unions alike.[1]

B. TENDENCY OF UNIONS TO RESORT TO THE ACT INSTEAD OF TO ECONOMIC WEAPONS

Since the purpose of the National Labor Relations Act is to provide a legal channel through which labor disputes centering around the right to organize and bargain collectively can be adjusted without resort to strikes or other forms of economic action, it is interesting to compare strike data with that of the work of the National Labor Relations Board. Prior to the validation of the act by the Supreme Court, its full effectiveness in affording a peaceful outlet for employer-employee differences could not of course be known.

Immediately following the decisions of the Supreme Court, there occurred a most extraordinary increase in cases before the Board.

[1] See chs. IV–VI, post, for statistical analyses of the work of the Board.

It is now a matter of history that thousands of workers turned to the Board for redress of grievances centering around the issue of the right to belong to and function through a labor organization. But what is clearer now than at that time is the growing tendency, where the issue of organization is involved, for labor organizations to turn more to the Board than resort to strikes. So marked did this trend become that at the end of the fiscal year the number of workers involved in Board cases exceeded those involved in strikes throughout the country. A month-by-month comparison of the number of strikes with the number of cases brought before the Board reveals the degree to which workers turn to the Board as against their resort to strikes.

Table I and chart A [2] indicate that in 1936 and in the spring of 1937, strikes exceeded cases brought before the Board. However, since May 1937, the month after the Supreme Court found the act constitutional, the number of cases before the Board has outdistanced the number of strikes. In the calendar year 1936 the number of Board cases was 67 percent of the number of strikes. In 1937 this percentage increased to 221. This upward trend was maintained during the first 6 months of 1938. If the number of Board cases is compared with the number of strikes in which organization was the major issue (that being the issue over which cases are brought before the Board), then the proportion of Board cases to such strikes is considerably greater, as is shown by column 3 of table I. Even for the calendar year 1936 and the spring of 1937, the number of cases brought to the Board in which organization was the major issue was greater than the number of strikes caused by this issue. But after the validation of the National Labor Relations Act by the Supreme Court, there occurred an extraordinary increase in Board cases as compared with the number of organization strikes. In 1936 the number of Board cases was 134 percent of the number of organization strikes. In the calendar year 1937 the percentage increased to 391, and the figures for 1938 indicate a continuation of this trend.

A similar situation exists with reference to the number of workers involved in strikes and in Board cases. Table No. II and chart B reveal that in 1936 the number of workers in Board cases was 68 percent of the number of workers involved in strikes. In 1937 this percentage increased to 129. If the number of workers involved only in strikes centering around the major issue of organization—the ground on which cases are brought to the Board—is considered, the percentage of Board cases over such strikes is much greater, as indicated in column 3 of table II. During 1936 and running into the spring of 1937 there was considerable fluctuation in the ratio of the number of workers involved in Board cases to those involved in organization strikes. On a month-to-month basis, the former would be greater at one time and the latter at another. Thus for the months of February, April, May, August, September, October, and December of 1936, and January and March of 1937, the number of workers involved in Board cases was less than the number involved in organization strikes, the percentages being as follows: February 1936, 15 percent; April, 26 percent; May, 58 percent; August, 19 percent; September, 31 percent; October, 41 percent; December, 35 percent; January

[2] The tables and charts referred to in this section will be found in appendix A.

1937, 34 percent; and March 1937, 26 percent. However, since April 1937 there has been a steady and mounting increase in the number of workers involved in Board cases as against those involved in organization strikes. The ratio of workers involved in Board cases as compared with those involved in organization strikes during this period ranges from 138 percent in April 1937 to 1,856 percent in February 1938.

This analysis is pertinent to any consideration of what the future may bring. Though the period available for study is brief, the tendencies are distinct and uninterrupted. Industrial unrest, particularly where the right to organize is an important issue, finds two main outlets—strikes and appeal to the Board. The former is drastically affected by such cyclical fluctuations as business recession or progression; the latter scarcely so. While the number of cases before the Board has a seasonal pattern which is similar to that of strikes, it is, nevertheless, steadier. As an established, legally sanctioned agency, it provides an outlet for industrial protest which might otherwise result in strikes; and a larger proportion of such protests are being taken to the Board rather than expressed in the form of strikes.

C. STATE LABOR RELATIONS BOARDS

In its last report the Board stated that it looked with favor on the adoption of State labor relations acts patterned after the National Labor Relations Act. Consequently, the Board regrets that during the fiscal year covered by this report no other States saw fit to follow the example previously set by Massachusetts, New York, Pennsylvania, Utah, and Wisconsin by passing labor relations acts. Labor relations bills were, however, introduced in several legislatures.

Last year the Board also reported that it hoped to make cooperative arrangements with the State boards to the end that administrative friction and lack of uniformity in the application of principles would not ensue. This hope has been completely fulfilled and the Board or its agents has been able to achieve satisfactory working arrangements with all of the State boards or their agents. As a result, cases filed with this Board in which State boards had jurisdiction were immediately and informally transferred to the State boards, or vice versa, with a minimum of misunderstanding and with no delay. Since many cases which would have previously been filed with this Board but over which this Board would nevertheless not have had jurisdiction were filed with State boards after they were organized, the unnecessary burden of investigation of such cases theretofore carried by the Board was lifted.

Naturally, the Board hopes that when the State legislatures meet again they will give serious consideration to the question of bringing to workers engaged in intrastate business the benefits now enjoyed by workers in interstate commerce. The Board has never been jealous of its jurisdiction and is prepared to cooperate with any new State boards to the same extent as it has with the boards already created.

D. COURT REVIEW OF THE BOARD'S ORDERS

No single event in the life of the Board during the past year can be compared in significance to the great constitutional decisions which

were recorded in last year's report. However, much of the energy which had previously been spent mainly in attacking the constitutional validity of the National Labor Relations Act was diverted into other channels. Instead of being engaged in one critical struggle the Board found itself fighting a number of battles on different fronts. Some of these were obviously rear-guard actions in one form or another, as for example the persistence of efforts to enjoin the Board from even holding hearings pursuant to the act.[3] The issue raised by these efforts was definitely settled in the Board's favor during the year by three Supreme Court decisions. Also settled in the Board's favor by action of the Supreme Court were a number of important legal issues arising under the terms of the statute. The Court sustained the Board fully in the five cases which were argued during the year. In the four others which the Court declined to review the Board's orders had been upheld in the circuit courts of appeals. Thus, the Board went through a year of Supreme Court litigation with a perfect record.

In the circuit courts of appeals, the Board was sustained in 18 cases [4] and lost in 6. During the early months of the year, the Board was almost consistently successful. However, as the year drew to a close there appeared a tendency in certain cases for the circuit courts to set aside factual findings as unsupported by evidence. The statute provides that the findings of the Board as to the facts, if supported by evidence, shall be conclusive. It has been well established by the courts that such provisions, in other statutes as well as in the National Labor Relations Act, place the responsibility of weighing and appraising the evidence upon the administrative or quasi judicial agency. The tendency of some of the circuit courts, as it appears to the Board, in departing from these principles raise an important problem which will no doubt be resolved by the Supreme Court.

In several cases also the circuit courts of appeals have in the opinion of the Board unduly limited the purposes of the act in the setting aside of remedial orders designed to remedy situations caused by unfair labor practices. The Board feels confident that final judicial determinations will resolve this problem also.

E. THE BOARD AND THE ADMINISTRATIVE PROCESS

Ironically enough, coincident with the appearance in decisions of the circuit courts of the tendency to go behind the Board's evidentiary findings, criticism of the statute increased because, it was argued, the act made the findings of the Board, if supported by any evidence, conclusive. Adverse discussion of the provision seldom recognized that the provision is not novel to the National Labor Relations Act, that, as put by a recent writer, "Statute and decision have firmly established the rule that administrative findings of fact, if supported by evidence, are conclusive."

[3] See Second Annual Report, ch. VIII, pp. 31–40.
[4] In 2 of these cases the order of the Board was modified in minor respects.

Inasmuch as the decision of the Supreme Court in the *Morgan case* [5] during the spring of 1938 also gave rise to a wide revival of popular and professional interest as to the nature of quasi judicial agencies and in their methods of administration, it may be helpful to describe in a general way the manner in which the Board performs its several functions. When charges are filed by individuals or labor organizations they are investigated by the Board's field agents who are subject to the general supervision of the Secretary of the Board. The Board itself decides whether complaints should be issued in only a very small proportion of the cases, and then only if the preliminary investigation indicates that the case involves a particularly difficult question of fact or law or an important new application of the statutory policy. The members of the Board themselves are therefore rarely familiar with the details of the case in its investigative stages, and never at first-hand. When a complaint is issued, the case is tried by an attorney permanently assigned to a field office who is directly responsible to an Associate General Counsel. Neither the attorney nor the Associate General Counsel is in direct consultation with the Board in connection with the particular case except when there is an extraordinary development which concerns the policy of the Board as a whole. Even in the exceptional case, however, the members of the Board take no further direct interest in the case after the question of policy has been decided. The hearing on the complaint is presided over by a trial examiner who is designated in each case by the Chief Trial Examiner. Again there is no consultation in the particular case between the Board, on the one hand, and the trial examiner or the Chief Trial Examiner, on the other unless, again, some new question of policy is involved. More significant are the instructions to the staff that there must be no relationship between the attorney for the Board trying the case and the trial examiner sitting on it except that which normally exists between judge and counsel. After the trial examiner issues his intermediate report, and exceptions thereto are taken by the parties, the case comes to the Board on the formal record for the making of the statutory findings of fact, conclusions of law, and appropriate order. In this work the Board is assisted, as the Supreme Court has expressly said administrative agencies may be, by a staff of lawyers under the supervision of an Assistant General Counsel. In deciding a particular case on the record there is no consultation between the Board or its assistants, on the one hand, and the attorney who tried the case or the trial examiner who heard it, on the other.

This description of the manner in which the Board performs its duties under the act takes on full meaning only when considered in the light of the fact that the procedural provisions of the act as a whole are by no means novel and have been sustained as constitutional in many Supreme Court precedents. To quote Chief Justice Hughes in the first case raising the issue under the act, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation* (301 U. S. 1, 46–47):

> The procedural provisions of the act are assailed. But these provisions, as we construe them, do not offend against the constitutional requirements governing the creation and action of administrative bodies. See *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.* (227 U. S. 88, 91). The act estab-

[5] *Morgan* v. *U. S.*, 304 U. S. 1 (1938).

lishes standards to which the Board must conform. There must be complaint, notice, and hearings. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority, are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation.

In other words, the Supreme Court has always been realistic in its appraisal of the functions of the quasi judicial agencies, and has never given comfort to those who have argued that the Interstate Commerce Commission Act, the Federal Trade Commission Act, the National Labor Relations Act, and similar statutes, do violence to the fundamental concept that a person should not sit in judgment on his own case.

F. THE EFFECT ON THE WORK OF THE BOARD OF THE CONFLICT BETWEEN THE AMERICAN FEDERATION OF LABOR AND THE COMMITTEE FOR INDUSTRIAL ORGANIZATION

The increase of membership in the American Federation of Labor and the Committee for Industrial Organization which followed the Board's original victories in the Supreme Court and which was noted in last year's report continued during the past year, although not at so great a rate. Problems posed for the Board as a result of labor's internecine strife continued to press for solution.

Interestingly enough, the Board's decisions relating to the appropriate unit—decisions which could conceivably affect the heart of the philosophical conflict between the two labor groups—seem to have generated less heat than the very small number of cases in which the Board has found that one of the labor groups has profited at the direct expense of the other by the employer's unfair labor practices. In such situations the Board's duty is so precise and unequivocal under the act that it is difficult to understand how it could be contended that the Board has no power to make appropriate remedial orders. The explanation probably lies in the fact that in most of such cases the beneficiary of the employer's illegal acts also secures a collective agreement, with or without a closed-shop agreement, and is naturally loath to recognize the Board's duty to compel the employer to forego the fruits of his violation of the law. In any event, since the primary objective of the Board is to encourage genuine collective bargaining through freely chosen representatives, it has necessarily used its power in such cases with understandable wariness and with scrupulous regard for all the circumstances of the particular case.

In connection with the exercise of the power given it in section 9 (b) of the act to decide in each case the unit appropriate for collective bargaining, the Board introduced during the past year a new technique which it has since consistently applied in suitable cases. In last year's report the Board stated that:

The Board, in its decisions regarding bargaining unit, continued to follow the principles established by it during the previous year, giving due consideration

to the particular circumstances of each case, such as the history of labor relations in the plant and the industry, the mutual interest of employees, and, most important, the desires of the employees themselves.[6]

In the case of Globe Machine & Stamping Co.,[7] decided in August 1937, the Board enunciated the doctrine that in cases where all the other considerations are evenly balanced the desires as to unit of the disputed group of employees themselves should be the determining factor, and that the only certain way of ascertaining the desires of the employees is to permit them to choose in an election between the labor organization espousing the industrial unit, on the one hand, and the labor organization espousing the craft unit on the other. Since this means that in every such case the Board orders an election among the workers by crafts and groups them with the remainder of the workers in the plant only if a majority within the craft vote for the industrial unit, the industrial unions reacted critically to the adoption of the technique by the Board.

It should be observed that only a very minor proportion of the representation cases decided by the Board concern differences as to unit between the American Federation of Labor and the Committee for Industrial Organization. During the past year, for example, the Board decided only 41 cases in which there were substantial differences between unions affiliated with the American Federation of Labor and unions affiliated with the Committee for Industrial Organization. If the results in these cases are broken down, the figures are as follows:

Substantial disagreement as to the appropriate unit	41
(A) Adoption of American Federation of Labor contention	21
(1) In general	18
(2) Accompanied by adoption of Committee for Industrial Organization contentions as to inclusion of minor groups	3
(B) Adoption of Committee for Industrial Organization contention	[1]16
(1) In general	16
(2) Accompanied by adoption of American Federation of Labor contentions as to inclusion of minor groups	0
(C) Adoption in part of contentions of both groups	4

[1] It should be noted that not all of the 16 cases in which the contention of the Committee for Industrial Organization was adopted involved the issue of craft versus industrial unionism in any direct way. In fact, the issue in most of the cases in this group was quite different. For example, 5 of the cases raised questions concerning the appropriateness of multiple-plant and multiple-company units (*Ohio Foundry Co.*, 3 N. L. R. B. 701; *United Shipyards, Inc.*, 5 N. L. R. B. 742; *Des Moines Steel Co.*, 6 N. L. R. B. 532; *Shipowners' Assn. of the Pacific Coast, etc.*, 7 N. L. R. B. 1002; *Fisher Body Corporation, etc.*, 7 N. L. R. B. 1083), and in 1 of these the American Federation of Labor argued for the larger unit (*Des Moines Steel Co.*, 6 N. L. R. B., 532); and 2 of them raised the question whether a union should be placed on the ballot when it had no members among the employees of the employer (*Texas Co., West Tulsa Works*, 4 N. L. R. B. 182; *Waggoner Refining Co., Inc., etc.*, 6 N. L. R. B. 731). For a detailed analysis of the cases, see ch. 7, post.

The necessity for deciding such issues as just outlined between unions affiliated with the American Federation of Labor and unions affiliated with the Committee for Industrial Organization has always been distasteful to the Board, especially since their decision and the decision of other issues which have arisen because of the split has absorbed a disproportionate part of the Board's time and energies. However, the Board has had no alternative under the statute except

[6] Second Annual Report (1937), p. 2.
[7] 3 N. L. R. B. 294.

to decide these issues when presented. Despite the profound cleavage in the labor movement, organized labor has still been able to derive enormous benefits as a result of the great guaranties of economic democracy embodied in the National Labor Relations Act. A unified labor movement would be in even a stronger position to enjoy the rights protected by the statute, and the Board is therefore gratified to note that at the time this report is being prepared there are signs that before another year has passed disunity in the American labor movement may be a thing of the past.

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

II. THE NATIONAL LABOR RELATIONS BOARD

A. THE BOARD

During the fiscal year 1938, the members of the Board were as follows: J Warren Madden, of Pennsylvania, chairman; Edwin S. Smith, of Massachusetts, member; and Donald Wakefield Smith, of Pennsylvania, member.

B. ORGANIZATION—WASHINGTON OFFICE

As will be seen by the accompanying chart, the following major divisions in the Washington office have been established by the Board: Administrative, Legal, Trial Examining, Economic Research, and Publications.

The Administrative Division, under the general supervision of the Secretary, is responsible for the coordination of all the divisions of the Board and also for the administrative activities of the Board both in the Washington and regional offices.

The clerical and fiscal work is under the direct supervision of a chief clerk who is directly responsible for the following sections: Accounts, Personnel, Dockets, Files and Mails, Purchase and Supply, Duplicating and Stenographic.

The Secretary, together with the Assistant Secretary and an administrative staff, directs and supervises all case development in the field to the point where hearings are held, and specializes in the labor-relations phases of these problems as well as the more formal procedures under the act. The executive office conducts liaison activities with other Government agencies and establishments in matters germane to the handling of the Board's cases.

The Legal Division, under the supervision of the General Counsel, has charge of the legal work involved in the administration of the National Labor Relations Act. This work falls into two main sections, Litigation and Review.

The Litigation Section, headed by the Associate General Counsel, is responsible for the conduct of hearings before the Board and advises the regional attorneys in their conduct of hearings before the agents of the Board in the field. It represents the Board in judicial proceedings seeking to enjoin the Board from holding hearings and taking other action in cases before it, and also represents the Board in proceedings brought by it in the United States circuit courts of appeals for the enforcement of its orders, and proceedings brought by parties for the review of the Board's orders. It collaborates with the Department of Justice in the presentation of arguments before the Supreme Court of the United States. It prepares briefs for presentation to the courts in all judicial proceedings brought by or against the Board.

The Review Section, headed by the Assistant General Counsel, assists in the analysis of the records of hearings in the regions and before the Board in Washington. It submits to the Board opinions and advice on general questions of law and problems of interpretations of the act and the Board's rules and regulations, and in response to inquiries from the regional offices submits to the regional attorneys opinions on the interpretation of the act as applied to specific facts. In collaboration with other divisions it prepares, for submission to the Board, orders, forms, rules, and regulations, and it engages in the research incidental to the formulation of legal opinions.

In addition to the foregoing, the Legal Division exercises supervision over the legal work of the regional attorneys in the field.

The Trial Examiners' Division is entirely separate from the Legal Division. It operates under the direct supervision of the Chief Trial Examiner, who is attached to the executive staff of the Board. The Chief Trial Examiner assigns trial examiners to hold hearings on behalf of the Board. Staff members of this Division are assigned to preside over hearings on formal complaints and petitions for certification of representatives, to make rulings on motions, to prepare intermediate reports containing findings of fact and recommendations for submission to the parties, and to prepare informal reports to the Board.

The Economics Division, under the supervision of the Chief Economist, prepares the economic material necessary for use as evidence in the Board's cases, covering both the business of the particular employer involved in a case before the Board and at times the industry of which this business is a part. It also makes general studies of the economic aspects of labor relations for use of the Board in its formulation of policy and prepares the economic material needed for inclusion in briefs for the courts in cases where the Board is a litigant.

The Publications Division, under the supervision of the Director of Publications, makes available to the public information regarding the activities of the Board, through releases and answers to oral and written inquiries. Copies of the Board's decisions and orders, rules and regulations, statements concerning the status of cases before the Board and its regional offices, and similar information are sent out in the form of releases issued to the press and through mailing lists.

C. ORGANIZATION—REGIONAL OFFICES

No substantial modification has been made of the organizational or functional character of the Board's regional offices within the fiscal year.

The regional director is the administrative head of each regional office, under the supervision of the Secretary's office in Washington. He is also in charge of the labor-relations work, investigating charges of commission of unfair labor practices and petitions for certification of representatives, attempting to secure compliance with the law without formal procedure, issuing complaints, or refusing to issue complaints, after advising with the regional attorney, and conducting elections as agent of the Board.

The field examiners aid the regional director in his investigations and efforts to secure compliance, in holding elections as agents of the Board, and in other nonadministrative duties.

The regional attorney is the legal officer in the regional office and acts as counsel to the regional director and as counsel for the Board in the conduct of hearings. The regional attorney is assisted in his duties by other attorneys attached to the regional office.

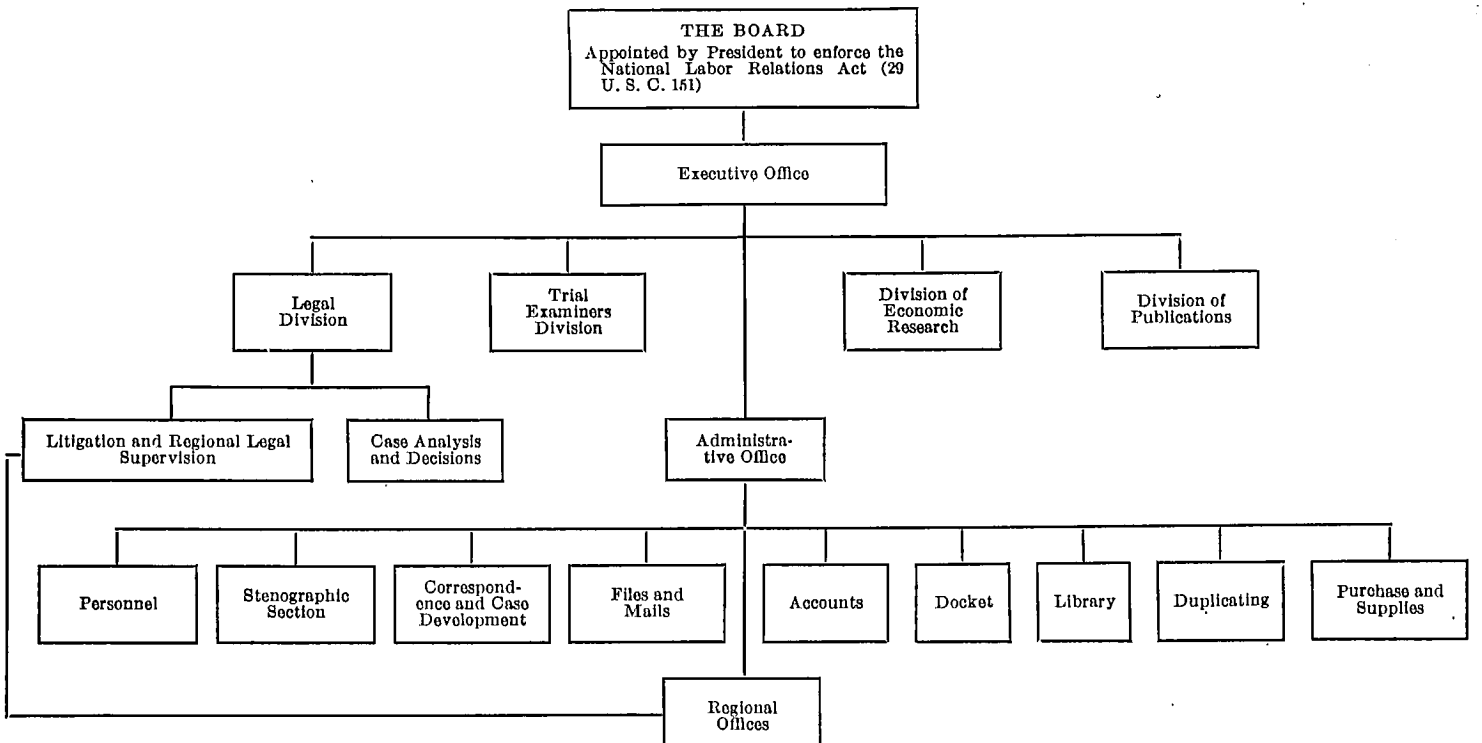
D. REGIONAL OFFICES—LOCATION, TERRITORY, AND PERSONNEL

Region 1, Old South Building, Boston, Mass.	Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Windham, New London, Tolland, Hartford, and Middlesex Counties in Connecticut.	A. Howard Myers, director; Edward Schneider, attorney.
Region 2, 560 Woolworth Building, New York City.	Litchfield, New Haven, and Fairfield Counties in Connecticut; Clinton, Essex, Washington, Warren, Saratoga, Schenectady, Albany, Rensselaer, Columbia, Greene, Dutchess, Ulster, Sullivan, Orange, Putnam, Rockland, Westchester, Bronx, New York, Richmond, Kings, Queens, Nassau, and Suffolk Counties in New York State; Sussex, Passaic, Bergen, Warren, Morris, Essex, Hudson, Union, Middlesex, Somerset, Monmouth, and Hunterdon Counties in New Jersey.	Mrs. Elinore M. Herrick, director; David A. Morse, attorney.
Region 3, Federal Building, Buffalo, N. Y.	New York State, except for those counties included in the second region.	Henry J. Winters, director; Edward Flaherty, attorney.
Region 4, Bankers Securities Building, Philadelphia, Pa.	Mercer, Ocean, Burlington, Atlantic, Camden, Gloucester, Salem, Cumberland, and Cape May Counties in New Jersey; New Castle County in Delaware; all of Pennsylvania lying east of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties.	Bennet F. Schauffler, director; Samuel G. Zack, attorney.
Region 5, 32 South Street, Baltimore, Md.	Kent and Sussex Counties in Delaware; Maryland; District of Columbia; Virginia; North Carolina; Jefferson, Berkeley, Morgan, Mineral, Hampshire, Grant, Hardy, and Pendleton Counties in West Virginia.	William M. Aicher, director; Jacob Blum, attorney.

Region 6, Post Office Building, Pittsburgh, Pa.	All of Pennsylvania lying west of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties; Hancock, Brooke, Ohio, Marshall, Wetzel, Monongalia, Marion, Harrison, Taylor, Doddridge, Preston, Lewis, Barbour, Tucker, Upshur, Randolph, Webster, and Pocahontas Counties in West Virginia.	Charles T. Douds, director; Robert H. Kleeb, attorney.
Region 7, National Bank Building, Detroit, Mich.	Michigan, exclusive of Gogebic, Ontonagon, Houghton, Keweenaw, Baraga, Iron, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Chippewa, and Mackinac Counties.	Frank H. Bowen, director; Harold Cranefield, attorney.
Region 8, 820 N. B. C. Building, Cleveland, Ohio.	Ohio, north of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties.	James P. Miller, director; Harry L. Lodish, attorney.
Region 9, 1220 Enquirer Building, Cincinnati, Ohio.	West Virginia, west of the western borders of Wetzel, Doddridge, Lewis, and Webster Counties and southwest of the southern and western borders of Pocahontas County; Ohio, south of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties; Kentucky, east of the western borders of Hardin, Hart, Barren, and Monroe Counties.	Philip G. Phillips, director; Oscar Grossman, attorney.
Region 10, Ten Forsyth Street Building, Atlanta, Ga.	South Carolina; Tennessee; Georgia; Alabama, north of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties.	Charles N. Feidelson, director; Maurice Nicoson, attorney.
Region 11, Architects Building, Indianapolis, Ind.	Indiana, except for Lake, Porter, La Porte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and De Kalb Counties; Kentucky, west of the western borders of Hardin, Hart, Barren, and Monroe Counties.	Robert H. Cowdrill, director; Lester M. Levin, attorney.

Region 12, Madison Building, Milwaukee, Wis.	Wisconsin; Gogebic, Ontonagon, Houghton, Keweenaw, Baraga, Iron, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Chippewa, and Mackinac Counties in Michigan.	Nathaniel S. Clark, director; Frederick P. Mett, attorney.
Region 13, 20 North Wacker Drive, Chicago, Ill.	Lake, Porter, La Porte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and DeKalb Counties in Indiana; Illinois, north of the northern borders of Edgar, Coles, Shelby, Christian, Montgomery, Macoupin, Greene, Scott, Brown, and Adams Counties.	Leonard C. Bajork, director; Isaiah S. Dorfman, attorney.
Region 14, United States Court and Customhouse, St. Louis, Mo.	Illinois, south of the northern borders of Edgar, Coles, Shelby, Christian, Montgomery, Macoupin, Greene, Scott, Brown, and Adams Counties; Missouri, east of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Callaway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties.	Miss Dorothea de Schweinitz, director; Thurlow Smoot, attorney.
Region 15, Hibernia Bank Building, New Orleans, La.	Louisiana; Arkansas; Mississippi; Florida; Alabama, south of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties.	Charles H. Logan, director; Samuel Lang, attorney.
Region 16, Federal Court Building, Fort Worth, Tex.	Oklahoma, Texas.	Edwin A. Elliott, director; Elmer P. Davis, attorney.
Region 17, Scarritt Building, Kansas City, Mo.	Missouri, west of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Callaway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties; Kansas; Nebraska.	Paul Broderick, attorney and acting director.
Region 18, New Post Office Building, Minneapolis, Minn.	Minnesota, North Dakota, South Dakota, Iowa.	Robert J. Wiener, director; Lee Loevinger, attorney.

Region 19, Dexter Horton Building, Seattle, Wash.	Washington, Oregon, Idaho, Territory of Alaska.	Elwyn J. Eagen, didirector; G. L. Patterson, attorney.
Region 20, 1095 Market Street, San Francisco, Calif.	Nevada; California, north of the southern borders of Monterey, Kings, Tulare, and Inyo Counties; Territory of Hawaii.	Mrs. Alice M. Rosseter, director; John McTernan, attorney.
Region 21, Pacific Electric Building, Los Angeles, Calif.	Arizona; California, south of the southern borders of Monterey, Kings, Tulare, and Inyo Counties.	Towne J. Nylander, director; William R. Walsh, attorney.
Region 22, Central Savings Bank Building, Denver, Colo.	Montana, Utah, Wyoming, Colorado, New Mexico.	Aaron W. Warner, director; Charles Graham, acting attorney.


THE BOARD
Appointed by President to enforce the National Labor Relations Act (29 U. S. C. 151)
Executive Office
Legal Division
Trial Examiners Division
Division of Economic Research
Division of Publications
Litigation and Regional Legal Supervision
Case Analysis and Decisions
Administrative Office
Personnel
Stenographic Section
Correspondence and Case Development
Files and Mails
Accounts
Docket
Library
Duplicating
Purchase and Supplies
Regional Offices

III. PROCEDURE OF THE BOARD

The procedure of the Board, as set forth in the act and elaborated in the Rules and Regulations made and published thereunder,[1] was discussed in detail in the First Annual Report.[2] This procedure, carefully devised to meet the requirements of a full and fair hearing, has stood the test of time and experience. In no decided case under the act has the Board's procedure been successfully challenged, and during the present fiscal year the Board has found it desirable to modify its procedure in only one respect, hereinafter discussed.

As pointed out in the First Annual Report, the Board, in cases arising under Section 10 of the act, has usually followed the practice of requiring the trial examiner hearing the case to submit an intermediate report, containing his findings of fact on the evidence and his recommendations as to the disposition of the case. This intermediate report is served on the parties.[3] Within 10 days from the date on which the intermediate report is filed, unless the time is extended, as is often the case, any party is permitted to file with the Board a statement of exceptions to the report or to any other part of the record.[4] Upon request, the Board has also permitted the parties to submit briefs and present oral argument before the Board in Washington.

In some cases, relatively few in number, in which it was deemed specially important that the Board first consider the record, the Board, at the conclusion of the hearing, has ordered that the proceeding be transferred to and continued before it.[5] In such cases, the procedure was similar to that in other cases except that the filing of an intermediate report by the trial examiner was dispensed with.

Following the decision of the Supreme Court in *Morgan* v. *United States* (304 U. S. 1), decided April 25, 1938, the Board modified its practice to require in all cases the issuance of either an intermediate report or of proposed findings of fact.[6] In other words, if no intermediate report were made by the trial examiner, then the Board itself, before making its final decision, issued proposed findings and a proposed order. This is served on the parties, with the right to file exceptions thereto and to brief or to argue orally the exceptions before the Board. In the Morgan case, the Court held invalid an order of the Secretary of Agriculture, under the Packers and Stockyards Act, based upon findings prepared by those who had engaged

[1] Series I, as amended, Apr. 7, 1936; published in *Federal Register*, vol. 1, no. 32, Apr. 28, 1936. The Board found it unnecessary to amend its Rules and Regulations during the present fiscal year.
[2] Ch. V, pp. 21–28.
[3] Art. II, sec. 32, Rules and Regulations.
[4] Art. II, sec. 34, Rules and Regulations.
[5] Art. II, sec. 37, Rules and Regulations.
[6] Proposed findings of fact were subsequently issued in the following cases: *Matter of Smith Wood Products, Inc.*, 7 N. L. R. B. 113; *Matter of Inland Steel Company*, 9 N. L. R. B., No. 73; *Matter of Douglas Aircraft Corporation*, 10 N. L. R. B., No. 18; *Matter of Empire Furniture Company*, case No. C–305.

in the prosecution of the investigation, in a proceeding in which no specific complaint had been formulated informing the respondent of the nature of the Government's contentions. The Board, notwithstanding the Morgan case, considered its previous practice and procedure valid and in no way lacking in due process.[7] It made the change so as always to have served upon the parties either an intermediate report or proposed findings issued by the Board as a desirable improvement. It was thought that the determination of the merits of controversies before the Board might thus be expedited and the purposes of the act more effectually carried out.

The Board's faith in the propriety of its previous procedure was confirmed by the decision of the Supreme Court in *National Labor Relations Board* v. *Mackay Radio & Telegraph Company* (304 U. S. 333), decided May 15, 1938, a case in which no intermediate report had been made and no proposed findings issued. The Court stated:

> The respondent now asserts that the failure of the Board to follow its usual practice of the submission of a tentative report by the trial examiner and a hearing on exceptions to that report deprived the respondent of opportunity to call to the Board's attention the alleged fatal variance between the allegations of the complaint and the Board's findings. What we have said sufficiently indicates that the issues and contentions of the parties were clearly defined, and as no other detriment or disadvantage is claimed to have ensued from the Board's procedure the matter is not one calling for a reversal of the order. The fifth amendment guarantees no particular form of procedure; it protects substantial rights. Compare *Morgan* v. *United States* (298 U. S. 468, 478). The contention that the respondent was denied a full and adequate hearing must be rejected.[8]

[7] Specific complaints clearly stating the issues are served upon the respondent in all cases arising under sec. 10 of the act. Furthermore, the regional attorneys who prosecute complaints under the act play no part in the decision of the cases.

[8] A similar conclusion was arrived at by the Circuit Court of Appeals for the Second Circuit in *Consolidated Edison Co.* v. *National Labor Relations Board*, 95 F. (2d) 390, cert. granted, 58 S. Ct. 1038, in which the company contended that it had been deprived of due process of law by the elimination of an intermediate report. In no decided case under the act has an order of the Board been set aside because of procedural defects. In addition to the *Mackay* and *Consolidated Edison cases*, the Board's procedure was upheld in *National Labor Relations Board* v. *Biles Coleman Lumber Company*, 98 F. (2d) 16 (C. C. A. 9th) and in *National Labor Relations Board* v. *American Potash and Chemical Corporation*, 98 F. (2d) 488 (C. C. A. 9th) during the present fiscal year.

IV. WORK OF THE BOARD

A. STATISTICAL SUMMARY

Cases on docket July 1, 1937, to June 30, 1938.—On June 30, 1937, there were pending before the Board 2,202 cases, involving 1,030,819 workers, which were carried over on July 1, 1937, from the preceding fiscal year.[1] During the period from July 1, 1937, to June 30, 1938, the regional offices received 10,419 charges and petitions, involving a total of 2,096,717 workers, and 11 charges and petitions, involving 4,152 workers, were filed directly with the Board. Thus, 12,632 cases, involving 3,131,688 workers, were on the dockets of the Board during the 12 months ending June 30, 1938.

Complaint cases are those cases which are instituted by the filing of charges by labor organizations or individuals, alleging that employers have engaged in unfair labor practices within the meaning of sections 8 and 10 of the act. All cases instituted by the filing of a petition, pursuant to section 9 (c) of the act, requesting an investigation and certification of representatives, are called representation cases.

Cases closed July 1, 1937, to June 30, 1938.—The Board and the regional offices disposed of 8,851 cases, involving 1,845,818 workers, during the period covered by this report.

Upon the receipt of a charge or petition, the regional director, after appropriate investigation, had to determine whether the unfair labor practice or the question concerning representation affected commerce sufficiently to warrant his issuing a complaint, where a charge had been filed, or, in a representation case, to warrant his recommending to the Board that an investigation and hearing be ordered pursuant to section 9 (c) of the act.

The director also had to determine, in complaint cases, whether the facts alleged by the party filing the charge constituted an unfair labor practice within the meaning of section 8 of the act, and in representation cases, whether a question or controversy existed within the meaning of section 9 (c).

If the director decided that the facts revealed by his investigation did not warrant the institution of formal proceedings under the act, he so informed the party filing the charge or petition and offered such party an opportunity to withdraw the charge or petition. Besides the withdrawals occurring in such cases, some charges and petitions were withdrawn as a result of a settlement of the issues in dispute reached directly by the parties involved without the intervention of the regional office. In a few instances withdrawals of charges or petitions resulted from the transfer of the cases to other agencies of the Government within whose jurisdiction the matters more properly belonged.

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[1] The pending figures on June 30, 1937, as given in the Board's Second Annual Report (ch. V, p. 16), were 2,054 cases and 1,027,028 workers. These figures were revised upon receipt of additional information from the regional offices.

If the parties filing the charges or petitions did not choose to withdraw them when informed by the regional director that in his opinion no further action was warranted, the director issued orders formally refusing to issue complaints, and recommended to the Board, in representation cases, that the petitions be dismissed.

In a majority of cases settlements in compliance with the act were brought about through the voluntary cooperation of the employer, the complaining union, and the agents of the Board.

In some instances charges or petitions involving the same employer were filed in more than one regional office. In most of such cases all of the charges or petitions were transferred to one of the regional offices, thus securing more expeditious and complete disposition.

After formal action taken by the Board, complaint cases may be disposed of either by compliance with the recommendations of the intermediate report of the trial examiner, after hearing, or by compliance with Board decisions and orders. Even after formal action, in many instances, cases were settled, withdrawn, or dismissed.

Settlements in compliance with the act were secured in 4,621 cases,[2] or 52.2 percent of the total cases closed. A total of 1,439 cases, or 16.3 percent of the cases closed, was dismissed either by the regional directors or by the trial examiners during hearings. Parties filing charges and petitions withdrew 2,345 cases,[3] or 26.5 percent of all cases closed.

The remaining 446 cases, or 5 percent of the total cases disposed of, were closed after the issuance of Board decisions and orders. Included in these 446 cases are 29 cases in which there was compliance with the Board's orders, 75 cases which were dismissed by Board decision, and 342 cases which were closed as a result of the Board's certification of unions representing a majority of the workers in the appropriate units.

Table I shows the cases on docket, the number of workers involved, and various methods by which cases were disposed of during the fiscal year ending June 30, 1938, as well as the total number of cases pending on that date.

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[2] This figure includes 12 cases in which the respondents agreed to comply with the recommendations of the trial examiner.

[3] This figure includes 125 cases closed by transfer to other agencies or by transfer from one regional office to another.

TABLE I.—*Disposition of all charges and petitions on docket July 1, 1937, to June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved[1]	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	2,202	----	17.4	1,030,819	----	32.9
Cases received July 1, 1937, to June 30, 1938	10,430	----	82.6	2,100,869	----	67.1
Total cases on docket	12,632	----	100.0	3,131,688	----	100.0
Cases closed before formal action:						
By settlement	4,428	50.0	35.1	574,679	31.1	18.4
By dismissal	1,368	15.5	10.8	159,513	8.7	5.1
By withdrawal	2,124	24.0	16.8	451,893	24.5	14.4
By transfer to other agencies	122	1.4	1.0	23,012	1.2	.7
Total cases closed before formal action	8,042	90.9	63.7	1,209,097	65.5	38.6
Cases closed after formal action:						
By settlement	181	2.1	1.5	359,340	19.5	11.5
By dismissal before issuance of Board decision	69	.8	.5	20,699	1.1	.7
By withdrawal before issuance of Board decision	96	1.1	.8	35,604	1.9	1.1
By transfer to other agencies	3	(2)	(2)	1,702	.1	.1
By intermediate report finding no violation	2	(2)	(2)	2	(2)	(2)
By compliance with intermediate report	12	.1	.1	1,519	.1	(2)
By issuance of decisions and orders:						
Certification	342	3.9	2.7	192,689	10.4	6.1
Compliance	29	.3	.2	5,781	.3	.2
Dismissal of complaint or petition	75	.8	.6	19,385	1.1	.6
Total cases closed after formal action	809	9.1	6.4	636,721	34.5	20.3
Total cases closed July 1, 1937, to June 30, 1938	8,851	100.0	70.1	1,845,818	100.0	58.9
Cases pending June 30, 1938	3,781	----	29.9	1,285,870	----	41.1

[1] In a number of cases, charges and petitions were filed relating to the same group of employees. In those cases where the number of employees involved has been included in the amount involved in complaint cases, this number has been omitted from the total of those involved in representation cases, and vice versa.
[2] Less than 0.05 percent.

Cases pending as of June 30, 1938.—Of the 12,632 cases, involving 3,131,688 workers, on docket during the fiscal year 1937–38, 3,781 cases, involving 1,285,870 workers, were pending on June 30, 1938. Thus, about 70 percent of the total cases on docket were disposed of during this period, with approximately 30 percent awaiting further action by the Board.

Included in the 3,781 pending cases were 2,604 cases, or 68.9 percent, which were awaiting further action by the regional directors; 232 cases, or 6.1 percent, were awaiting the issuance of an intermediate report by the trial examiners; 629 cases, or 16.6 percent, were awaiting the decision of the Board; and 316 cases, or 8.4 percent, were awaiting certification by the Board or compliance with the Board's decisions.

Decisions issued and cases heard.—During the fiscal year 1937–38 the Board held hearings in 1,451 cases, all of which were conducted by trial examiners designated by the Chief Trial Examiner.[4]

[4] Hearings which opened on or before June 30, 1938, but were still in progress after this date were excluded from this total.

After the complaint cases had been transferred to the Board, either by its order transferring the cases, by the filing of exceptions to the intermediate report of the trial examiner by any of the parties to the proceedings, or by the failure of the respondents to comply with the recommendations contained in the intermediate report, and after the representation cases had been heard, the Board issued decisions in 701 cases. This represents 5½ percent of the 12,632 cases on docket during the 12-month period covered by this report. Included in these 701 cases were 514 cases involving the determination of representatives, and 187 cases involving unfair labor practices.

Settlements.—The Board has attempted in every way possible to reduce the time element in the procedure before it to a minimum but it has no control over the time which elapses as a result of the review of its orders by the courts. Therefore, the ability of the regional directors to secure settlements without recourse to formal proceedings has meant the rapid removal from the area of possible industrial conflict of certain disputes which, by their nature, are likely to lead to economic strife. The Board is gratified to report, therefore, that substantial compliance with the act was secured in 4,621 cases settled as a result of the direct participation of the Board's staff during the fiscal year ending June 30, 1938. These cases represented 52.2 percent of all cases disposed of during the period.

In some of the settlements secured by the Board during the fiscal period ending June 30, 1938, intervention by the Board took place before the disputes involved had advanced to the stage of strikes or threatened strikes. However, the issues in these disputes, discrimination, and union recognition and collective bargaining, were the same issues which have caused a large percentage of strikes in the United States for many years, and it may safely be stated that a large proportion of these disputes would have culminated in strikes but for the intervention of the Board.[5]

Of the 4,621 cases settled by the Board, 2,972 were complaint cases, the settlements of which resulted in recognition of the workers' representatives, the disestablishment of company unions, reinstatement of employees who were discriminated against because of union activity, the cessation of interference with employees' exercise of the right of self-organization, the posting of notices to this effect, the placement of workers on preferential employment lists, payment of back wages.[6] The settlements in these 2,972 complaint cases affected 595,640 workers.

The remaining 1,649 cases settled, involving 339,898 workers, were representation cases. Of this total 830 cases were settled by elections held with the consent of all parties involved. In many cases, as a result of these elections, the employers entered into contractual relations with the unions winning the elections. In 603 cases the employers entered into collective bargaining negotiations with the petitioning union without recourse to the election machinery provided for in the act, and in 216 additional cases the employers consented to a pay-roll check, i. e., a comparison of union membership cards with the employers' pay rolls, in order to determine whether or not a majority of their employees had selected the petitioning union as their representative.

In about 64 percent of all cases closed by settlement, the terms of the agreement were reduced to writing.

[5] See appendix A, p. 284.
[6] 26 complaint cases were settled by elections conducted by the Board and its agents.

Workers reinstated.—During the fiscal year, the Board brought about the reinstatement of 6,630 workers alleged to have been discriminatorily discharged and by its actions 88,191 workers were reinstated after strikes or lock-outs. Thus, 94,821 workers were returned to their jobs as a result of the intervention of the Board.

Strikes settled and strikes averted.—The Board handled 1,003 cases in which strikes or lock-outs were in progress during the year ending June 30, 1938, involving 139,260 workers, and settlements were secured in 771 cases, or 77 percent, affecting 96,252 workers.

In addition to the foregoing, strikes had been threatened but were averted in 287 cases. These cases involved 78,014 workers.

B. ANALYSIS OF CASES BY UNIONS INVOLVED

There is presented in this section an analysis of all cases on docket during the fiscal year ending June 30, 1938, by the type of labor organization which filed either the charge or petition. Complainants and petitioners have been divided into four groups—unions affiliated with the A. F. of L., unions affiliated with the C. I. O., unaffiliated unions, and individuals.[7]

Of the 12,632 cases on the dockets of the Board during the 12-month period ending June 30, 1938, 4,593 were filed by A. F. of L. unions, 6,469 were filed by C. I. O. unions, 891 by unaffiliated unions, and 679 by individuals.

During the year the Board disposed of 74.3 percent of the A. F. of L. cases which were on docket, 67.1 percent of the C. I. O. cases, approximately 61 percent of the unaffiliated union cases, and about 82 percent of the cases filed by individuals.

Settlements were secured in 52.5 percent of the A. F. of L. cases disposed of before formal action was instituted, and in 52.7 percent of the C. I. O. cases. A. F. of L. unions withdrew 22.4 percent of all cases disposed of, whereas C. I. O. unions withdrew 25.6 percent of their cases. The Board dismissed 13.6 percent of the A. F. of L. cases before formal proceedings and 11.8 percent of the C. I. O. cases. Thus, the Board, after appropriate investigation, refused to assume jurisdiction in 36 percent of the A. F. of L. cases and in 37.4 percent of the cases filed by unions affiliated with the C. I. O.

Of the total American Federation of Labor cases disposed of, 5.9 percent were closed after the issuance of Board orders and decisions. The corresponding figure for the cases of the Committee for Industrial Organization affiliates was 5 percent, as against 5.4 percent for unaffiliated unions.

Hearings were held in 448 American Federation of Labor cases, or 9.8 percent of all American Federation of Labor cases on docket during the year. With respect to unions affiliated with the Committee for Industrial Organization the Board heard 885 cases, or 13.7 percent of all such cases on docket. The Board issued decisions in 276 cases, or 6 percent, of all A. F. of L. cases on docket, compared with the 357 cases decided, or 5.5 percent, which affected C. I. O. unions. Of the total cases of unaffiliated unions on docket, hearings were held in 99 cases and the Board issued decisions in 67 cases.

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[7] In instances where the unions changed affiliation during the proceedings before the Board, their affiliation at the time of filing the charge or petition was the determining factor.

Tables II through V contain an analysis of the number of cases, and the number of workers involved, which were filed by A. F. of L. unions, C. I. O. affiliates, unaffiliated unions, and individuals.

TABLE II.—*Disposition of all charges and petitions of American Federation of Labor unions on docket July 1, 1937, to June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	901		19.6	184,244		33.0
Cases received July 1, 1937, to June 30, 1938	3,692		80.4	374,709		67.0
Total cases on docket	4,593		100.0	558,953		100.0
Cases closed before formal action:						
By settlement	1,793	52.5	39.0	150,563	43.3	27.0
By dismissal	463	13.6	10.1	32,941	9.5	5.9
By withdrawal	765	22.4	16.7	70,558	20.3	12.6
By transfer to other agencies	51	1.5	1.1	7,366	2.1	1.3
Total cases closed before formal action	3,072	90.0	66.9	261,458	75.2	46.8
Cases closed after formal action:						
By settlement	70	2.0	1.5	7,828	2.3	1.4
By dismissal before issuance of Board decision	12	.4	.3	3,465	1.0	.6
By withdrawal before issuance of Board decision	52	1.5	1.1	10,082	2.9	1.8
By transfer to other agencies						
By intermediate report finding no violation						
By compliance with intermediate report	8	.2	.2	1,377	.4	.2
By issuance of decisions and orders:						
Certification	140	4.1	3.0	49,781	14.3	8.9
Compliance	17	.5	.4	2,198	.6	.4
Dismissal of complaint or petition	43	1.3	.9	11,430	3.3	2.1
Total cases closed after formal action	342	10.0	7.4	86,161	24.8	15.4
Total cases closed July 1, 1937, to June 30, 1938	3,414	100.0	74.3	347,619	100.0	62.2
Cases pending June 30, 1938	1,179		25.7	211,334		37.8

TABLE III.—*Disposition of all charges and petitions of Committee for Industrial Organization unions on docket July 1, 1937, to June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	927		14.3	745,809		32.3
Cases received July 1, 1937, to June 30, 1938	5,542		85.7	1,562,415		67.7
Total cases on docket	6,469		100.0	2,308,224		100.0
Cases closed before formal action:						
By settlement	2,287	52.7	35.4	377,543	27.7	16.4
By dismissal	513	11.8	7.9	78,931	5.8	3.4
By withdrawal	1,111	25.6	17.2	356,229	26.2	15.4
By transfer to other agencies	59	1.4	.9	13,999	1.0	.6
Total cases closed before formal action	3,970	91.5	61.4	826,702	60.7	35.8

TABLE III.—*Disposition of all charges and petitions of Committee for Industrial Organization unions on docket July 1, 1937, to June 30, 1938*—Continued

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases closed after formal action:						
By settlement	89	2.1	1.4	350,007	25.7	15.2
By dismissal before issuance of Board decision	15	.3	.2	13,933	1.0	.6
By withdrawal before issuance of Board decision	41	1.0	.6	21,547	1.6	.9
By transfer to other agencies	3	.1	.1	1,702	.1	.1
By intermediate report finding no violation	2	(1)	(1)	2	(1)	(1)
By compliance with intermediate report	2	(1)	(1)	140	(1)	(1)
By issuance of decisions and orders:						
Certification	182	4.2	2.8	138,888	10.2	6.0
Compliance	10	.2	.2	3,558	.3	.2
Dismissal of complaint or petition	25	.6	.4	4,594	.4	.2
Total cases closed after formal action	369	8.5	5.7	534,371	39.3	23.2
Total cases closed July 1, 1937, to June 30, 1938	4,339	100.0	67.1	1,361,073	100.0	59.0
Cases pending June 30, 1938	2,130		32.9	947,151		41.0

[1] Less than 0.05 percent.

TABLE IV.—*Disposition of all charges and petitions of unaffiliated unions on docket July 1, 1937, to June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	256		28.7	94,712		39.3
Cases received July 1, 1937, to June 30, 1938	635		71.3	146,475		60.7
Total cases on docket	891		100.0	241,187		100.0
Cases closed before formal action:						
By settlement	158	29.3	17.7	36,161	31.0	15.0
By dismissal	153	28.3	17.2	43,836	37.6	18.1
By withdrawal	136	25.2	15.3	19,104	16.4	7.9
By transfer to other agencies	5	.9	.5	1,577	1.4	.7
Total cases closed before formal action	452	83.7	50.7	100,678	86.4	41.7
Cases closed after formal action:						
By settlement	15		1.7	1,128	1.0	.5
By dismissal before issuance of Board decision	40	2.8	4.5	3,298	2.8	1.4
By withdrawal before issuance of Board decision	3	7.4	.3	3,975	3.4	1.6
By transfer to other agencies		.5				
By intermediate report finding no violation						
By compliance with intermediate report	1	.2	.1	1	(1)	(1)
By issuance of decisions and orders:						
Certification	20	3.7	2.3	4,020	3.5	1.7
Compliance	2	.4	.2	25	(1)	(1)
Dismissal of complaint or petition	7	1.3	.8	3,361	2.9	1.4
Total cases closed after formal action	88	16.3	9.9	15,808	13.6	6.6
Total cases closed July 1, 1937, to June 30, 1938	540	100.0	60.6	116,486	100.0	48.3
Cases pending June 30, 1938	351		39.4	124,701		51.7

[1] Less than 0.05 percent.

TABLE V.—*Disposition of all charges and petitions of individuals on docket July 1, 1937, to June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	118	----------	17.4	6,054	----------	26.0
Cases received July 1, 1937, to June 30, 1938	561	----------	82.6	17,270	----------	74.0
Total cases on docket	679	----------	100.0	23,324	----------	100.0
Cases closed before formal action:						
By settlement	190	34.0	28.0	10,412	50.5	44.7
By dismissal	239	42.8	35.2	3,805	18.5	16.3
By withdrawal	112	20.0	16.5	5,972	28.9	25.6
By transfer to other agencies	7	1.3	1.0	70	.3	.3
Total cases closed before formal action	548	98.1	80.7	20,259	98.2	86.9
Cases closed after formal action:						
By settlement	7	1.3	1.0	377	1.8	1.6
By dismissal before issuance of Board decision	2	.4	.3	3	(1)	(1)
By withdrawal before issuance of Board decision	----------	----------	----------	----------	----------	----------
By transfer to other agencies	----------	----------	----------	----------	----------	----------
By intermediate report finding no violation	----------	----------	----------	----------	----------	----------
By compliance with intermediate report	1	.2	.2	1	(1)	(1)
By issuance of decisions and orders:						
Certification	----------	----------	----------	----------	----------	----------
Compliance	----------	----------	----------	----------	----------	----------
Dismissal of complaint or petition	----------	----------	----------	----------	----------	----------
Total cases closed after formal action	10	1.9	1.5	381	1.8	1.6
Total cases closed July 1, 1937, to June 30, 1938	558	100.0	82.2	20,640	100.0	88.5
Cases pending June 30, 1938	121	----------	17.8	2,684	----------	11.5

[1] Less than 0.05 percent.

C. COMPARISON OF THE WORK OF THE BOARD 1937–38 WITH FISCAL YEARS 1935–36 and 1936–37

The number of cases on docket during the fiscal years 1935–36 and 1936–37 was 1,068 [8] and 4,398,[9] respectively. During the third year of its operations, the Board had under consideration 12,632 cases, or 188 percent more cases than in 1936–37.

During the year 1937–38 the Board disposed of 8,851 cases, compared with 738 cases [10] and 2,344 cases [11] during 1935–36 and 1936–37, respectively. Thus, the Board disposed of 278 percent more cases in 1937–38 than in 1936–37.

On June 30, 1937, the Board had pending before it for further action 2,054 cases,[12] or 46.7 percent of all cases on docket during the year ending on that date. Although on June 30, 1938, the Board had 3,781 cases under consideration, this figure represented 29.9 percent

[8] First Annual Report of the N. L. R. B., ch. VI, p. 30.
[9] Second Annual Report of the N. L. R. B., ch. V, p. 15.
[10] First Annual Report of the N. L. R. B., ch. VI, p. 29.
[11] Second Annual Report of the N. L. R. B., ch. V, p. 16.
[12] Ibid. See footnote 1, p. 18, *supra*.

of all cases on docket during the fiscal year 1937–38. Thus, despite the increased case load, the Board disposed of a much greater proportion of its cases during the latest period.

The Board held hearings in 1,451 cases and issued 701 decisions during the 12 months ending June 30, 1938. During the preceding fiscal year the Board heard 329 [13] cases and decided 152 [14] cases. This increase of 341 percent in cases heard and 362 percent in cases decided is another reflection of the tremendous increase in the volume of the work of the Board since the Supreme Court issued its decisions involving the validity and scope of the National Labor Relations Act.

Other comparisons of the Board's work during the period covered by this report and the preceding fiscal year show that the Board secured settlements in 4,621 cases in 1937–38 as against 1,435 cases [15] in 1936–37. During the latter period the Board had on its dockets 1,003 cases in which strikes were actually in progress, and settled 771 of these cases, which compares with 591 strike cases, and the settlement of 446 [16] of such cases during the former period.

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[13] Second Annual Report of the N. L. R. B., ch. VI, p. 24, and ch. VII, p. 28.
[14] Ibid., ch. V, p. 15.
[15] Ibid., ch. V, pp. 15–16.
[16] Ibid., ch. V, p. 17.

V. COMPLAINT CASES

A. STATISTICAL SUMMARY OF COMPLAINT CASES

Complaint cases on docket July 1, 1937 to June 30, 1938.—On June 30, 1937, there were pending before the Board 1,406 complaint cases, involving 639,693 workers.[1] These cases were, therefore, carried over on July 1, 1937, from the preceding fiscal year. During the fiscal year 1937–38, 6,807 charges, involving 1,003,346 workers, were filed with the regional offices or directly with the Board.[2] Thus a total of 8,213 complaint cases, involving 1,643,039 workers, was on the dockets of the Board during the entire period covered by this report.

Analysis of charges on docket July 1, 1937, to June 30, 1938.—Section 8 of the act lists five types of employer activity which are designated as unfair labor practices. Subsection 1 of this section so designates employer activity which interferes with, restrains, or coerces employees in the exercise of the rights enumerated in section 7 of the act. The Board has ruled that an employer who engages in any of the unfair labor practices described in subsections 2, 3, 4, or 5 of section 8, has by doing so, interfered with, restrained, or coerced his employees in the exercise of their rights as defined in section 7, and has thus engaged in an unfair labor practice within the meaning of section 8 (1). Therefore, all of the charges received by the Board alleged an unfair labor practice within the meaning of section 8 (1).

Section 8 (2) of the act prohibits domination of or interference with the formation or administration of labor organizations (the "company union" section); section 8 (3) prohibits discrimination because of union activity; section 8 (4) prohibits discrimination because of the filing of charges or testifying under the act; and section 8 (5) deals with refusal to bargain collectively.

A charge filed with the Board may allege the violation of one or more of the subsections of section 8.

Table VI shows the number of cases received by the regional offices and by the Board, as well as the analysis of cases by the various charges of unfair labor practices and the number of cases which included any one of the five subsections of section 8. Table VII contains a similar breakdown for all cases pending on June 30, 1937.

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[1] The pending figures on June 30, 1937, as given in the Board's Second Annual Report (ch. VI, p. 20), were 1,362 cases and 694,720 workers. For explanation of this revision see footnote 1, p. 18, *supra*.

[2] Two charges, involving 300 workers, were filed directly with the Board, the Board having granted special permission, under the rules and regulations, for such filing.

TABLE VI.—*Analysis of charges received during fiscal year ending June 30, 1938*

	Number of complaint cases received	Number of charges involving subsections of section 8					Number of charges by subsections of section 8 involved														
		1	2	3	4	5	1 and 3	1 and 5	1, 3, and 5	1, 2, and 3	1, 2, 3, and 5	1	1 and 2	1 and 4	1, 2, and 5	1, 3, and 4	1, 4, and 5	1, 2, and 4	1, 2, 3, and 4	1, 3, 4, and 5	1, 2, 3, 4, and 5
Board	6	6	5	5		2		1		4	1										
Region:																					
1. Boston	496	496	81	322	2	140	255	85	36	25	4	37	37		15	2					
2. New York	1,233	1,233	216	814	15	562	486	265	208	67	43	44	62	4	43	7	1		1	2	
3. Buffalo	140	140	42	92	2	60	49	23	21	12	8	3	14		8	2					
4. Philadelphia	314	314	91	196	1	129	111	67	30	37	17	15	22		14						1
5. Baltimore	325	325	52	232	3	91	167	45	38	18	7	20	26	1	1	2					
6. Pittsburgh	148	148	51	105	1	27	74	10	5	16	9	7	23		3	1					
7. Detroit	164	164	51	112	3	59	61	30	16	24	8	6	13		3				1		2
8. Cleveland	237	237	42	160	1	54	120	28	15	14	10	31	17		1	1					
9. Cincinnati	522	522	66	329	5	200	236	126	54	22	12	37	24		6	3					2
10. Atlanta	256	256	39	202	5	84	131	36	35	19	12	11	6		1	4			1		
11. Indianapolis	252	252	68	170	1	101	92	56	23	34	20	13	11		2				1		
12. Milwaukee	238	238	57	119		112	71	71	17	17	14	22	16		10						
13. Chicago	443	443	79	328	16	149	217	68	55	29	14	12	21	3	11	9			3		1
14. St. Louis	121	121	30	84	1	52	44	26	18	15	6	2	7		2	1					
15. New Orleans	217	217	20	136	3	88	95	61	24	11	3	15	5			2			1		
16. Fort Worth	202	202	48	150	11	69	86	24	30	19	7	5	14	2	6	6	1		1		1
17. Kansas City	285	285	51	146	1	173	69	115	41	23	12	8	11		5	1					
18. Minneapolis	123	123	25	76	1	54	50	34	12	9	4	1	8		4	1					
19. Seattle	256	256	71	165	2	83	103	27	48	9	3	5	55		4	1				1	
20. San Francisco	223	223	29	158	2	57	119	26	25	11	2	23	11		4	1		1			
21. Los Angeles	462	462	74	280	3	167	195	110	40	31	11	40	26		6	3					
22. Denver	144	144	39	82	3	63	48	32	14	9	8	9	13		8	2					1
Total	6,807	6,807	1,327	4,463	82	2,576	2,879	1,366	805	475	235	366	442	10	157	49	2	1	9	3	8

TABLE VII.—*Analysis of charges pending as of June 30, 1937*

	Number of complaint cases pending July 1, 1937	Number of charges involving subsections of section 8					Number of charges by subsections of section 8 involved														
		1	2	3	4	5	1 and 3	1 and 5	1, 3, and 5	1, 2, and 3	1, 2, 3, and 5	1	1 and 2	1 and 4	1, 2, and 5	1, 3, and 4	1, 4, and 5	1, 2, and 4	1, 2, 3, and 4	1, 3, 4, and 5	1, 2, 3, 4, and 5
Board	3	3	2	3		1	1			1	1										
Region:																					
1. Boston	67	67	20	51		20	29	5	7	8	7	6	4		1						
2. New York	211	211	48	148		105	82	47	32	14	20	2	8		6						
3. Buffalo	37	37	9	26		15	14	3	9	2	1	2	4		2						
4. Philadelphia	93	93	37	69		41	35	6	15	9	10		8		10						
5. Baltimore	66	66	20	46	2	13	32	5	5	7	1	3	9	1	2				1		
6. Pittsburgh	37	37	10	31		13	18	3	6	3	4		3								
7. Detroit	65	65	25	44		25	20	10	8	11	5	2	7		2						
8. Cleveland	43	43	6	31		13	25	7	3		3	2	3								
9. Cincinnati	108	108	23	86		37	52	11	17	12	5	5	2		4						
10. Atlanta	75	75	13	64	2	25	38	8	13	8	4	1	1	1		1					
11. Indianapolis	73	73	40	46	1	33	21	6	5	10	9	1	7		13				1		
12. Milwaukee	13	13	6	11		3	7			1	3		2								
13. Chicago	89	89	29	73		35	39	10	11	12	11		3		3						
14. St. Louis	39	39	13	30		20	15	6	5	2	8		2		1						
15. New Orleans	26	26	5	24		7	16	1	4	2	2		1								
16. Fort Worth	48	48	14	42		16	26	2	6	3	7		3		1						
17. Kansas City	69	69	35	58	5	16	27	3	3	20	7	1	5		2						1
18. Minneapolis	17	17	7	8		7	3	4	2	2	1	1	4								
19. Seattle	52	52	24	42		14	20	2	5	12	5	1	5		2						
20. San Francisco	101	101	21	65		63	17	20	40	6	2	3	12		1						
21. Los Angeles	74	74	20	59		12	41	5	4	12	2	4	5		1						
Total	1,406	1,406	427	1,057	6	534	578	164	200	157	118	34	98	2	51	1			2		1

Of the 6,807 complaint cases received during the fiscal year, 66.7 percent included the allegation of discrimination either for union activity, for testifying before the Board, or filing charges with the Board. About 38 percent of the cases alleged the refusal of the employer to bargain collectively with the representatives of the workers. The charge of domination of and interference with a labor organization was made in approximately 19 percent of the cases received.

Complaint cases closed July 1, 1937 to June 30, 1938.—Complaint cases closed fall into two main categories—cases closed before the issuance of complaints and cases closed after the issuance of complaints. Included in the latter group are cases closed after the issuance of a Board decision and order.[3]

The Board disposed of 5,694 complaint cases, or 69.3 percent of all complaint cases on docket before the Board, during the fiscal year ending June 30, 1938. Of this total, 5,487 cases, or 96.4 percent, were closed before the issuance of complaints. The fact that such a large proportion of the cases was closed in the early stages reflects the effectiveness of the Board's work.

Settlements in compliance with the act were secured in 2,972 cases, affecting 595,640 workers. These cases represent 52.2 percent of all complaint cases disposed of by the Board. Most of the settlements provided for the cessation of one or more of the unfair labor practices listed in section 8 of the act and had the direct effect of securing compliance with the act, removing from the area of dispute the most frequent causes of strikes. As a practical restitution to employees for damage illegally done them by employers by violation of the provisions of the act, workers who were discriminatorily discharged secured reinstatement, and, in many instances, provision was made for cash payment in lieu of back wages lost.

The Board dismissed 1,111 complaint cases either upon the refusal of the regional director to issue a complaint, or by the dismissal of complaints by the trial examiner after hearing. Slightly less than 20 percent of all cases disposed of were closed in this manner.

Charges of unfair labor practices were withdrawn in 1,578 cases, or 27.7 percent of all complaint cases closed. These withdrawals took place both before and after the issuance of complaints and include cases transferred to other agencies or from one regional office to another.

The remaining 33 complaint cases, or 0.6 percent of the total closed, were disposed of after the issuance of Board decisions and orders.

Table VIII shows a complete breakdown of the disposition of all complaint cases during the fiscal year 1937–38.

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[3] For statistical purposes only, complaint cases in which decisions and orders have been issued are considered closed when compliance is secured with the affirmative portions of the Board decisions. However, the negative portions of the orders, i. e., the cease and desist orders, continue in effect indefinitely.

TABLE VIII.—*Disposition of all complaint cases on docket July 1, 1937, to June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	1,406		17.1	639,693		38.9
Cases received July 1, 1937, to June 30, 1938	6,807		82.9	1,003,346		61.1
Total cases on docket	8,213		100.0	1,643,039		100.0
Cases closed before issuance of complaint:						
By settlement	[1] 2,839	49.9	34.5	281,241	29.7	17.1
By dismissal	1,099	19.3	13.4	71,831	7.6	4.4
By withdrawal	1,451	25.5	17.7	240,157	25.4	14.6
By transfer to other agencies	98	1.7	1.2	16,214	1.7	1.0
Total cases closed before issuance of complaint	5,487	96.4	66.8	609,443	64.4	37.1
Cases closed after issuance of complaint:						
By settlement before hearing	62	1.1	.8	7,155	.8	.4
By settlement after hearing	59	1.0	.7	305,725	32.2	18.6
By dismissal before issuance of Board decision	10	.2	.1	882	.1	.1
By withdrawal before issuance of Board decision	[2] 29	.5	.4	15,301	1.6	.9
By intermediate report finding no violation	2	[3]	[3]	2	[3]	[3]
By compliance with intermediate report	12	.2	.1	1,519	.2	.1
By dismissal by Board decision	4	.1	[3]	767	.1	[3]
By compliance with Board decision	29	.5	.4	5,781	.6	.4
Total closed after issuance of complaint	207	3.6	2.5	337,132	35.6	20.5
Total cases closed July 1, 1937, to June 30, 1938	5,694	100.0	69.3	946,575	100.0	57.6
Cases pending June 30, 1938:						
Before hearing	1,732		21.1	453,969		27.6
After hearing:						
Awaiting intermediate report	232		2.8	79,829		4.9
Awaiting decision	365		4.5	70,663		4.3
Awaiting compliance with cease and desist orders	190		2.3	92,003		5.6
Total cases pending June 30, 1938	2,519		30.7	696,464		42.4

[1] Includes 26 cases in which consent elections were held.
[2] Less than 0.05 per cent.
[3] Includes 3 cases, involving 1,702 workers, transferred from one regional office to another.

Complaint cases pending as of June 30, 1938.—On June 30, 1938, there were pending before the Board 2,519 cases, or 30.7 percent of all complaint cases on docket during the preceding 12 months, involving 696,464 workers.

Included in this group were 1,732 cases, or approximately 69 percent of all cases pending, which had not entered into the formal hearing stage. Many of these cases were in the process of investigation, a large proportion of which will probably result in final disposition without recourse to formal proceedings. Of the remaining 787 cases, 232, or about 9 percent, were awaiting the issuance of an intermediate report by the trial examiners, 365 cases were awaiting the decision of the Board, and 190 cases were awaiting compliance with Board decisions. The last two categories represented approximately 14 percent and 8 percent of all pending cases, respectively.

Table IX shows a regional breakdown of the disposition of complaint cases.

TABLE IX.—*Disposition of complaint cases on docket during the fiscal year ending June 30, 1938, by regions*

	Cases on docket fiscal year 1937–38		Disposition of cases													Cases pending				
			Before issuance of complaint				After issuance of complaint and before Board decision							After Board decision						
							Settled					Intermediate report					After hearing			
	Number	Workers involved	Settled	Dismissed	Withdrawn	Transferred to other agencies	Before hearing	After hearing	Dismissed	Withdrawn	Transferred to other agencies	No violation	Compliance	Dismissed	Compliance	Total cases disposed of	Before hearing	Awaiting intermediate report	Awaiting decision	Awaiting compliance	Total
Board	9	76,812			1	1										2	4		1	2	7
Region:																					
1 Boston	563	72,135	232	73	140	1	4	1	1				2		1	455	66	9	20	13	108
2 New York	1,444	139,775	536	331	181	3	19	19	5	6			1		7	1,108	235	27	43	31	336
3 Buffalo	177	50,612	57	23	33	2		3		2		1	2			123	31	5	12	6	54
4 Philadelphia	407	96,553	117	35	94	6	1	1							4	258	112	6	21	10	149
5 Baltimore	391	48,997	90	14	87	7	12	7					2	2	4	225	65	29	46	26	166
6 Pittsburgh	185	347,344	56	14	52	3		2					1			128	41	6	4	6	57
7 Detroit	227	90,501	69	41	18		1		1						2	132	77	1	13	4	95
8 Cleveland	282	41,785	73	24	98	2						1			1	199	62	5	6	10	83
9 Cincinnati	630	81,722	350	40	66	2	4								3	465	145	6	9	5	165
10 Atlanta	331	36,514	45	63	83		6	9		3	1				1	211	71	15	19	15	120
11 Indianapolis	325	56,426	89	55	59	4	1						1		1	210	76	7	26	6	115
12 Milwaukee	251	47,531	109	28	15		1	3					1		1	158	71	4	15	3	93
13 Chicago	532	103,120	202	69	87	14	1	3	1		1				1	379	108	13	25	7	153
14 St. Louis	160	23,401	43	32	33		2			2						112	28	7	10	3	48
15 New Orleans	243	12,384	88	26	19	2	2	3	2						2	144	81	3	10	5	99
16 Fort Worth	250	20,595	82	36	46	2	2	3								171	43	11	18	7	79
17 Kansas City	354	31,303	131	10	62	46	1	1		1						252	82	9	8	3	102
18 Minneapolis	140	14,367	61	7	19	2	2						1			92	37	3	2	6	48
19 Seattle	308	45,398	57	44	88	1		1		2					1	194	84	11	8	11	114
20 San Francisco	324	154,725	103	54	41					1	1		1	2		203	73	32	11	5	121
21 Los Angeles	536	36,579	226	68	98			2		2						396	103	16	17	4	140
22 Denver	144	14,460	23	12	31		3	1		7						77	37	7	21	2	67
Total	8,213	1,643,039	2,839	1,099	1,451	98	62	59	10	26	3	2	12	4	29	5,694	1,732	232	365	190	2,519

Decisions issued and cases heard.—The Board issued decisions in 187 complaint cases during the fiscal year 1937–38, or 2.3 percent of the 8,213 complaint cases on docket during the year.

Hearings were conducted by trial examiners designated by the Chief Trial Examiner in 723 cases, some of which were settled, dismissed, or withdrawn during or after the hearing. These 723 cases represent 8.8 percent of all cases on docket.

Trial examiners issued intermediate reports in 418 cases during the fiscal year, and exceptions to the intermediate reports were filed by the interested parties in 364 cases which were thereupon transferred to the Board for further action. In 31 cases compliance with the intermediate report was not secured within the time limit set by the Board and these cases were likewise transferred to the Board. In 12 cases there was compliance with the recommendations of the trial examiner.

During the entire year 516 complaint cases were transferred to the Board. This total includes the cases transferred either upon the filing of exceptions to the intermediate report or upon the failure of the respondents to comply with the recommendations contained in the intermediate report. In addition, 121 cases were transferred upon the issuance of Board orders to that effect.

A regional breakdown of the number of cases heard, intermediate reports issued, cases transferred to the Board, and cases decided by the Board is given in Table X.

TABLE X.—*Formal action taken by N. L. R. B. in complaint cases on docket during fiscal year ending June 30, 1938, by regions*

	Number of cases heard	Number of intermediate reports issued	Cases transferred to N. L. R. B.			Total	Number of decisions issued
			Exceptions	Noncompliance	Order		
Board	3	1					1
Region:							
1. Boston	36	28	23	2	2	27	10
2. New York	112	66	55	3	12	70	32
3. Buffalo	26	16	13	2	2	17	4
4. Philadelphia	6	4	15		10	25	4
5. Baltimore	100	50	39	9	16	64	27
6. Pittsburgh	15	7	8		2	10	7
7. Detroit	19	18	15		1	16	7
8. Cleveland	17	13	16		2	18	11
9. Cincinnati	18	9	7	2	11	20	8
10. Atlanta	48	25	20		5	25	11
11. Indianapolis	35	24	17	3	13	33	6
12. Milwaukee	25	19	14	4	2	20	5
13. Chicago	44	27	24	1	4	29	8
14. St. Louis	20	10	8	2	4	14	3
15. New Orleans	18	9	6	1	8	15	7
16. Fort Worth	36	17	15		5	20	7
17. Kansas City	22	11	9		2	11	3
18. Minneapolis	11	8	8		1	9	6
19. Seattle	25	4	3		14	17	8
20. San Francisco	17	13	15	1	1	17	6
21. Los Angeles	37	16	13	1	4	18	4
22. Denver	33	23	21			21	2
Total	723	418	364	31	121	516	187

B. ANALYSIS OF COMPLAINT CASES BY UNIONS INVOLVED

Tables XI through XIV show the disposition of complaint cases involving A. F. of L. affiliates, C. I. O. unions, unaffiliated unions, and cases filed by individuals.

TABLE XI.—*Disposition of complaint cases of A. F. of L. unions on docket during the fiscal year ending June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	572		18.1	90,357		30.3
Cases received July 1, 1937, to June 30, 1938	2,587		81.9	208,108		69.7
Total cases on docket	3,159		100.0	298,465		100.0
Cases closed before issuance of complaint:						
By settlement	1,190	52.0	37.7	81,017	51.0	27.1
By dismissal	390	17.1	12.3	17,877	11.3	6.0
By withdrawal	557	24.4	17.6	41,510	26.2	13.9
By transfer to other agencies	46	2.0	1.5	4,329	2.7	1.5
Total cases closed before issuance of complaint	2,183	95.5	69.1	144,733	91.2	48.5
Cases closed after issuance of complaint:						
By settlement before hearing	31	1.4	1.0	2,152	1.4	.7
By settlement after hearing	24	1.1	.8	1,884	1.2	.6
By dismissal before issuance of Board decision	3	.1	.1	147	.1	.1
By withdrawal before issuance of Board decision	18	.8	.6	6,063	3.8	2.1
By intermediate report finding no violation						
By compliance with intermediate report	8	.3	.2	1,377	.9	.5
By dismissal by Board decision	2	.1	.1	65	(1)	(1)
By compliance with Board decision	17	.7	.5	2,198	1.4	.7
Total cases closed after issuance of complaint	103	4.5	3.3	13,886	8.8	4.7
Total cases closed July 1, 1937 to June 30, 1938	2,286	100.0	72.4	158,619	100.0	53.2
Cases pending June 30, 1938:						
Before hearing	579		18.3	73,379		24.5
After hearing:						
Awaiting intermediate report	96		3.0	28,932		9.7
Awaiting decision	121		3.9	12,529		4.2
Awaiting compliance with cease and desist orders	77		2.4	25,006		8.4
Total cases pending June 30, 1938	873		27.6	139,846		46.8

[1] Less than 0.05 percent.

TABLE XII.—*Disposition of complaint cases of C. I. O. unions on docket during the fiscal year ending June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	665	----------	16.1	535,491	----------	41.4
Cases received July 1, 1937, to June 30, 1938	3,473	----------	83.9	757,517	----------	58.6
Total cases on docket	4,138	----------	100.0	1,293,008	----------	100.0
Cases closed before issuance of complaint:						
By settlement	1,395	52.0	33.7	180,613	24.0	13.9
By dismissal	424	15.8	10.3	45,503	6.1	3.5
By withdrawal	737	27.5	17.8	192,173	25.6	14.9
By transfer to other agencies	41	1.5	1.0	10,262	1.4	.8
Total cases closed before issuance of complaint	2,597	96.8	62.8	428,551	57.1	33.1
Cases closed after issuance of complaint:						
By settlement before hearing	24	.9	.6	4,855	.6	.4
By settlement after hearing	31	1.1	.8	303,457	40.4	23.4
By dismissal before issuance of Board decision	5	.2	.1	732	.1	.1
By withdrawal before issuance of Board decision	[2] 11	.4	.3	9,238	1.2	.7
By intermediate report finding no violation	2	.1	(1)	2	(1)	(1)
By compliance with intermediate report	2	.1	(1)	140	(1)	(1)
By dismissal by Board decision	2	.1	(1)	702	.1	.1
By compliance with Board decision	10	.3	.3	3,558	.5	.3
Total cases closed after issuance of compaint	87	3.2	2.1	322,684	42.9	25.0
Total cases closed July 1, 1937 to June 30, 1938	2,684	100.0	64.9	751,235	100.0	58.1
Cases pending June 30, 1938:						
Before hearing	999	----------	24.1	370,446	----------	28.6
After hearing:						
Awaiting intermediate report	123	----------	3.0	46,827	----------	3.6
Awaiting decision	228	----------	5.5	57,841	----------	4.5
Awaiting compliance with cease and desist orders	104	----------	2.5	66,659	----------	5.2
Total cases pending June 30, 1938	1,454	----------	35.1	541,773	----------	41.9

[1] Less than 0.05 percent.
[2] Includes 3 cases, involving 1,702 workers, transferred from one regional office to another.

TABLE XIII.—*Disposition of complaint cases of unaffiliated unions on docket during fiscal year ending June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	53		20.9	7,959		25.4
Cases received July 1, 1937, to June 30, 1938	201		79.1	23,411		74.6
Total cases on docket	254		100.0	31,370		100.0
Cases closed before issuance of complaint:						
By settlement	72	40.0	28.3	9,679	51.4	30.8
By dismissal	48	26.7	18.9	4,678	24.8	14.9
By withdrawal	49	27.2	19.3	2,718	14.5	8.7
By transfer to other agencies	4	2.2	1.6	1,553	8.3	5.0
Total cases closed before issuance of complaint	173	96.1	68.1	18,628	99.0	59.4
Cases closed after issuance of complaint:						
By settlement before hearing	2	1.1	.8	138	.8	.4
By settlement after hearing	2	1.1	.8	17	.1	.1
By dismissal before issuance of Board decision						
By withdrawal before issuance of Board decision						
By intermediate report finding no violation						
By compliance with intermediate report	1	.6	.4	1	(1)	(1)
By dismissal by Board decision						
By compliance with Board decision	2	1.1	.8	25	.1	.1
Total cases closed after issuance of complaint	7	3.9	2.8	181	1.0	.6
Total cases closed July 1, 1937 to June 30, 1938	180	100.0	70.9	18,809	100.0	60.0
Cases pending June 30, 1938:						
Before hearing	50		19.7	7,917		25.2
After hearing:						
Awaiting intermediate report	7		2.8	4,036		12.9
Awaiting decision	9		3.5	278		.9
Awaiting compliance with cease and desist orders	8		3.1	330		1.0
Total cases pending June 30, 1938	74		29.1	12,561		40.0

[1] Less than 0.05 percent.

TABLE XIV.—*Disposition of complaint cases of individuals on docket during the fiscal year ending June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	116		17.5	5,886		29.1
Cases received July 1, 1937, to June 30, 1938	546		82.5	14,310		70.9
Total cases on docket	662		100.0	20,196		100.0
Cases closed before issuance of complaint:						
By settlement	182	33.4	27.5	9,932	55.4	49.2
By dismissal	237	43.5	35.8	3,773	21.1	18.7
By withdrawal	108	19.9	16.3	3,756	21.0	18.6
By transfer to other agencies	7	1.3	1.1	70	.4	.3
Total cases closed before issuance of complaint	534	98.1	80.7	17,531	97.9	86.8
Cases closed after issuance of complaint:						
By settlement before hearing	5	.9	.8	10	.1	.1
By settlement after hearing	2	.4	.3	367	2.0	1.8
By dismissal before issuance of Board decision	2	.4	.3	3	(1)	(1)
By withdrawal before issuance of Board decision						
By intermediate report finding no violation						
By compliance with intermediate report	1	.2	.1	1	(1)	(1)
By dismissal by Board decision						
By compliance with Board decision						
Total cases closed after issuance of complaint	10	1.9	1.5	381	2.1	1.9
Total cases closed July 1, 1937 to June 30, 1938	544	100.0	82.2	17,912	100.0	88.7
Cases pending June 30, 1938:						
Before hearing	104		15.7	2,227		11.0
After hearing:						
Awaiting intermediate report	6		.9	34		.2
Awaiting decision	7		1.1	15		.1
Awaiting compliance with cease and desist orders	1		.1	8		(1)
Total cases pending June 30, 1938	118		17.8	2,284		11.3

[1] Less than 0.05 percent.

On docket before the Board during the 12 months ended June 30, 1938, were 3,159 complaint cases which had been filed by A. F. of L. affiliates, 4,138 cases filed by C. I. O. unions, 254 cases filed by unaffiliated unions and 662 cases by individuals. During this period the Board closed 72.4 percent of all A. F. of L. cases on docket as against 64.9 percent for the C. I. O. cases.

Settlements were secured before the institution of formal proceedings in 1,190 A. F. of L. cases, or 52 percent of all complaint cases closed. Similarly, the Board settled 52 percent, or 1,395, of all the closed cases of C. I. O. affiliates. In 40 percent of the cases of unaffiliated unions, compliance was secured with the act. The percentage for the similar category of cases filed by individuals was 33.4.

The regional directors refused to issue complaints in 17.1 percent of all A. F. of L. cases disposed of during the year as against 15.8 percent for C. I. O. cases, 26.7 percent for cases of unaffiliated unions,

and 43.5 percent of all closed cases filed by individuals. However, the unions affiliated with the C. I. O. consented to withdraw 27.5 percent of their cases filed with the Board compared with withdrawals of 24.4 percent of the cases brought to the Board by the A. F. of L. unions. Withdrawals occurred in 27.2 percent of the closed cases of unaffiliated unions and in 19.9 percent of the cases filed by individuals.

Of the total A. F. of L. cases closed during the year, 17 were closed by compliance with the decisions of the Board. Only 10 C. I. O. cases were similarly closed during the same period. In two cases affecting unaffiliated unions compliance was secured with the Board's orders.

Hearings were conducted in 242 cases filed by the unions affiliated with the A. F. of L., or 7.7 percent of all their cases on docket, as against 441 C. I. O. cases heard, or 10.6 percent of their cases on docket.

The Board issued decisions in 71 complaint cases affecting A. F. of L. unions, this total being 2.3 percent of all A. F. of L. cases on docket. Of the C. I. O. complaint cases on docket during the year, the Board issued 107 decisions. or 2.6 percent of the total.

VI. REPRESENTATION CASES

A. STATISTICAL SUMMARY OF REPRESENTATION CASES

Representation cases on docket July 1, 1937 to June 30, 1938.—On June 30, 1937, 796 representation cases, involving 391,126 workers, were pending before the Board.[1] These cases were carried over into the fiscal year ending June 30, 1938.

In the fiscal year 1937–38 there were filed with the regional offices 3,569 petitions, involving 995,422 workers, and 54 petitions, involving 102,101 workers, were filed with the Board in Washington, special permission for such filing having been granted pursuant to the Board's rules and regulations. Thus, a total of 4,419 representation cases, involving 1,488,649 workers, was on docket during the period covered by this report.

Representation cases closed July 1, 1937, to July 30, 1938.—The representation cases closed are divided into two groups—those cases closed before formal action and those closed after formal action.[2]

The Board disposed of 3,157 cases during the fiscal year 1937–38, or 71.4 percent of the total number of representation cases on docket. In 1,649 representation cases, or 52.2 percent of the total cases disposed of during the year, settlements were secured with the aid of the regional director. Of these 1,649 cases, 830[3] were settled after the regional director secured the consent of all parties involved to an election to determine the issue of representation. In 603 cases the negotiations for a consent election led to an admission that the petitioner actually represented the majority of the employees and to the recognition of such representatives for the purpose of collective bargaining. Frequently, an agreement was secured between the petitioner and the employer permitting the agents of the Board to check union membership cards against the pay roll in order to determine whether or not a majority of the employees had designated the petitioner as their representative for the purposes of collective bargaining. Such agreements were entered into in 216 cases.

The Board dismissed the petitions filed in 328 cases, or 10.4 percent of all cases closed, while the petitioners withdrew their petitions in 767 cases,[4] representing 24.3 percent of all cases disposed of. In some cases the withdrawals resulted from adjustments of the controversies between the parties directly; in some cases they occurred after the petitioners learned that the Board had no jurisdiction over the particular controversy; in others they were withdrawn and charges were filed alleging a violation of section 8 (5) of the act, i. e., a refusal to bargain collectively.

[1] The figures given in the Board's Second Annual Report (ch. VII, p. 25) were 692 cases and 332,308 workers. For explanation of the revisions see footnote 1, p. 18, *supra*.

[2] Formal action in representation cases is instituted by the issuance of a notice of hearing.

[3] The Board conducted 812 consent elections during the fiscal year 1937–38. (See table XXI.) However, in a few instances one election settled more than one case.

[4] Included in this figure are 24 cases trasferred from one regional office to another.

In the remaining 413 representation cases, or 13.1 percent of the total cases closed, the Board issued decisions either certifying the petitioning union or a rival union, or dismissing the petition. Of this total the Board held elections in 258 cases to determine whether or not the petitioner represented a majority of the employees in the unit designated by the Board. After these elections, the Board issued certifications in 233 cases and dismissed the petitions in 25 cases. The Board disposed of 155 cases without elections, by certifying unions in 109 cases and by dismissing petitions in 46 cases.

Table XV sets forth the disposition of the representation cases in detail.

TABLE XV.—*Disposition of all representation cases on docket during the fiscal year ending June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	796	----------	18.0	391,126	----------	26.3
Cases received July 1, 1937, to June 30, 1938	3,623	----------	82.0	1,097,523	----------	73.7
Total cases on docket	4,419	----------	100.0	1,488,649	----------	100.0
Cases closed before formal action:						
By settlement:						
(a) Consent election	796	25.2	18.0	178,168	19.8	12.0
(b) Recognition of representatives	582	18.4	13.2	83,545	9.3	5.6
(c) Payroll check	211	6.7	4.8	31,725	3.5	2.1
By dismissal	269	8.5	6.1	87,682	9.8	5.9
By withdrawal	673	21.3	15.2	211,736	23.5	14.2
By transfer to other agencies	24	.8	.5	6,798	.8	.5
Total cases closed before formal action	2,555	80.9	57.8	599,654	66.7	40.3
Cases closed after formal action:						
By settlement:						
(a) Consent election	34	1.1	.8	37,650	4.2	2.6
(b) Recognition of representatives	21	.6	.5	8,113	.9	.6
(c) Payroll check	5	.2	.1	697	.1	(1)
By dismissal before issuance of Board decision	59	1.9	1.3	19,817	2.2	1.3
By withdrawal before issuance of Board decision	70	2.2	1.6	22,005	2.4	1.5
By certification by Board without election	109	3.4	2.4	55,486	6.2	3.7
By certification by Board after election	233	7.4	5.3	137,203	15.2	9.2
By dismissal of petition by Board without election	46	1.5	1.0	12,242	1.4	.8
By dismissal of petition by Board after election	25	.8	.6	6,376	.7	.4
Total cases closed after formal action	602	19.1	13.6	299,589	33.3	20.1
Total cases closed July 1, 1937 to June 30, 1938	3,157	100.0	71.4	899,243	100.0	60.4
Cases pending:						
Before hearing	872	----------	19.7	361,065	----------	24.2
After hearing:						
Awaiting decision	264	----------	6.0	184,107	----------	12.4
Awaiting certification	126	----------	2.9	44,234	----------	3.0
Total cases pending June 30, 1938	1,262	----------	28.6	589,406	----------	39.6

[1] Less than 0.05 percent.

Representation cases pending as of June 30, 1938.—On June 30, 1938, there were pending before the Board 1,262 cases, involving 589,406 workers. Of these cases, 872, or 69.1 percent, were awaiting informal settlement or formal action. A large proportion of these cases will probably be settled before any formal proceedings are instituted. Awaiting the decision of the Board after hearing are 264 cases, and an additional 126 cases have already been decided upon by the Board but are awaiting certification. In some of the cases awaiting certification elections have been ordered but not as yet held, in others elections have already been conducted by the Board and are awaiting final certification.

Table XVI shows the disposition of the representation cases by regions.

TABLE XVI.—*Disposition of representation cases on docket during the fiscal year ending June 30, 1938, by regions*

	Cases on docket fiscal year 1937-38		Before formal action						After formal action								Total cases disposed of	Cases pending			
			Settled						Before Board decision					After Board decision							
									Settled					Certification		Dismissed				After hearing	
	Number	Workers involved	Consent election	Recognition	Pay-roll check	Dismissed	Withdrawn	Transferred to other agencies	Consent election	Recognition	Pay-roll check	Dismissed	Withdrawn	Without election	After election	Without election	After election		Before hearing	Awaiting decision	Awaiting certification	Total
Board	155	157,644	-----	-----	-----	1	-----	-----	-----	1	-----	5	-----	5	62	16	2	92	39	3	21	63
Region:																						
1. Boston	171	57,522	56	12	7	8	28	1	-----	-----	-----	-----	-----	-----	19	4	2	137	19	13	2	34
2. New York	958	205,355	215	168	37	97	110	3	12	14	-----	4	17	23	30	6	4	740	157	53	8	218
3. Buffalo	81	25,207	18	5	5	3	19	1	1	-----	-----	-----	2	5	6	1	-----	66	9	4	2	15
4. Philadelphia	195	51,939	63	49	4	6	25	2	1	1	-----	-----	-----	1	-----	1	-----	153	35	7	-----	42
5. Baltimore	219	55,234	61	26	9	5	30	3	1	-----	3	-----	-----	4	22	9	1	174	25	16	4	45
6. Pittsburgh	91	137,876	10	13	9	2	21	-----	-----	-----	1	-----	-----	4	4	1	-----	65	17	7	2	26
7. Detroit	143	157,731	24	38	2	6	13	-----	-----	-----	-----	-----	3	1	4	-----	3	94	40	7	2	49
8. Cleveland	144	90,333	21	17	7	1	17	1	3	-----	-----	2	3	9	16	-----	3	100	32	9	3	44
9. Cincinnati	219	58,357	47	32	10	25	47	-----	1	-----	1	-----	2	8	3	-----	1	177	32	5	5	42
10. Atlanta	108	45,659	8	2	5	2	24	-----	3	1	-----	-----	5	-----	10	1	2	63	27	5	13	45
11. Indianapolis	129	45,040	31	18	10	2	14	-----	1	-----	-----	1	-----	4	1	-----	2	84	14	27	4	45
12. Milwaukee	124	34,076	28	29	13	-----	22	2	-----	-----	-----	3	1	2	6	-----	-----	105	10	8	1	19
13. Chicago	169	78,932	45	18	11	16	24	2	2	1	-----	2	2	5	9	1	1	140	16	9	4	29
14. St. Louis	80	24,167	11	3	6	3	22	-----	1	-----	-----	-----	1	1	6	1	-----	55	21	4	-----	25
15. New Orleans	207	25,323	24	30	18	12	16	1	2	3	-----	-----	-----	2	5	-----	-----	113	87	7	-----	94
16. Fort Worth	110	15,808	9	12	7	7	17	1	1	-----	-----	-----	1	6	2	-----	1	64	23	20	3	46
17. Kansas City	80	24,871	16	4	11	6	16	7	1	-----	-----	-----	2	2	1	-----	-----	66	11	3	-----	14
18. Minneapolis	73	17,127	13	17	5	3	9	-----	2	-----	-----	-----	3	3	2	1	-----	58	13	1	1	15
19. Seattle	196	31,653	46	5	15	7	31	-----	-----	-----	-----	-----	-----	8	2	1	1	116	71	5	4	80
20. San Francisco	250	68,573	15	11	7	18	83	-----	-----	-----	-----	41	1	4	4	-----	-----	184	34	5	27	66
21. Los Angeles	483	75,447	29	68	12	39	78	-----	2	-----	-----	1	27	11	18	3	1	289	134	40	20	194
22. Denver	34	4,775	6	5	1	-----	7	-----	-----	-----	-----	-----	-----	1	1	-----	1	22	6	6	-----	12
Total	4,419	1,488,649	796	582	211	269	673	24	34	21	5	59	70	109	233	46	25	3,157	872	264	126	1,262

Decisions issued and cases heard.—Hearings were conducted by trial examiners designated by the Chief Trial Examiner in 728 representation cases during the fiscal year 1937–38. Thus, 16.5 percent of all representation cases on docket were heard during the year.

After hearing, the Board issued decisions in 514 cases which involved a question of representation. During the year the Board issued 364 directions of election, and 233 certifications after elections had been conducted. In 25 cases supplemental decisions were issued by the Board dismissing the petitions after elections had been held.

The 514 cases decided represent 11.6 percent of all representation cases on docket during the 12 months ending June 30, 1938.

Table XVII gives a regional breakdown of representation cases heard, the number of elections ordered, and decisions issued.

TABLE XVII.—*Hearings and N. L. R. B. orders and decisions in representation cases on docket during the fiscal year ending June 30, 1938, by regions*

	Number of cases heard	Number of elections ordered	Number of decisions issued		Number of cases heard	Number of elections ordered	Number of decisions issued
Board	28	75	93	Region—Contd.			
Region:				13	31	13	19
1	27	12	28	14	12	6	8
2	131	38	65	15	12	5	7
3	19	10	14				
4	10		2	16	30	7	13
5	57	27	40	17	8	1	3
				18	12	4	7
6	17	8	13	19	21	7	16
7	20	9	10	20	38	32	36
8	38	23	29				
9	20	13	14	21	99	38	52
10	30	22	23	22	9	2	3
11	40	6	9	Total	728	364	514
12	19	6	10				

B. ANALYSIS OF REPRESENTATION CASES BY UNIONS INVOLVED

For statistical purposes, in the analysis of representation cases by unions involved, the petitions filed by individuals were combined with the petitions filed by unaffiliated unions. Only 17 petitions, invilving 3,128 workers, which were filed by individuals, were on docket during the year and it is assumed that many of these petitions were filed by informal groups of employees which are, in effect, unaffiliated unions.

Of the 4,419 representation cases on docket, 1,434 were cases filed by A. F. of L. unions, 2,331 were cases filed by C. I. O. unions, and 654 by unaffiliated unions. The workers involved in the petitions filed by the three groups were 260,488 for the A. F. of L. affiliates, 1,015,216 for the C. I. O. unions, and 212,945 for the unaffiliated unions.

The Board, during the fiscal year 1937–38, disposed of 78.7 percent of all the A. F. of L. cases on docket as against 71 percent for C. I. O. cases, and 57.2 percent of the cases filed by unaffiliated unions.

Settlements before formal action was instituted were secured in 53.5 percent of all A. F. of L. cases closed. Of the 603 cases of

A. F. of L. affiliates which were settled by the Board, 228 were closed after consent elections were held, 301 were closed upon the recognition of representatives of the union without recourse to the election machinery of the Board, and 74 were closed as a result of a pay-roll check. Of the total number of C. I. O. cases closed, 892 cases, or 53.9 percent, were closed by the settlement of the question of representation before formal proceedings were started. Included in these cases settled were 523 cases closed by consent elections, 242 by the recognition of representatives by the employer, and 127 cases by pay-roll checks.

Although almost the same proportion of representation cases was settled for the A. F. of L. unions as for the C. I. O. unions, the greatest proportion of the C. I. O. cases were settled by consent elections, whereas the greatest proportion of settlements in A. F. of L. cases was based on the recognition of representatives, that is, the employer recognized the fact that the petitioning union had a majority in the unit and there was no necessity for conducting an election.

Only 25.1 percent of closed cases of unaffiliated unions were disposed of by the three methods of settling the question of representation stated above. The Board dismissed or permitted the withdrawal of 52.9 percent of all unaffiliated union cases closed during the year.

The Board dismissed, before formal action was started, 6.5 percent of all A. F. of L. cases closed as against 5.4 percent of the C. I. O. cases. However, as in complaint cases, the C. I. O. unions withdrew a larger proportion of their petitions than did the A. F. of L. unions, 22.6 percent as compared with 18.4 percent for the A. F. of L. unions.

Certifications were issued in 140 cases, or 12.4 percent of all cases disposed of, filed by the unions affiliated with the A. F. of L. These figures compare with 182 cases and 10.9 percent for cases filed by the C. I. O. unions.[5] The Board, on the other hand, dismissed 41 petitions filed by the A. F. of L. unions, or 3.6 percent of all cases closed, compared with 23 C. I. O. petitions, or 1.4 percent, which were dismissed either without elections or after elections.

Hearings were conducted on 206 petitions filed by A. F. of L. unions and on 444 petitions filed by C. I. O. unions. These figures represent 14.4 percent and 19 percent, respectively, of all cases of both labor organizations on docket.

Decisions were issued by the Board in 205 representation cases submitted to it by A. F. of L. affiliates as against 250 decisions on C. I. O. petitions. Thus, of the 1,434 cases of A. F. of L. affiliates on docket during the year the Board handed down decisions in 14.3 percent of the cases. This compares with decisions in 10.7 percent of the 2,331 cases on docket which were filed by C. I. O. affiliates.

Unaffiliated unions were certified in 5.4 percent of their cases disposed of during the year after hearings were held in 78 cases and decisions issued in 59 cases.

Tables XVIII through XX set forth the disposition of cases filed by A. F. of L. unions, C. I. O. unions and unaffiliated unions, respectively.

[5] In only a few cases did the Board certify a union which did not file the original petition.

TABLE XVIII.—*Disposition of representation cases of A. F. of L. unions on docket during the fiscal year ending June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	329		22.9	93,887		36.0
Cases received July 1, 1937, to June 30, 1938	1,105		77.1	166,601		64.0
Total cases on docket	1,434		100.0	260,488		100.0
Cases closed before formal action:						
By settlement:						
(a) Consent election	228	20.2	15.9	35,175	18.6	13.4
(b) Recognition of representatives	301	26.7	21.0	21,862	11.6	8.4
(c) Payroll check	74	6.6	5.2	12,509	6.6	4.8
By dismissal	73	6.5	5.1	15,064	8.0	5.8
By withdrawal	208	18.4	14.5	29,078	15.4	11.2
By transfer to other agencies	5	.4	.3	3,037	1.6	1.2
Total cases closed before formal action	889	78.8	62.0	116,725	61.8	44.8
Cases closed after formal action:						
By settlement:						
(a) Consent election	11	1.0	.8	3,337	1.8	1.3
(b) Recognition of representatives	2	.2	.1	425	.2	.2
(c) Payroll check	2	.2	.1	30	(1)	(1)
By dismissal before issuance of Board decision	9	.8	.6	3,318	1.8	1.3
By withdrawal before issuance of Board decision	34	3.0	2.4	4,019	2.1	1.5
By certification by Board without election	36	3.2	2.5	4,997	2.6	1.9
By certification by Board after election	104	9.2	7.3	44,784	23.6	17.2
By dismissal of petition by Board without election	31	2.7	2.2	8,608	4.6	3.3
By dismissal of petition by Board after election	10	.9	.7	2,757	1.5	1.1
Total cases closed after formal action	239	21.2	16.7	72,275	38.2	27.8
Total cases closed July 1, 1937 to June 30, 1938	1,128	100.0	78.7	189,000	100.0	72.6
Cases pending:						
Before hearing	202		14.1	40,504		15.5
After hearing:						
Awaiting decision	59		4.1	16,259		6.2
Awaiting certification	45		3.1	14,725		5.7
Total cases pending June 30, 1938	306		21.3	71,488		27.4

[1] Less than 0.05 percent.

TABLE XIX.—*Disposition of representation cases of C. I. O. unions on docket during the fiscal year ending June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	262		11.2	210,318		20.7
Cases received July 1, 1937, to June 30, 1938	2,069		88.8	804,898		79.3
Total cases on docket	2,331		100.0	1,015,216		100.0
Cases closed before formal action:						
By settlement:						
(a) Consent election	523	31.6	22.5	125,858	20.6	12.4
(b) Recognition of representatives	242	14.6	10.4	56,399	9.2	5.5
(c) Pay roll check	127	7.7	5.4	14,673	2.4	1.4
By dismissal	89	5.4	3.8	33,428	5.5	3.3
By withdrawal	374	22.6	16.1	164,056	26.9	16.2
By transfer to other agencies	18	1.1	.8	3,737	.6	.4
Total cases closed before formal action	1,373	83.0	59.0	398,151	65.2	39.2
Cases closed after formal action:						
By settlement:						
(a) Consent election	23	1.4	1.0	34,313	5.6	3.4
(b) Recognition of representatives	8	.5	.3	6,715	1.1	.7
(c) Pay roll check	3	.2	.1	667	.1	.1
By dismissal before issuance of Board decisions	10	.6	.4	13,201	2.2	1.3
By withdrawal before issuance of Board decision	33	2.0	1.4	14,011	2.3	1.4
By certification by Board without election	63	3.8	2.7	49,149	8.1	4.8
By certification by Board after election	119	7.1	5.1	89,739	14.7	8.8
By dismissal of petition by Board without election	10	.6	.4	963	.2	.1
By dismissal of petition by Board after election	13	.8	.6	2,929	.5	.3
Total cases closed after formal action	282	17.0	12.0	211,687	34.8	20.9
Total cases closed July 1, 1937, to June 30, 1938	1,655	100.0	71.0	609,838	100.0	60.1
Cases pending:						
Before hearing	439		18.8	222,651		21.9
After hearing:						
Awaiting decision	185		8.0	155,737		15.3
Awaiting certification	52		2.2	26,990		2.7
Total cases pending June 30, 1938	676		29.0	405,378		39.9

TABLE XX.—*Disposition of representation cases of unaffiliated unions on docket during the fiscal year ending June 30, 1938*

	Number of cases	Percentage of—		Number of workers involved	Percentage of—	
		Total cases closed	Total cases on docket		Total number of workers involved in cases closed	Total number of workers involved in cases on docket
Cases pending June 30, 1937	205		31.3	86,921		40.8
Cases received July 1, 1937, to June 30, 1938	449		68.7	126,024		59.2
Total cases on docket	654		100.0	212,945		100.0
Cases closed before formal action:						
By settlement:						
(a) Consent election	45	12.0	6.9	17,135	17.1	8.1
(b) Recognition of representatives	39	10.4	6.0	5,284	5.3	2.5
(c) Payroll check	10	2.7	1.5	4,543	4.5	2.1
By dismissal	107	28.6	16.3	39,190	39.0	18.4
By withdrawal	91	24.3	13.9	18,602	18.5	8.7
By transfer to other agencies	1	.3	.2	24		
Total cases closed before formal action	293	78.3	44.8	84,778	84.4	39.8
Cases closed after formal action:						
By settlement:						
(a) Consent election						
(b) Recognition of representatives	11	3.0	1.7	973	1.0	.5
(c) Payroll check						
By dismissal before issuance of Board decision	40	10.7	6.1	3,298	3.3	1.5
By withdrawal before issuance of Board decision	3	.8	.5	3,975	3.9	1.9
By certification by Board without election	10	2.7	1.5	1,340	1.3	.6
By certification by Board after election	10	2.7	1.5	2,680	2.7	1.3
By dismissal of petition by Board without election	5	1.3	.8	2,671	2.7	1.3
By dismissal of petition by Board after election	2	.5	.3	690	.7	.3
Total cases closed after formal action	81	21.7	12.4	15,627	15.6	7.4
Total cases closed July 1, 1937, to June 30, 1938	374	100.0	57.2	100,405	100.0	47.2
Cases pending:						
Before hearing	231		35.3	97,910		46.0
After hearing:						
Awaiting decision	20		3.1	12,111		5.6
Awaiting certification	29		4.4	2,519		1.2
Total cases pending June 30, 1938	280		42.8	112,540		52.8

C. ELECTIONS CONDUCTED BY THE BOARD

Number of elections and valid votes cast.—During the period ending June 30, 1938, the Board conducted, through its agents, 1,152 elections,[6] 812 by consent of the parties involved in the controversy concerning representation, and 340 pursuant to Board order.

Approximately 394,558 workers were eligible to vote in these elections and 350,960 actually participated in the polling. The fact that about 89 percent of the eligible voters cast ballots in the elections conducted by the Board is an indication of the keen interest shown by

[6] Excluded from these figures are elections which were voided by the Board for various reasons.

employees in the choice of organizations which are to represent them in collective bargaining with their employers, and their approval of the democratic device of secret ballot to ascertain their choice.

These 1,152 elections in which 394,558 workers were eligible to vote represent a large increase in the use of the election machinery of the Board over the preceding year, during which period the Board conducted 265 elections in which 181,424 workers were eligible to vote.[7]

The great majority of requests for investigation and certification of representatives were made by trade unions affiliated with the American Federation of Labor or the Committee for Industrial Organization. Almost every trade union and every industry was represented in these cases. Of the 343,587 valid votes cast,[8] 67.8 percent were cast in favor of trade unions, 14.4 percent in favor of unaffiliated unions, and 17.8 percent were cast against all types of labor organizations. Included in the votes cast against all labor organizations, were 5,359 cast "for neither" organization when two or more unions appeared on a ballot.

Trade unions, which are affiliates of either the A. F. of L. or the C. I. O., won 816 of the 1,152 elections. Unaffiliated national unions won 45 elections and unaffiliated local unions won 84.[9] The number of elections lost by all forms of labor organizations was 207, which includes 13 tie votes.

Methods of conducting the elections were usually shaped to meet the needs of individual cases. In consent elections an attempt was made to secure an agreement regarding all the details of the election. In this manner, the parties determined the proper bargaining unit, the form of ballot, the polling place, the time of the election, the eligibility list, the method of tallying, and other similar details. In those cases where elections were ordered by the Board, the Board decided what the bargaining unit should be and usually directed that employees on the pay roll on a certain date should be eligible to vote. The regional director in whose region the case originated was empowered by the Board's direction of election to conduct the election and to arrange the necessary details.

In almost all cases election notices were posted and distributed several days before the date of the election. These notices contained full details about the election, setting forth the time and place of polling, the purpose of the election, and a copy of the ballot to be used. This enabled the employees to become familiar with the procedure to be followed and avoided much confusion and delay at the polling places. Usually each party had watchers and tellers present at the polling places, and these representatives signed certificates before the ballots were counted stating that the elections were conducted properly and fairly. This had the effect of eliminating many objections which, although without merit, might otherwise have been made by the losing party regarding the conduct of the elections, and were particularly useful in the case of consent elections.

Table XXI shows the regional breakdown of the elections conducted by the Board.

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[7] Second Annual Report of the N. L. R. B., ch. VII, p. 30.
[8] Valid votes cast equal total votes cast less votes challenged, blank or void.
[9] See Table XXI for definitions.

TABLE XXI.—*Number of elections conducted by the National Labor Relations Board during the fiscal year ending June 30, 1938, by regions*

	Number of elections			Number of employees		Valid votes cast [1]					Percentage of valid votes cast			Number of elections won			Number of elections lost by all unions [6]
	Consent	Ordered	Total	Eligible to vote	Voting	Total	For trade unions	For unaffiliated unions		Against all unions	For neither [4]	For trade unions	For unaffiliated unions	Against all unions [5]	By trade unions	By unaffiliated unions		
								National [2]	Local [3]							National	Local	
Region:																		
1. Boston	52	22	74	31,957	27,590	27,350	17,964	417	1,775	7,173	21	65.7	8.0	26.3	52	3	8	11
2. New York	246	90	336	69,886	63,753	62,576	49,732	1,661	3,461	6,106	1,616	79.5	8.2	12.3	282	4	8	42
3. Buffalo	22	8	30	11,420	10,300	10,134	6,502	423	2,049	999	161	64.2	24.4	11.4	22	-------	6	2
4. Philadelphia	65	1	66	16,670	14,804	14,540	8,923	772	925	3,916	4	61.4	11.7	26.9	46	1	5	14
5. Baltimore	59	31	90	32,392	28,937	28,606	19,709	111	2,176	6,372	238	68.9	8.0	23.1	71	-------	6	13
6. Pittsburgh	8	7	15	11,011	9,943	9,633	5,353	-------	2,346	1,565	369	55.6	24.3	20.1	9	-------	1	5
7. Detroit	23	10	33	9,033	8,791	8,665	4,876	1,110	756	1,636	287	56.3	21.5	22.2	12	9	4	8
8. Cleveland	29	22	51	50,415	42,205	41,682	29,423	355	4,441	7,357	106	70.6	11.5	17.9	36	-------	7	8
9. Cincinnati	48	6	54	17,283	16,073	15,755	7,437	3,874	2,272	2,092	80	47.2	39.0	13.8	25	2	10	17
10. Atlanta	16	19	35	18,805	16,345	16,004	10,812	-------	196	4,951	45	67.6	1.2	31.2	26	-------	1	8
11. Indianapolis	30	6	36	11,499	10,097	9,790	6,975	-------	803	1,876	136	71.2	8.2	20.6	22	-------	4	10
12. Milwaukee	28	8	36	22,467	20,732	20,100	15,442	164	780	3,272	442	76.8	4.7	18.5	29	-------	2	5
13. Chicago	39	12	51	25,781	22,968	22,689	15,173	74	4,322	2,344	776	66.9	19.4	13.7	37	-------	4	10
14. St. Louis	14	4	18	3,309	2,861	2,794	2,190	-------	48	556	-------	78.4	1.7	19.9	12	-------	1	5
15. New Orleans	16	6	22	9,565	8,608	8,251	4,926	30	1,693	1,446	156	59.7	20.9	19.4	13	-------	4	5
16. Fort Worth	9	6	15	2,518	2,307	2,295	1,109	154	565	426	41	48.3	31.3	20.4	9	1	2	3
17. Kansas City	16	1	17	5,878	5,372	5,308	2,051	-------	1,747	910	-------	50.0	32.9	17.1	9	-------	2	6
18. Minneapolis	31	3	34	11,418	10,512	10,407	7,380	723	1,847	395	62	70.9	24.7	4.4	24	1	2	7
19. Seattle	7	5	12	4,867	4,454	4,251	4,111	-------	-------	56	84	96.7	-------	3.3	11	-------	-------	1
20. San Francisco	16	39	55	15,234	13,858	12,681	5,091	1,033	3,869	1,297	191	44.9	43.4	11.7	33	7	4	11
21. Los Angeles	31	32	63	11,562	9,851	9,527	6,266	374	1,493	861	533	65.8	19.6	14.6	32	14	3	14
22. Denver	7	2	9	688	599	549	344	20	22	152	11	62.7	7.6	29.7	4	3	-------	2
Total	812	340	1,152	394,558	350,960	343,587	232,989	11,895	37,586	55,758	5,359	67.8	14.4	17.8	816	45	84	207

[1] Valid votes include all votes cast less blank, void, and challenged votes.
[2] Unaffiliated unions which represent more than one plant or company.
[3] Unaffiliated unions which represent one plant or company.
[4] I. e., votes cast for neither organization when more than one labor organization appeared on the ballot.
[5] Includes votes cast "for neither."
[6] Includes 13 elections which resulted in a tie vote.

Labor organizations involved in elections.—There is shown in Table XXII the number of elections won and lost by the various types of labor organizations, as well as the number of times each type of labor organization appeared on the ballot.

TABLE XXII.—*Number of elections won and lost and participation by labor organizations in elections conducted by the N. L. R. B. fiscal year ending June 30, 1938*[1]

	Total appearances on ballot		Won				Lost			
			Elections		Valid votes cast		Elections		Valid votes cast	
	Number	Valid votes cast	Number	Percent of appearances	Number	Percent of total cast	Number	Percent of appearances	Number	Percent of appearances
Unions affiliated with A. F. of L.	604	57,151	263	43.5	37,061	64.8	341	56.5	20,090	35.2
Unions affiliated with C. I. O.	816	175,838	553	67.8	148,565	84.5	263	32.2	27,273	15.5
Unaffiliated national unions[2]	98	11,895	45	45.9	9,941	83.6	53	54.1	1,954	16.4
Unaffiliated local unions[3]	175	37,586	84	48.0	20,785	55.3	91	52.0	16,801	44.7

[1] This table includes only those elections which were won by some form of labor organization.
[2] Unaffiliated unions which represent more than one plant or company.
[3] Unaffiliated unions which represent one plant or company.

The C. I. O. affiliates won 67.8 percent of the 816 elections in which they appeared on the ballot. The A. F. of L. unions were successful in 43.5 percent of the 604 elections in which they were participants. Unaffiliated national unions and unaffiliated local unions were successful in securing a majority of the votes in 45.9 percent and 48 percent, respectively, of the elections in which they appeared on the ballot.

Affiliates of the C. I. O. were involved most often in the elections conducted by the Board. They appeared on the ballot in 86.4 percent of the elections won by some form of labor organization. The A. F. of L. appeared in 63.9 percent of the elections, unaffiliated national unions participated in 10.4 percent of the elections, and unaffiliated local unions in 18.5 percent of the elections.

In 312 elections, in which 79,738 valid votes were cast, unions affiliated with the A. F. of L. and affiliates of the C. I. O. both appeared on the same ballot. These cases represented 27 percent of all elections held and 23 percent of all valid votes cast in the 1,152 elections conducted by the Board during the fiscal year 1937–38. Of these 312 elections, C. I. O. unions won 219 of the elections, whereas the affiliates of the A. F. of L. were successful in 86 of these elections. One election resulted in a tie vote, and in six elections neither labor organization was successful.

VII. PRINCIPLES ESTABLISHED

In the First and Second Annual Reports we outlined the important principles enunciated by the Board in its decisions issued during the first and second years of its existence.[1] No attempt will be made in this chapter to repeat that material. While referring on occasion to decisions discussed in the First and Second Annual Reports, we shall devote this chapter primarily to the reiteration, extension, or development of principles already laid down or to the establishment of new principles, as enunciated by the Board in its decisions issued from July 1, 1937, to June 30, 1938.[2]

For convenience the chapter has been divided into seven sections:

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

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

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

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

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

F. Adequate proof of majority representation where no election is held: This section deals with proof of majority under section 8 (5) and 9 (c) where no election is held.

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

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

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

Section 7 of the act provides that—

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their

[1] The First Annual Report deals with all decisions issued up to June 30, 1936, reported in 1 N. L. R. B.; the Second Annual Report deals with all decisions issued up to June 30, 1937, reported in 1 and 2 N. L. R. B.

[2] The decisions issued from July 1, 1937, to June 30, 1938, are reported in 3 to 7 N. L. R. B., inclusive.

own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

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

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

The Board consistently has held that a violation by an employer of any of the four subdivisions of section 8 other than subdivision (1) is also a violation of subdivision (1). Thus, a discriminatory discharge because of union membership or activity is held not only a violation of section 8 (3), but also of section 8 (1), for the employer's action interferes with, restrains, and coerces both the wrongfully discharged worker and other employees in the exercise of rights secured by the act. Similarly, domination or interference with the formation or administration of, or contributing support to, a labor organization, a refusal to bargain collectively with the employees' chosen representatives, or discrimination against an employee for filing charges or testifying under the act, not only violates subdivisions (2), (5), and (4), respectively, but subdivision (1) as well.[3]

On the other hand, subdivision (1) may be, and frequently is, infringed by activities which do not fall within the specific categories covered by the other four subdivisions of section 8, although few of the Board's decisions concern violations of subdivision (1) alone. In this section the discussion will primarily concern unfair labor practices not specifically covered by subdivisions (2), (3), (4), and (5) of section 8.

1. Espionage

In a number of cases the Board has held that the employment and use of professional spies by an employer to keep him informed of the union activities of his employees, constitutes a violation of section 8 (1). As pointed out in previous reports, in *Matter of Fruehauf Trailer Company*[4] an operative hired by the company from a nationally known agency joined the union, became its secretary, and furnished the company with the names of the most active members, who were then discharged. The Board held that the company's action was a violation of the rights guaranteed employees by the act, and the Board's order was upheld in its entirety by the Supreme Court.[5] Activities of these spies cover a wide range. Thus in one case, the secret operatives were given the picture of an employee, who was subsequently discharged, and instructed to follow

[3] The Second Circuit Court of Appeals has expressed the view that a refusal to bargain collectively does not constitute interference, restraint, or coercion within the meaning of section 8 (1). *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d, 1938), certiorari denied, 304 U. S. 576. But in other cases the Circuit Courts have sustained Board decisions finding that violations of section 8 (5) are also violations of section 8 (1). See *National Labor Relations Board* v. *Carlisle Lumber Company*, 94 F. (2d) 138 (C. C. A. 9th, 1937), certiorari denied, 304 U. S. 575; *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th, 1937), certiorari denied, 302 U. S. 731; *Agwilines, Inc.* v. *National Labor Relations Board*, 87 F. (2d) 146 (C. C. A. 5th, 1937).

[4] *Matter of Fruehauf Trailer Company* and *United Automobile Workers Federal Labor Union No. 19375*, 1 N. L. R. B. 68, order enforced in *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, enforcement denied in 85 F. (2d) 391 (C. C. A. 6th, 1936). See also *Matter of Remington Rand, Inc.* and *Remington Rand Joint Protective Board*, 2 N. L. R. B. 626, order enforced in *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d, 1938), certiorari denied, 304 U. S. 576; *Matter of Fansteel Metallurgical Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America*, 5 N. L. R. B. 930, enforcement denied in 98 F. (2d) 375 (C. C. A. 7th, 1938), certiorari granted November 19, 1938.

[5] *National Labor Relations Board* v. *Fruehauf Trailer Company*, 301 U. S. 49.

him constantly and make reports to the company concerning his union activities; other detectives were sent to attend union meetings and conventions; still others were given union leaflets and circulars for investigational purposes.[6]

Espionage, is not, however, limited to the activities of professional spies employed for such purposes. At times regular employees have been directed or encouraged by the employer to report upon the union membership or activities of their fellow workers. Such action by the employer also is violative of section 8 (1). In some cases the evidence establishes quite a comprehensive and efficient system maintained by the employer for keeping himself informed of the progress of the union and of its officers. Thus in *Matter of Agwilines, Inc.*,[7] detailed reports on union activities in the various branch offices of the company were regularly made and transmitted to the general office which determined the company's labor policy.[8] In other cases, while no such system existed, individual employees were utilized on occasion for spying purposes.[9]

Perhaps the most common type of espionage which appears in the cases is that engaged in by company supervisory or managerial employees, and officials. Such employees and officials have been found to post themselves at points of vantage near union meetings in order to note the identity of employees who attended.[10] In *Matter of Boss Manufacturing Company* [11] a foreman repeatedly importuned an employee to give him information about the union's activities, but the employee refused. The Board found that the attempted procurement of such information, though unsuccessful, was a violation of section 8 (1).

2. Bribery

Bribery or attempted bribery of employees, as an antiunion weapon, has been found in a number of cases. The Board has condemned such practice as a violation of section 8 (1). In some instances company officials have openly offered bribes to union leaders in an attempt to induce them to cease their union activities. In *Matter*

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[6] *Matter of Consolidated Edison Company of New York, Inc.*, and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 71, order enforced in *Consolidated Edison Co.* v. *National Labor Relations Board*, 95 F. (2d) 390 (C. C. A. 2d, 1938), certiorari granted, 304 U. S. 555. See also *Matter of Fashion Piece Dye Works, Inc.*, and *Federation of Silk and Rayon Dyers and Finishers of America*, 6 N. L. R. B. 274, order enforced in *National Labor Relations Board* v. *Fashion Piece Dye Works, Inc.*, 3 Cir., decided November 28, 1938, where the president of the company told an employee that he had a Pinkerton detective trailing him the previous night when the employee had met with officers of the union.

[7] *Matter of Agwilines, Inc.*, and *International Longshoremen's Association*, 2 N. L. R. B. 1, order enforced in *Agwilines, Inc.*, v. *National Labor Relations Board*, 87 F. (2d) 146 (C. C. A. 5th, 1937).

[8] See also *Matter of William Randolph Hearst, Hearst Publications, Inc.*, and *American Newspaper Guild, Seattle Chapter*, 2 N. L. R. B. 530, where the employer's city editor told a union member that the employer had "an espionage system that reaches everywhere," and averred that the publishers knew of every member of the Guild in Seattle.

[9] See for example, *Matter of Metropolitan Engineering and Metropolitan Device Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 542; *Matter of Friedman-Harry Marks Clothing Company, Inc.*, and *Amalgamated Clothing Workers of America*, 1 N. L. R. B. 411, order enforced in *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, enforcement denied in 85 F. (2d) 1 (C. C. A. 2d, 1936).

[10] See, for example, *Matter of Mansfield Mills, Inc.*, and *Textile Workers Organizing Committee*, 3 N. L. R. B. 901; *Matter of C. A. Lund Company and Northland Ski Manufacturing Company*, and *Woodenware Workers Union, Local 20481*, 6 N. L. R. B. 423. In some cases supervisory officials drove past the union meeting place in an automobile; in others they stood outside watching the employees enter and leave. A somewhat similar practice was revealed in *Matter of Tiny Town Togs, Inc.*, and *International Ladies' Garment Workers Union*, 7 N. L. R. B. 54, where supervisory officials of the company stationed themselves outside the plant to observe which employees accepted the union pamphlets then being passed out by organizers.

[11] *Matter of Boss Manufacturing Company* and *International Glove Workers of America*, 3 N. L. R. B. 400.

of Carlisle Lumber Company [12] the sales manager offered the union leader a lucrative position in another city if he would abandon his union activities; in *Matter of Stackpole Carbon Company* [13] the factory manager promised two union officers a building, which they could use for business purposes, if they would quit the union. At times, inducements have been proffered by the employer to the general body of employees. Thus, in *Matter of McNeely & Price Company* [14] the employees were offered vacations with pay for voting against representation by a union to which the company was opposed. Similarly, in *Matter of Jacob A. Hunkele* [15] the company undertook to increase substantially the employees' wages if they would abandon the union.

3. INCITEMENT TO VIOLENCE AND VIOLENCE AGAINST UNION LEADERS, ORGANIZERS, AND MEMBERS

In some cases the employer, for the purpose of disorganizing and defeating union activity, has sought to instigate or cause the commission of acts of violence against union organizers and leaders and union members. In one case an overseer of the company offered to buy an employee a gallon of whiskey if he would "stamp hell out of" an active union employee.[16] In another case, a forelady supplemented her attempt to dissuade employees from accepting union pamphlets by the following suggestion having reference to the organizer who distributed the literature: "What do you say, girls, we give her a beating?" [17] Marked conduct of this sort was revealed in *Matter of Clover Fork Coal Company.*[18] The company and the Harlan County Coal Operators' Association, an employer organization of which the company was a prominent member, conducted a literal reign of terror against unionization. Union organizers were ordered out of the county at the point of guns; one organizer's hotel room was flooded with tear gas; another organizer, a minister, was shot at. The general superintendent of the mine told employees: "If one of my men will pick up a stick and whip hell out of one of them organizers, I will * * * see he don't put in a day in jail and I will pay the fine." On another occasion he proposed that the men throw the union organizers into the river.

In some strike cases, the employer not only sought to incite or did incite violence against union organizers and members, but in connection therewith sought to create a situation of general disorder in order to demoralize the striking employees and to justify appeals to "law

[12] *Matter of Carlisle Lumber Company* and *Lumber and Sawmill Workers' Union, Local 2511,* 2 N. L. R. B. 248, order enforced in *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th, 1937), certiorari denied, 304 U. S. 575.

[13] *Matter of Stackpole Carbon Company* and *Electrical & Radio Workers of America, Local No. 502,* 6 N. L. R. B. 171.

[14] *Matter of McNeely & Price Company* and *National Leather Workers Association,* 6 N. L. R. B. 800.

[15] *Matter of Jacob A. Hunkele* and *Local No. 40 United Laundry Workers Union,* 7 N. L. R. B. 1276.

[16] *Matter of Mansfield Mills, Inc.,* and *Textile Workers Organizing Committee,* 3 N. L. R. B. 901. See also *Matter of United Carbon Company, Inc.,* and *Oil Workers International Union,* 7 N. L. R. B. 598, where the plant superintendent proposed that an employee start a fight with another employee who was active in the union so that the company could discharge the latter.

[17] *Matter of Tiny Town Togs, Inc.,* and *International Ladies' Garment Workers Union,* 7 N. L. R. B. 54. See also *Matter of Phillips Packing Company, Inc.,* and *United Cannery, Agricultural, Packing and Allied Workers of America,* 5 N. L. R. B. 272, where two of the company's supervisors participated in an attempt to run an active union member out of town.

[18] *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America,* 4 N. L. R. B. 202.

and order." In *Matter of Remington Rand, Inc.*,[19] large numbers of professional strikebreakers and operatives, known as "missionaries," "nobles," and "undercover" men, were hired by the company for such purpose. They jostled pickets and terrorized striking employees. In *Matter of Sunshine Mining Company*,[20] supervisors fostered the formation of two strikebreaking organizations, the "Vigilantes" and the "Committee of 356." Through them the company sought to enlist the intervention in the strike of local law enforcement agencies and the governor of the State. A mass demonstration was arranged by these organizations against the strikers, and handbills were distributed stating: "Vigilantes are ready to take care of any radical organizers * * * ropes are ready." Confronted by this situation the pickets disbanded before the demonstration was held. There then followed a victory celebration, with the company furnishing beer tickets, good in any saloon. Violence occurred; in one instance, a supervisor led a crowd of about 400 men who attempted to lynch one of the strikers.

4. Eliciting Renunciations of Union Affiliation From Employees Under Coercive Circumstances

Requests made by employers that employees express a preference for or against a particular union, or unionization, constitute a common type of employer conduct which the Board has held a violation of section 8 (1). Such action by the employer generally assumes one of the following forms: Interrogating employees individually or in a group concerning union membership or activities; conducting employer-supervised elections; or circulating pledges of loyalty or anti-union petitions for the employees' signatures.

In an early case, *Matter of Greensboro Lumber Company*,[21] a company official, during the course of a conversation with the union representative, ordered the work at the plant stopped and the employees lined up outside his office; he then ordered the employees to be brought in one at a time, and bluntly asked each whether he did or did not belong to the union. In finding a violation, the Board stated:

> That this procedure constituted flagrant intimidation and coercion of the respondent's employees is obvious * * *[22]

In *Matter of Maryland Distillery, Inc.*,[23] the president of the company, after assembling all employees and telling them the company wanted "no outside union to come in and run our business for us," asked for a show of hands as to whether the employees favored an "outside" labor organization or a company union.

In *Matter of Remington-Rand, Inc.*,[24] after the union had taken a strike vote, the employer conducted, under the supervision of its

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[19] *Matter of Remington Rand, Inc.*, and *Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626, order enforced in *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d, 1938), certiorari denied, 304 U. S. 576, rehearing denied, 304 U. S. 590.

[20] *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252.

[21] *Matter of Greensboro Lumber Company* and *Lumber and Sawmill Workers Local Union No. 2688*, 1 N. L. R. B. 629.

[22] The technique of questioning individual employees has appeared in numerous other cases. See, for example, *Matter of the Boss Manufacturing Company* and *International Glove Workers' Union of America*, 3 N. L. R. B. 400; *Matter of Trenton Garment Company* and *International Ladies' Garment Workers Union*, 4 N. L. R. B. 1186; *Matter of Williams Manufacturing Company* and *United Shoe Workers of America*, 6 N. L. R. B. 135; *Matter of Semet-Solvay Company* and *Detroit Coke Oven Employees Association and International Union United Automobile Workers of America*, 7 N. L. R. B. 511.

[23] *Matter of Maryland Distillery, Inc.*, and *Distillery Workers Union*, 3 N. L. R. B. 176.

[24] *Matter of Remington Rand, Inc.*, and *Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626.

foremen and officials, a vote among the employees on the same subject. In reviewing the Board's order, the Circuit Court of Appeals said:

> * * * it is plain, we think, that after an exclusive bargaining unit has taken a strike vote, it is an active interference with the exercise of its right to "bargain collectively" for the employer to undercut its authority by a vote of his own. The only possible reason for doing this is to show that the union's vote does not truly represent the men's wishes; it is to go over the heads of the representatives to their constituents; to discredit them as representatives, to destroy their power to bargain as such.[25]

However, employer-conducted elections are not confined to strike votes. In *Matter of Eagle Manufacturing Company*,[26] after a variety of attempts to dissuade employees from joining the union, the company took a vote upon the question "company union, Committee for Industrial Organization union, or no union." The ballots were given out by the paymaster and collected by foremen. In *Matter of McNeely & Price Company*,[27] the general manager spoke against an outside union at a meeting of employees, suggested an "inside" union, and proposed that a vote be taken on the question. A secret ballot revealed the employees strongly in favor of an outside union. The company then brought about a second poll, its action this time supplemented by inducements to employees to vote in favor of an inside union. The opinion of the Board stated:

> After the employees had indicated their distinct preference for an "outside" union in the first plant election despite the respondent's interference, the respondent eliminated completely the employee's free choice in the selection of representatives by arranging for a second company-supervised election. To insure the desired result, which was obtained in the second election, the respondent promised and subsequently awarded vacations with pay in return for the general repudiation of an "outside" union.
>
> We find that by the above acts the respondent, through its officers and agents, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in section 7 of the act.

Campaigns and other action by employers to secure pledges of "loyalty" from employees generally have the same purpose of undermining union organization and activity that employer-supervised elections have. The Board has found such conduct a violation of the section. In *Matter of Kiddie Kover Manufacturing Company*,[28] a petition reciting that the signatories did "not want the union," because the company "will give us a square deal" was circulated among the employees with the active assistance of a supervisory official. In *Matter of American Manufacturing Company*,[29] the petition, circulated at the company's suggestion, called for an expression of satisfaction "with present conditions," and a renunciation of any desire for "outside representation."[30] In *Matter of Sunshine Mining Com-*

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[25] Order enforced in *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d, 1938); certiorari denied, 304 U. S. 576, rehearing denied, 304 U. S. 590.

[26] *Matter of Eagle Manufacturing Company* and *Steel Workers Organizing Committee*, 6 N. L. R. B. 492, order enforced in *National Labor Relations Board* v. *Eagle Manufacturing Company*, 4 Cir., decided November 10, 1938.

[27] *Matter of McNeely & Price Company* and *National Leather Workers Association*, 6 N. L. R. B 800.

[28] *Matter of Arthur L. Colten, and A. J. Colman, co-partners, doing business as Kiddie Kover Manufacturing Company*, and *Amalgamated Clothing Workers of America*, 6 N. L. R. B. 355.

[29] *Matter of American Manufacturing Company* and *Textile Workers' Organizing Committee*, 5 N. L. R. B. 443.

[30] See also *Matter of Knoxville Glove Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 559, where the company's attorney prepared forms for withdrawal from the union, and the forms were distributed in the plant by supervisors.

pany,[31] the petition, also circulated with company assistance, not only recited opposition to "outside" representation, but further provided that the signatories would not recognize any strike or respect any picket line unless a majority of the employees consented to the strike. Great pressure was brought to bear by supervisors upon employees to sign.

5. Use of Contracts of Employment With Individual Employees to Obstruct Unionization

The employer in some of the cases has sought to defeat organizational efforts by inviting or requiring employees to enter into individual contracts of employment with it. In a number of instances the contract follows, or substantially follows, the form of individual employment contract prepared for employers by one L. L. Balleisen, secretary of the Brooklyn Chamber of Commerce. Such a contract and one of its uses were before the Board in *Matter of Hopwood Retinning Company, Inc.*[32] The employees in that case were locked out upon their undertaking to organize a union. After causing a deadlock in the negotiations involving a return of the employees, by refusing to make a contract with the union, the company informed the employees that they could return if they individually signed a proposed contract between it and "the duly elected collective bargaining committee consisting of all the production employees * * * and each and every one of the production employees." The contract provided that the employees would not go on strike prior to 1942, and further provided, as stated by the Board:

> Pursuant to the contract, "any employee has a right to join any union of his own choosing, or to refrain from joining any union. Furthermore, no employee or person working for the employer shall be obliged or required to join any union. The employees, or any of them, shall not and have not the right to demand a closed shop or recognition by the employer of any union, and the employer has the absolute and unqualified right to hire or discharge any employee or employees for any reason or for no reason and regardless of his or their affiliation or nonaffiliation with any union." By the contract, it is "the intention of the employer that employees be not unjustly discharged. It is strictly understood and agreed, however, that the question as to the propriety of any employee's discharge is in no event to be one for arbitration or mediation, and that any action of reinstatement, if any, will be taken voluntarily by the employer if it deems such reinstatement advisable."
>
> The contract further states that "all of the parties understand and agree that the propositions and questions of a closed shop and the recognition of a union are not and shall at no time be matters subject to or to be submitted to arbitration."

The Board stated that while the contract was "cleverly disguised as a collective agreement," it nevertheless was an individual employment contract; and found that the company by its course of conduct in seeking to foist such a contract upon its individual employees, had violated both sections 8 (1) and (5). The Board referred to the following statement in an earlier decision:[33]

> The contract deprives each employee who signs it of the right to strike until November 1, 1940, of the right to demand recognition of any union by the em-

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[31] *Matter of Sunshine Mining Company* and *International Union of Mine, Mill, and Smelter Workers*, 7 N. L. R. B. 1252.

[32] *Matter of Hopwood Retinning Company, Inc., and Monarch Retinning Company, Inc.*, and *Metal Polishers, Buffers, Platers, and Helpers International Union, Local No. 8, and Teamsters Union, Local No. 584*, 4 N. L. R. B. 922.

[33] *Matter of Atlas Bag and Burlap Company, Inc.*, and *Burlap and Cotton Bag Workers Local Union No. 2469*, 1 N. L. R. B. 292.

ployer, and of the right to question discharges for any reason or no reason regardless of his affiliation or nonaffiliation with any union. Despite the lip-service rendered by the terms of the contract to the right of any employee to join any union of his own choosing, the agreement deprives each employee subscriber of the fundamental rights inherent in union affiliation and activity—the right to union recognition, which means the right to collective bargaining, the right to concerted activities for mutual aid or protection, which is guaranteed to employees in section 7 of the National Labor Relations Act, and the right to protest against the employer's exercise of his most powerful antiunion weapon, discharge for union affiliation or activity. It would be hard to devise a more patently antiunion or "yellow dog" contract, or one more discouraging to membership in a labor organization.

The Circuit Court of Appeals, in enforcing the Board's order, pointed out that although the contract allowed the employees the right to join the union, "it denied them any right of collective bargaining and would allow the employer to discharge for any reason, one of which might be union activities." [34] The court held that in view of the circumstances surrounding the company's offer of the contract to the employees, the Board "could properly find that the contract offered was not made in good faith as an attempt to bargain collectively."

The use by employers of similar individual employment contracts in combating union activity has been held a violation of section 8 (1) in a number of cases.[35] In *Matter of Williams Manufacturing Company* [36] individual employment contracts of somewhat different provision nevertheless were used to the same end. The contracts there provided for employment of the individual employee for a stated period at the wages then prevailing and were terminable by either party upon 15 days' written notice. The contracts were presented to the employees by the company for the first time in its history, during the course of a vigorous campaign waged by it against union organization. Employees were called in small groups by the president of the company who exhorted them to sign. Supervisory officials attended. Many of the employees who were induced to sign did so because they feared loss of their jobs if they demurred. The president testified that counsel had suggested to the company the possibility of using such contracts as a basis, among other things, for injunction proceedings against the union, and such use was in fact made during a subsequent strike. In finding the making of these contracts a violation of section 8 (1), the Board said:

We find, in the light of the events preceding the presentation of the contracts and in the light of the circumstances under which they were presented and executed, that the contracts were not intended by the respondent and were not regarded by its employees as a genuine and voluntary exchange of promises mutually induced. The respondent's sole purpose in procuring and presenting the contracts was, through the guise of spurious individual bargaining, to foreclose its employees from exercising the right to self-organization and collective bargaining guaranteed to them under the Act and to impede the right to strike expressly preserved by the Act. The presentation of the contracts was regarded by the respondent's employees as a challenge to abandon the rights guaranteed to them under the Act, and the execution of the contracts was intended by them to signify to the respondent their submission to that challenge.

[34] Order enforced in part in *National Labor Relations Board* v. *Hopwood Retinning Company, Inc.*, 98 F. (2d) 97 (C. C. A. 2d, 1938).

[35] See, for example, *Matter of The Jacobs Bros. Co., Inc.*, and *United Electrical and Radio Workers of America*, 5 N. L. R. B. 620; *Matter of David E. Kennedy, Inc.*, and *Isidore Greenberg*, 6 N. L. R. B. 699; *Matter of National Licorice Company* and *Bakery and Confectionery Workers International Union of America*, 7 N. L. R. B. 537.

[36] *Matter of Williams Manufacturing Company* and *United Shoe Workers of America*, 6 N. L. R. B. 135.

6. Intimidatory Antiunion Statements

The use of the written or spoken word by the employer as an antiunion weapon arises with frequency and variety in the cases. Spreading of rumors, talks to individual employees and speeches to groups of them, notices of various import and use, the distribution of pamphlets and other literature have been utilized as media for preventing, combating, or destroying unionization.

In some cases, the statements are patently intimidatory or coercive. Typical is the following: "We don't want no outside union to come in and run our business for us." [37] In one case, the general superintendent announced, "the union principles are fine, but we don't want no union in our plant." [38] Often statements of like import are coupled with a threat to close or move the plant if the employees join the union.[39] In some cases, however, the intimidatory or coercive nature and effect of the statement made or used appears only when it is examined in the context of surrounding circumstances and in its relation to the entire factual background. The violation in these cases necessarily depends on these other factors. The Board has found an unfair labor practice under section 8 (1) in employer statements to employees describing union organizers as "racketeers," "parasites," or as persons interested solely in their own monetary advancement; [40] statements asserting that union dues are used by organizers to buy clothes,[41] get drunk,[42] or to purchase big black cigars; [43] statements depicting unions as "rotten" or "corrupt," and the employees who join them as "thugs and highwaymen," "cutthroats," and "reds." [44] In one case the union was termed a "dark cloud" or "stranger" which would destroy the "happy family" relationship between the company

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[37] See, for example, *Matter of Maryland Distillery, Inc.*, and *Distillery Workers Union 20270*, 3 N. L. R. B. 176.

[38] *Matter of Dunbar Glass Corporation* and *Committee for Industrial Organization*, 6 N. L. R. B. 789.

[39] Threats of this nature have appeared in a great number of cases. For some typical examples, see *Matter of Remington Rand, Inc.*, and *Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626; *Matter of Leo L. Lowy* and *International Association of Machinists*, 3 N. L. R. B. 938; *Matter of Titan Metal Manufacturing Company* and *Federal Labor Union No. 19981*, 5 N. L. R. B. 577; *Matter of Stackpole Carbon Company* and *United Electrical and Radio Workers of America*, 6 N. L. R. B. 171. In *Matter of Omaha Hat Corporation* and *United Hatters, Cap and Millinery Workers International Union*, 4 N. L. R. B. 878, the company actually signed a lease for a building in another community, and began to move its machinery, in order to avoid dealing with the union.

[40] See for example *Matter of Jones and Laughlin Steel Corporation* and *Amalgamated Association of Iron, Steel & Tin Workers of North America*, 1 N. L. R. B. 503, order enforced in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, enforcement denied in 83 F. (2d) 998 (C. C. A. 5th, 1936); *Matter of Oregon Worsted Company* and *United Textile Workers of America*, 3 N. L. R. B. 36; *Matter of Trenton Philadelphia Coach Company and Amalgamated Association of Street, Electrical Railway and Motor Coach Employees of America*, 6 N. L. R. B. 112.

[41] *Matter of Bell Oil & Gas Co.* and *Local Union 258 of the International Association of Oil Field, Gas Well, and Refinery Workers of America, et al.*, 1 N. L. R. B. 562.

[42] *Matter of Crucible Steel Company of America* and *Strip Steel and Wire Workers Union*, 2 N. L. R. B. 298.

[43] *Matter of Greensboro Lumber Co.* and *Lumber and Sawmill Workers Local Union No. 2688*, 1 N. L. R. B. 629. Employers sometimes paint a lurid picture in this respect. See, for example, *Matter of Cating Rope Works, Inc.*, and *Textile Workers Organizing Committee*, 4 N. L. R. B. 1100, where company officials told the employees that the company "did not want any union organizers sitting around with their feet on a desk, smoking big black cigars, and collecting dues from its employees." In the *Greensboro Lumber case* an employee was warned that while the organizer was sitting in his hotel smoking a cigar, he would "be down here stopping bullets."

[44] *Matter of Jones & Laughlin Steel Corporation* and *Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200*, 1 N. L. R. B. 503; *Matter of Crucible Steel Company* and *Strip Steel and Wire Workers Union, Local No. 20084, American Federation of Labor*, 2 N. L. R. B. 298; *Matter of Ralph A. Freundlich, Inc.*, and *Max Marcus, et al.*, 2 N. L. R. B. 802. For a comprehensive characterization, see *Matter of Knoxville Glove Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 559, where the business manager of the company described the union as a bunch of "Communists and Reds and foreigners."

and its employees.[45] Statements disparaging the effectiveness of the act in protecting employees and in according them rights have been held a violation. Thus an assertion that "the Wagner Labor Relations Act was just a bluff;"[46] or purported explanations of the act through negative treatment which stress such matters as the retention by the employer of his right to hire and discharge, at the same time carefully omitting mention of the employee rights which the act guarantees.[47]

In some cases the statements are not made by the employer himself or through persons in his employ, but through third persons, such as civic officials, whom the employer utilizes for such purpose. This also has been held a violation.[48]

The importance of an examination of the circumstances surrounding the statement and of the general background of the case is shown in *Matter of Indianapolis Glove Company*.[49] In that case the company discharged employees for union activities and sponsored a company-dominated labor organization among the employees. Coincident therewith an official addressed the employees in each department, bitterly denouncing the outside union, stating that it was only fomenting trouble to obtain the employees' money, and that the company did not need any "outsiders" to help run the plant. The employees were warned that if the outside union succeeded, the plant would be closed. The same official later made another series of addresses, telling the employees that he could speak plainer than the "bunch of foreigners" in the outside union, who, he averred, probably had been chased out of their own countries. The Board found these statements, under the circumstances, a violation of section 8 (1).

In *Matter of The Triplett Electrical Instrument Company*,[50] the two companies jointly operated the principal business establishment in a town of about 2,500 inhabitants. In March 1937 the employees organized a local of the United Electrical and Radio Workers of America. The president of the companies thereupon called a meeting of employees in the plant laboratory and told them that an "inside" union would be more in their interest. He asked for a viva voce vote on an inside or outside union, and upon no one voting against an inside union appointed a committee to form such an organization. After his departure from the meeting, the employees held a secret ballot among themselves, and a decided preference was shown for outside affiliation. The company thereafter closed the plant,

[45] *Matter of Williams Manufacturing Company* and *United Shoe Workers of America*, 6 N. L. R. B. 135.

[46] *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America*, 4 N. L. R. B. 202. In *Matter of Union Die Casting Company, Ltd.*, and *International Union United Automobile Workers of America*, 7 N. L. R. B. 846, after the issuance of the Trial Examiner's Intermediate Report, the company posted a notice in the plant castigating the Report as "villanous, partial, one-sided, and otherwise unfair." The notice went on to characterize the Act as "the abomination of abominations," protested that "we should not be spending hundreds of dollars to satisfy rotten politicians and grafting parasites," and expressed the hope that the employees realized "what a hell of a mess certain labor racketeers have made of things and what a big ass our government has become to tolerate such acts."

[47] See *Matter of Mansfield Mills, Inc.*, and *Textile Workers Organizing Committee*, 3 N. L. R. B. 901. Cf. *Matter of Nebel Knitting Company, Inc.*, and *American Federation of Hosiery Workers*, 6 N. L. R. B. 284.

[48] See, for example, *Matter of J. Freezer & Sons., Inc.*, and *Amalgamated Clothing Workers of America*, 3 N. L. R. B. 120; *Matter of Regal Shirt Company* and *Amalgamated Clothing Workers of America*, 4 N. L. R. B. 567; *Matter of Christian A. Lund* and *Woodenware Workers Union*, 6 N. L. R. B. 423.

[49] *Matter of Indianapolis Glove Company* and *Amalgamated Clothing Workers of America*, 5 N. L. R. B. 231.

[50] *Matter of The Triplett Electrical Instrument Company, the Diller Manufacturing Company*, and *United Electrical and Radio Workers of America*, 5 N. L. R. B. 835.

allegedly fearing a strike, and distributed a handbill reading in part as follows:

These Companies now face a labor disturbance among their employees fostered by outside organizers and sympathizers, but to which, very much to our surprise, a number of our employees are subscribing. These Companies will always do the very best they are able to satisfy reasonable demands of any employee, but they cannot and will not permit the operations to be taken over and thereafter dictated and dominated by any alien and outside influence or authority. If the matter in dispute can be adjusted satisfactorily by our employees and ourselves, and to our mutual satisfaction, we shall always be found willing and reasonable in making such adjustment; until we can have some assurance and settlement of all differences between us, the plants will remain closed. If such disposition of the matter cannot be made, after a fair and free effort to settle all questions between us, then we shall have finally to decide as a matter of policy whether the Companies will liquidate their business or remove their operations to other fields * * *.

Thereafter, a company-dominated labor organization was formed; some employees who were members of the affiliated union were discharged; and collective bargaining with the outside union refused. In discussing the statements made by the president and contained in the handbill, the Board said:

The above facts show that the respondents adopted an antiunion policy when the news of the organization of a labor union among their employees came to their attention. Triplett's remarks at the meeting which he called in the laboratory left no doubt in anyone's mind that he and the respondents were opposed to outside labor unions. Such a statement of policy by an employer is sufficient to intimidate persons who are dependent upon him for their livelihood and who have little or no chance of securing employment elsewhere in the community if they lose their jobs with that employer. There need be no out-and-out threat of termination of employment.

The handbill issued by the boards of directors of the respondents on March 15 finally dispelled whatever doubts may still have existed in anyone's mind as to where the respondents stood in regard to their employees' membership in the Union. The policy indicated by that handbill was to refuse to deal with any representative of the employees who was not himself an employee of the respondents, and to discourage membership in the union by closing the plants and threatening to keep them closed and to move them to another city. There can be no doubt of what the respondents intended to accomplish by the issuance of that handbill and the simultaneous closing of the plants.

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We find that by all these acts the respondents have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the act.

In *Matter of Nebel Knitting Company, Inc.*,[51] the president, at a company Christmas party, told the employees that "before he would have a union in his mill he would close his mill and go back to Germany," reminded them that "I am the head of this place," and stated that "You all ought to be satisfied and by God, they (meaning the Union and its organizer) are not going to tell me what to do." Subsequently, after organizational activities were begun by the union, the employees were given a mimeographed sheet entitled "Facts About the Wagner Law," consisting of a series of questions and answers relating to the act. Simultaneously the president posted on a bulletin board a letter to employees stating in part:

The most important answer is the last one which leaves the employer the right to select his employees or discharge them. Personally, I don't deny the fact that I am against labor Unions. However, this corporation will live up

[51] *Matter of Nebel Knitting Company, Inc.*, and *American Federation of Hosiery Workers*, 6 N. L. R. B. 284.

100% to the laws of this country. If by any chance 51% of our employees should join the Union, and their outside representative would call on us, an officer or representative of this company would naturally, under the law, bargain with him or them. I doubt however that my people would choose to have an outsider represent them.

That same night the president addressed the knitters in the plant at midnight and, referring to the organizational efforts, said "I cleaned them out two years ago and I am going to clean them out again if I have to fire every damn man I have got * * * This is my plant, and I will run it the way I please." Earlier that same day an employee was discharged for union membership. The Board stated:

> Nebel's Christmas speech, as related in the testimony of the two employees, foreshadowed the hostility which the Union was to encounter. * * * We are convinced that the midnight session with the knitters was a step deliberately taken for the purpose of interfering with, restraining, and coercing these employees in rights which were secured them under the act. Nebel's attempt to portray this incident as a casual conversation between himself and the employees, to discuss provisions of the Act, is not borne out by the evidence. The hour of the conversation, his own presence, the discharge of Griffin earlier in the day, his knowledge that the Union organizers had been distributing circulars outside the mill, render such interpretation highly implausible. * * * We also view the use to which the respondent put the sheet "Facts about the Wagner Law" as interference and coercion of the same stamp. This unfair labor practice was rooted not so much in the distribution or contents, *per se*, of the reprint, but in the statements of Nebel which accompanied distribution. The emphasis placed, in his letter to the employees, upon the words of the reprint that an employer had the right to select and discharge employees, followed, as it was, by Nebel's own words that "Personally, I don't deny the fact that I am against labor Unions," was well calculated to intimidate. The concluding appeal of the letter, "I doubt however that my people would choose to have an outsider represent them," under the facts involved, was coercive * * *.

7. Miscellaneous Violations of Section 8 (1)

The more common forms of employer action violative of the section have been dealt with above. The cases, however, contain considerable antiunion conduct which, while not as recurrent, nevertheless has been the subject of consideration by the Board. Thus, section (1) was held violated by the employers' attempt to place limitations upon what representatives the employees should designate as their collective bargaining representative;[52] and a similar attempt, although unsuccessful, to dictate to them the form of their labor organization, such as an "inside" union.[53]

A discharge of workers for engaging in concerted activities unrelated to union organization may constitute an unfair labor practice under the section. In *Matter of Indianapolis Glove Company*,[54] employees were dismissed for engaging in a brief stoppage of work induced by a wage grievance. The Board's opinion pointed out:

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[52] See *Matter of Oregon Worsted Company* and *United Textile Workers of America, Local 2435*, 1 N. L. R. B. 916, order enforced in *National Labor Relations Board* v. *Oregon Worsted Company*, 96 F. (2d) 193 (C. C. A. 9th, 1938); *Matter of Wallace Manufacturing Company, Inc.*, and *Local No. 2237, United Textile Workers of America*, 2 N. L. R. B. 1081, order enforced in *National Labor Relations Board* v. *Wallace Mfg. Co., Inc.*, 95 F. (2d) 818 (C. C. A. 4th, 1938).

[53] See *Matter of Fansteel Metallurgical Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 66*, 5 N. L. R. B., enforcement denied on other grounds in *Fansteel Metallurgical Corp.* v. *National Labor Relations Board*, 98 F. (2d) 375 (C. C. A. 7th, 1938), certiorari granted November 19, 1938; *Matter of United Carbon Company, Inc.*, and *Oil Workers International Union, Local 236*, 7 N. L. R. B. 598.

[54] *Matter of Indianapolis Glove Company* and *Amalgamated Clothing Workers of America*, 5 N. L. R. B. 231.

The nine tippers were unorganized and could not be represented by a labor organization in the presentation of their grievances. The stoppage engaged in by them was a spontaneous expression of discontent staged for the purpose of bringing to the attention of the respondent the grievance concerning wages which repeated talks with their forelady had failed to remedy.

The discharges were held to constitute interference, restrain, and coercion of the employees in the exercise of their right to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection.

In the *Matter of Carlisle Lumber Company*,[55] striking employees were notified that unless they made application for work by a certain day, the company would evict them from their company-owned homes. The Board found this action exceptionally coercive, because all dwellings in the town were owned by the company and no other shelter was available. In *Matter of Hercules-Campbell Body Co., Inc.*,[56] wages were increased by the company after it refused to negotiate with the union regarding such increase. At the time the increase was announced the employees were told by the company president that a union was unnecessary. The Board found a violation and stated:

It is clear that, after the failure of the Union committee to secure an increase in wages, Campbell's announcement of a general wage increase, coupled with his statements concerning the futility of unions, was intended, at least in part, as striking proof of these and his previous statements regarding the positive benefits of not having a union at the respondent's plant.

In *Matter of Waterman Steamship Corporation*,[57] the company's refusal to allow solicitation of membership by one union on board its ships, while permitting a rival union to do so, was held a violation, the discrimination having "the necessary effect of impeding its employees in the free choice of representatives." In *Matter of Brown Shoe Company, Inc.*,[58] the company arbitrarily abrogated a contract with the union which represented the union's "outstanding achievement in collective bargaining." The Board found that the employer's act "in the light of the background situation * * * is to be interpreted only as a blow aimed directly at the union. Consequently, the respondent's termination of the arrangement without conferring with the union constitutes interference, restraint, and coercion of its Salem plant employees in the exercise of their right to collective bargaining guaranteed by the Act."

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[55] *Matter of Carlisle Lumber Company* and *Lumber & Sawmill Workers' Union*, 2 N. L. R. B. 248, order enforced in *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th, 1937), certiorari denied, 304 U. S. 575.

[56] *Matter of Hercules Campbell Body Co., Inc.*, and *United Automobile Workers of America*, 7 N. L. R. B. 431. In enforcing an order of the Board under section 8 (2) in another case, the Ninth Circuit Court of Appeals observed: "The finding that the Allied Chemical Workers' Association did not succeed in freeing itself from employer domination is supported by the evidence. For more than a year following passage of the Act, the Association made some attempts to gain better wages and to relieve the unsatisfactory housing situation in Trona. These moves were for the most part fruitless until concessions on both matters were made by respondent in April 1936, the high point of the Borax and Potash Workers' Union organizing campaign. The Board justly inferred that such success, coming after a long period of chronic inability to bargain successfully, was due to respondent's desire to head off the American Federation of Labor union rather than to any pressure from the Association." *National Labor Relations Board* v. *American Potash and Chemical Corporation*, 98 F. (2d) 488 (C. C. A. 9th, 1938), enforcing order of Board in *American Potash and Chemical Corporation* and *Allied Chemical Workers Association of Trona, California*, 3 N. L. R. B. 140.

[57] *Matter of Waterman Steamship Corporation* and *National Maritime Union of America*, 7 N. L. R. B. 237.

[58] *Matter of Brown Shoe Company, Inc.*, and *Boot and Shoe Workers' Union*, 1 N. L. R. B. 803.

8. Favoritism Between Rival Unions as a Violation of Section 8 (1)

One particular situation presented by some of the cases warrants separate consideration—i. e., the instance of the employer infringing the Act by campaigning for, or otherwise lending assistance to, one union against a rival organization, neither of which, however, is company-dominated. In *Matter of National Electric Products Corporation*,[59] the United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization, commenced organizational activities among the employees in March 1936, and was immediately confronted by company hostility. Some time in May 1937 the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, initiated a rival organizing movement at the plant. From the outset, company officials, foremen, and the plant superintendent actively assisted the Brotherhood in securing members. Solicitation for that organization was permitted throughout the plant during working hours. On May 22, 1937, the company agreed in writing to recognize the Brotherhood as the exclusive bargaining representative of the employees. A local of the brotherhood, however, was first established at the plant the following day, when its initial meeting was held. A closed-shop contract between the company and the favored union was consummated on May 27.[60] All during this period, the United claimed a majority and attempted in vain to obtain a conference with the company for collective bargaining purposes. The Brotherhood's claim of majority representation was accepted by the company without question. After the agreement was signed, a company official told a group of employees that "if the A. F. of L. Union is good enough for the company, it is good enough for * * * you fellows." Thereafter employees were informed by the company that if they failed to join the Brotherhood, the equivalent of membership dues in that union would be deducted from their wages. The Board found the above course of conduct by the employer to constitute interference, restraint, and coercion of the employees in the exercise of their right to self-organization, as guaranteed in section 7, and hence a violation of section 8 (1).[61]

In *Matter of The Grace Company*,[62] the United Garment Workers of America, affiliated with the American Federation of Labor, secured a substantial membership among the employees. The company favored a rival union, the International Ladies' Garment Work-

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[59] *Matter of National Electric Products Corporation* and *United Electrical and Radio Workers of America*, 3 N. L. R. B. 475.

[60] Prior to the hearing before the Board, the United States District Court for the Western District of Pennsylvania entered a decree in favor of the Brotherhood, as plaintiff, against the company, as defendant, specifically enforcing the closed shop contract. However, no question of unfair practice under the Act was before that court. The Board pointed out in its decision that section 10 (a) of the Act expressly vests in the Board exclusive power to prevent unfair labor practices, and exclusive jurisdiction to review and enforce the Board's orders, in the Circuit Court of Appeals. The Board stated: "This Act embodies a public policy of national concern and is the supreme law of the land on the subject matter covered by it. * * * We hold that the decree in question cannot foreclose the Board's consideration of the validity of the May 27 contract under the Act. * * *"

[61] For similar cases, see *Matter of Consolidated Edison Company of New York, Inc.*, and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 71, order enforced in *Consolidated Edison Co.* v. *National Labor Relations Board*, 96 F. (2d) 390 (C. C. A. 2d, 1938) certiorari granted, 304 U. S. 555; *Matter of Lenox Shoe Company, Inc.*, and *United Shoe Workers of America*, 4 N. L. R. B. 372; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America*, 5 N. L. R. B. 409; *Matter of Zenite Metal Corporation* and *United Automobile Workers of America*, 5 N. L. R. B. 509; *Matter of Missouri-Arkansas Coach Lines, Inc.*, and *The Brotherhood of Railroad Trainmen*, 7 N. L. R. B. 186.

[62] *Matter of The Grace Company* and *United Garment Workers of America*, 7 N. L. R. B. 766.

ers Union, affiliated with the Committee for Industrial Organization, because its standard contract with employers in the trade provided for lower wages than did a similar contract used by the American Federation of Labor union. The company president told the employees they "would have to join the C. I. O. or none at all." A floorlady procured C. I. O. membership cards and distributed them to employees with the warning that if they did not sign the company would liquidate. The company discharged some of the employees who joined the American Federation of Labor union and refused to deal with it. However, about the time this illegal assistance was to close with the signing of a collective bargaining agreement between the company and the Committee for Industrial Organization's affiliate, that union stated that it might never sign. The Company thereupon decided to and did form an "independent" union, lent it vigorous assistance, and a contract was made with the new organization. The Board found that the company's entire course of action in assisting the Committee for Industrial Organization's affiliate and the "independent" union constituted a violation of Section 8 (1).

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

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

> By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act * * * or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made.[63]

1. Discrimination Because of Union Activity

In administering section 8 (3) the Board has been careful not to "interfere with the normal exercise of the right of the employer to select its employees or to discharge them."[64] And conversely the Board has been equally determined not to permit in any case an unfair labor practice within the meaning of this section to go unchallenged "under cover of that right."[65] The Board has never held it to be an unfair labor practice for an employer to hire or discharge, to promote or demote, to transfer, lay off, or reinstate, or otherwise to affect the hire or tenure of employees or their terms or conditions of employment, for asserted reasons of business, animosity, or because of sheer caprice, so long as the employer's conduct is not wholly or in part motivated by antiunion cause. As stated in one case:

> This Board does not attempt to interpret employers' rules or pass upon their reasonableness. The only issue with which we are concerned is whether Green had been discharged because of his Union activity * * *[66]

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

[64] *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 45 (1937), reversing, 83 F. (2d) 998 (C. C. A. 5th, 1936), and enforcing *Matter of Jones & Laughlin Steel Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, etc.*, 1 N. L. R. B. 503.

[65] *Ibid.*

[66] *Matter of Montgomery Ward and Company, etc.*, and *United Mail Order and Retail Workers of America*, 4 N. L. R. B. 1151.

This view was expressed in *Matter of Pennsylvania Greyhound Lines*,[67] the very first case decided by the Board. The complaint alleged the discharge of nine employees for union activity. The Board concluded that in regard to five of the employees the company had committed an unfair labor practice, within section 8 (3), and stated:

> If the motivating cause of the discriminatory change in the tenure of employment was interference with the employees in the exercise of their guaranteed rights or discouragement of membership in a labor organization, a violation is established * * *

In dismissing the complaint as to two of the employees, the Board stated:

> The record does not support the allegations in the complaint that these two discharges were for union membership or activity. In so finding, however, the Board is not unmindful of the fact that these discharges represent the severest discipline that can be meted out to employees * * * However, on the whole record the Board is of the opinion that union membership or activity was not the effective cause for the two discharges.[68]

The Board has applied section 8 (3) in many cases. A number of its orders in these cases have been passed upon by the Supreme Court, and in each that Court has upheld the Board.[69]

In the typical case the employer violates the section by discriminatory action against an employee because the employee is a member of, or active in, a labor organization to which the employer is

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[67] *Matter of Pennsylvania Greyhound Lines, Inc., etc.* and *Local Division No. 1063 of the Amalgamated Association of Street, Electrical, and Motor Coach Employees of America*, 1 N. L. R. B. 1, order enforced in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261 (1938).

[68] In *Matter of Botany Worsted Mills* and *Textile Workers Organizing Committee*, 4 N. L. R. B. 292, the Board stated: "we interpret the intent of Congress as embodied in the Act to be this, that inasmuch as by Section 8 (3) it is made an unfair labor practice to encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment, it is therefore an unfair labor practice so to discriminate whether or not the discharge is attributed to a violation of known company rules or 'conditions of * * * employment.'" Discrimination involves an intent to distinguish in the treatment of employees on the basis of union affiliations or activities, thereby encouraging or discouraging membership in a labor organization * * *" See cases cited below, p. 85.

[69] *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1 (1937), reversing 83 F. (2d) 198 (C. C. A. 5th, 1936); and enforcing *Matter of Jones & Laughlin Steel Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Beaver Valley Lodge No. 200*, 1 N. L. R. B. 503; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49 (1937), reversing 85 F. (2d) 391 (C. C. A. 6th, 1936); and enforcing *Matter of Fruehauf Trailer Company* and *United Automobile Workers Federal Labor Union No. 19575*, 1 N. L. R. B. 68; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co., Inc.*, 301 U. S. 58 (1937), reversing 85 F. (2d) 1 (C. C. A. 2d, 1936), and enforcing *Matter of Friedman-Harry Marks Clothing Co., Inc.*, and *Amalgamated Clothing Workers of America*, 1 N. L. R. B. 411, 432; *Washington, Virginia & Maryland Coach Company* v. *National Labor Relations Board*, 301 U. S. 142 (1937) affirming 85 F. (2d) 990 (C. C. A. 4th, 1936), and enforcing *Matter of Washington, Virginia & Maryland Coach Company, etc.*, and *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, etc.*, 1 N. L. R. B. 769; *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103 (1937), affirming 85 F. (2d) 56 (C. C. A. 2d, 1936), and enforcing *Matter of The Associated Press* and *American Newspaper Guild*, 1 N. L. R. B. 788; *Santa Cruz Fruit Packing Company* v. *National Labor Relations Board*, 303 U. S. 453 (1937), affirming 91 F. (2d) 790 (C. C. A. 9th, 1937), and enforcing *Matter of Santa Cruz Fruit Packing Company, etc.*, and *Weighers, Warehousemen and Cereal Workers, etc.*, 1 N. L. R. B. 454; *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333 (1938), reversing 92 F. (2d) 761 (C. C. A. 9th, 1937). 87 F. (2d) 611 (C. C. A. 9th, 1937), and enforcing *Matter of Mackay Radio & Telegraph Company, etc.*, and *American Radio Telegraphists' Association, etc.*, 1 N. L. R. B. 201. In the *Associated Press Case*, the Supreme Court stated: "The act permits a discharge for any reason other than union activity or agitation for collective bargaining with employers * * * The petitioner is at liberty, whenever occasion may arise, to exercise his undoubted right to sever his relationship for any cause that seems to it proper save only as a punishment for, or discouragement of, such activities as the act declares permissible."

opposed. Not infrequently the situation varies somewhat though the violation is equally clear. The Board has found the employer's antiunion discrimination an unfair labor practice, regardless of the status of the employee. In *Matter of Fruehauf Trailer Company*,[70] the Board found that an unfair labor practice had occurred with respect to a subforeman who had been discharged for union activity.[71] A similar result was reached involving a foreman,[72] newspaper circulation district and branch managers,[73] and a power house chief engineer.[74]

An employee may be the subject of discrimination although he is not a member of the union opposed by the employer.[75] Thus a discharge because of supposed union membership or activity has been held a violation.[76] The employer's antiunion discrimination has on occasion been directed even to those not suspected of union activity.[77] In *Matter of Memphis Furniture Manufacturing Company*,[78] the employer discharged an employee for union activity, then dismissed the employee's wife who was neither affiliated with nor active in the union, because her husband had been discharged. The Board found a violation in the dismissal of the wife:

> The respondent thus made union membership and activities a bar to the employment not only of the union member himself but of members of his family as well. A more effective mode of discouragement of union affiliation could hardly be found than the knowledge that such activities put not merely the union member's employment but that of those closely related to him in jeopardy. The direct cause of Mrs. Barmer's discharge was the fact that her husband had been discharged, but the indirect and antecedent cause was discrimination against union members in regard to hire and tenure of employment with intent to discourage membership in the Union.

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[70] *Matter of Fruehauf Trailer Company* and *United Automobile Workers Federal Labor Union No. 19375*, 1 N. L. R. B. 68, enforced in *National Labor Relations Board* v. *Fruehauf Trailer Company*, 301 U. S. 49 (1937).

[71] See also *Matter of The Triplett Electrical Instrument Company, etc.*, and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835; *Matter of Atlantic Greyhound Corporation and Brotherhood of Railroad Trainmen*, 7 N. L. R. B. 1189 (dispatcher). In the latter case the Board stated: "Lee's position as dispatcher, heretofore described, was of a minor supervisory character. Although antiunion conduct of managerial or supervisory employees has been repeatedly held to be proof that the employer has engaged in unfair labor practices, it does not follow that managerial or supervisory employees are not employees within the meaning of Section 2 (3) of the Act. The statutory definition is of wide comprehension. We find that Lee was an employee within the meaning of Section 2 (3) of the Act." Cf. *National Labor Relations Board* v. *Biles-Coleman Lumber Company*, 96 F. 2d 197, 98 F. (2d) 16, 18 (C. C. A. 9th, 1938), enforcing *Matter of the Biles-Coleman Lumber Company* and *Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679: the respondent objected to the Board's ordering the respondent to reinstate nonunion workers who went on strike, especially two foremen; the Circuit Court held that the order was authorized by secs. 2 (3) and 10 (c) of the act.

[72] *Matter of American Potash & Chemical Corporation* and *Borax and Potash Workers Union, No. 20181*, 3 N. L. R. B. 140, enforced in *National Labor Relations Board* v. *American Potash & Chemical Corporation*, 98 F. (2d) 448, (C. C. A. 9th, 1938).

[73] *Matter of Star Publishing Company* and *Seattle Newspaper Guild, Local No. 82*, 4 N. L. R. B. 498, enforced in *National Labor Relations Board* v. *Star Publishing Company*, 97 F. (2d) 465 (1938), (C. C. A. 9th, 1938).

[74] *Matter of The Warfield Company, etc.*, and *International Union of Operating Engineers, etc.*, and *International Brotherhood of Firemen and Oilers*, etc., 6 N. L. R. B. 58.

[75] Cf. above, note 71.

[76] *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304; *Matter of The Hoover Company and United Electrical and Radio Workers of America, etc.*, 6 N. L. R. B. 688.

[77] Cf. *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, etc.*, 5 N. L. R. B. 409.

[78] *Matter of Memphis Furniture Manufacturing Company* and *Furniture Workers Local Union No. 1174, United Brotherhood of Carpenters and Joiners of America*, 3 N. L. R. B. 26, enforced in *Memphis Furniture Manufacturing Company* v. *National Labor Relations Board*, 96 F. (2d) 1018, (C. C. A. 6th, 1938); certiorari denied, 59 S. Ct. 91 (1938).

Matter of Mansfield Mills, Inc.,[79] presents a slight variation. The employer discharged the employee for union activity and then discharged his wife on the asserted ground that her discharge was required by a company rule that all members of the family must be dismissed when the head of the family is to make room for another family in the company-owned house. Given this company rule as the immediate reason, the Board held "we would necessarily find that she was the victim of discrimination in violation of the act * * *." The interposition of the company rule could not break the causal chain linking the employer's antiunion activity to the discharge of the wife.[80]

The Board has held that an employer commits an unfair labor practice by refusing employment to persons whether the employer acts because of their former or current membership in a labor organization.[81] In either view, membership induced the employer to discriminate. For the same reason the section has been applied to instances of discrimination based on employee activity looking toward the formation of a labor organization.[82]

All labor organizations have received the protection of the section, whether affiliated or unaffiliated. Since the Board does not interfere in the internal administration of unions,[83] it has been held immaterial that a complaining union might not be in good standing with its parent body.[84]

Section 8 (3) forbids both discouragement and encouragement of membership by discrimination. In many cases coming before the Board two rival unions are competing for membership. The Board has described the employer's obligation, under these circumstances, as "the duty to remain aloof and impartial," [85] in order that employees will be free to choose either union or neither. The employer's act of favoritism toward either union necessarily encourages membership in the favored and discourages membership in the disfavored union. In *Matter of Phillips Packing Company, Inc.*,[86] the Board found it to be an unfair labor practice for the employer to discharge an employee "because he joined the unions, and refused to become a member of the association." The Board reached the same result where the employer discriminated against an employee who refused to join a favored

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[79] *Matter of Mansfield Mills, Inc.*, and *Textile Workers Organizing Committee*, 3 N. L. R. B., 901.

[80] Also: *Matter of Fashion Piece Dye Works, Inc.*, and *Federation of Silk and Rayon Dyers and Finishers of America*, 6 N. L. R. B. 274, enforced in *National Labor Relations Board* v. *Fashion Piece Dye Works, Inc.*, decided November 28, 1938 (C. C. A. 3d, 1938).

[81] *Matter of Appalachian Electric Power Company* and *International Brotherhood of Electrical Workers, etc.*, 3 N. L. R. B. 240, enforcement denied on other grounds in *Appalachian Electric Power Co.* v. *National Labor Relations Board*, 93 F. (2d) 985 (1938), (C. C. A. 4th, 1938).

[82] *Matter of Stylecraft Leather Goods Company, Inc.*, and *Benjamin Marsala*, 3 N. L. R. B. 920. In the absence of a union, discrimination may be an unlawful interference with the employees' right "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection" as guaranteed in section 7. *Matter of Southgate-Nelson Corporation* and *National Marine Engineers Beneficial Association*, 3 N. L. R. B. 535; *Matter of Indianapolis Glove Company* and *Amalgamated Clothing Workers of America, Local No. 145*, 5 N. L. R. B. 231.

[83] See *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252, and cases cited therein.

[84] *Matter of Frederick R. Barrett* and *International Longshoremen's Association, Local No. 978*, 3 N. L. R. B. 513; *Matter of M. and M. Woodworking Company* and *Plywood and Veneer Workers Union Local No. 102, affiliated with International Woodworkers of America*, 6 N. L. R. B. 372.

[85] *Matter of Ingram Manufacturing Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 908.

[86] *Matter of Phillips Packing Company, Inc., etc.*, and *United Cannery, Agricultural, Packing and Allied Workers of America; Phillips Packing Company, Inc., etc.*, and *Tin Can Makers Local Union 20919*, and *Packing House Workers Local Union 20918*, 5 N. L. R. B. 272.

union;[87] where the employer discriminated against employees who actively opposed the organization of a union supported by the employer;[88] and where the employer discriminated against employees who strove to free a company-supported union from company domination.[89] In the latter case the Circuit Court of Appeals, in enforcing the Board's order, stated:

> The protest by the seven committee members shows an attempt by the seven and, through them, the Association, to be free of employer control. The discharge shows that such freedom was not obtained. A discriminatory discharge may just as well be directed toward *domination* of a labor organization as toward a dissolution or driving out of a labor organization. The distinction is clearly brought out in the case at bar. Both Union men and Association men were discharged by this respondent. After such discharges the Union was driven out or underground, but the Association continued to function with the permission and facilities of the employer. Clearly the discharges were motivated by a desire to destroy the Union and to *destroy the militancy and independence of the Association, but not the Association itself.*[90]

Matter of Highway Trailer Company[91] illustrates another method of discrimination. The employer agreed to discharge any employee whom the company-dominated union deemed undesirable. A discharge pursuant to the direction of this union was found to be in violation of the section. The Board has reached the same result where the favored union, although not company-dominated, was assisted by other unfair labor practices,[92] and where the favored union was not otherwise assisted by unfair labor practices.[93]

The Board has rejected several attempts to justify a discrimination where it is contended that the union activity is inimical to the employer's business. The employer's ulterior motive, what it thought its business interest, cannot justify antiunion discrimination in the face of the policy of the act and its legislative findings.[94] In *Matter of The Associated Press*,[95] the employer discharged an employee for union activity, claiming that the discharge was privileged because the peculiar nature of the business, requiring accuracy in news gathering and freedom of the press, made it necessary that the employer be free to discriminate on the ground of union membership. The Board in overruling the defense stated:

> Yet the policy of the act seems clearly applicable to the situation here disclosed; and, pursuant to its policy, accuracy, or other requirements of this form of employment would appear not to be hampered, but even promoted by the presence of contented employees under labor relations determined by the Congress to be generally desirable, and freedom of the press would be facilitated by a freedom of organization granted to its highest skilled equally with its other employees.[96]

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[87] *Matter of The Triplett Electrical Instrument Company, etc.*, and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835.
[88] *Matter of David E. Kennedy, Inc.*, and *Isidore Greenberg*, 6 N. L. R. B. 699.
[89] *Matter of American Potash & Chemical Corporation* and *Borax and Potash Workers Union No 20181*, 3 N. L. R. B. 140, enforced in *National Labor Relations Board* v. *American Potash and Chemical Corporation*, 98 F. (2d) 488, (C. C. A. 9th, 1938).
[90] Ibid.
[91] *Matter of Highway Trailer Company* and *United Automobile Workers of America, Local No. 135, and Local No. 136*, 3 N. L. R. B. 591, enforced in *National Labor Relations Board* v. *Highway Trailer Company*, 95 F. (2d) 1012 (C. C. A. 7th, 1938).
[92] See cases cited below, p. 90, notes 25, 26.
[93] *Matter of Frederick R. Barrett* and *International Longshoremen's Association, Local No. 978*, 5 N. L. R. B. 513. For a discussion of closed shop agreements see below, p. 88.
[94] Sec. 1.
[95] *Matter of The Associated Press* and *American Newspaper Guild*, 1 N. L. R. B. 788, enforced in *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103 (1937).
[96] Also, *Matter of Fruehauf Trailer Company* and *United Automobile Workers Federal Labor Union, etc.*, 1 N. L. R. B. 68, enforced in *National Labor Relations Board* v. *Fruehauf Trailer Company*, 301 U. S. 49 (1937).

The Board applied this principle recently in *Matter of Star Publishing Company.*[97] The employees of the newspaper publishing company in the circulation department were members of the Newspaper Guild; the actual hauling of the papers was contracted out to an outside company whose drivers were members of the rival teamsters' union. On July 1, 1937, the teamsters' union notified the Star Publishing Co. that the teamsters would not haul the Star papers unless all the circulation-department employees enrolled in the teamsters' union. The circulation employees, however, were determined not to abandon the guild. The management then requested the guild to guarantee delivery of the papers, but it refused on jurisdictional grounds. The guild members thereupon were removed from their regular jobs. They called a strike. The Board found that the employer confronted the guild members with the alternative of either transferring their affiliation to the teamsters' union or of losing their jobs, that "the resultant removal from their jobs constituted an unmistakable blow at the Guild and a clear violation of the Act." Here economic pressure by a rival union induced the employer to act against the guild members because of union membership. The Circuit Court of Appeals, in enforcing the Board's order, stated:

> The respondent further contends that it was necessary to make the transfer, and thus engage in the unfair labor practice, because its business would otherwise be disrupted, and therefore, under all the facts, the transfer was excusable. We think, however, the act is controlling. The act prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute. In fact, nothing in the statute permits or justifies its violation by the employer.[98]

Where the employer has discharged an employee for two or more reasons, and one of them is union affiliation or activity, the Board has found a violation. Such a case is *Matter of The Louisville Refining Company,*[99] where a change from the 6- to the 8-hour day necessitated many lay-offs. The employer contended that many factors, such as capability and willingness, determined the selection of those to be laid-off. The Board said: "It must be concluded that the activity in and membership of these employees in the Local was a definite factor in determining that they should be dismissed from the respondent's employ." [1]

Whether the employee activity which induced the discharge is or is not union or organizational activity has come before the Board in several cases. Typical forms of such activity are organizing the union,[2] participation in a strike,[3] membership in the union or solicita-

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[97] *Matter of Star Publishing Company* and *Seattle Newspaper Guild, etc.*, 4 N. L. R. B. 498, enforced in *National Labor Relations Board* v. *Star Publishing Company*, 97 F. (2d) 465 (1938) (C. C. A. 9th, 1938).

[98] *Ibid.*

[99] *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well, and Refinery Workers of America*, 4 N. L. R. B. 844.

[1] Also, *Matter of Hercules-Campbell Body Co., Inc.*, and *United Automobile Workers of America, etc.*, 7 N. L. R. B. 431.

[2] See, for example, *Matter of Botany Worsted Mills* and *Textile Workers Organizing Committee*, 4 N. L. R. B. 292, where the Board stated: "Finally, the respondent argues that since several other men in the plant, whom it knows to be members of the union, are still employed, the discharge of Peidl cannot be attributed to his union affiliation. We are convinced that the respondent's basis for distinction in its discharge was between Peidl, whom it feared as an active organizer, and the others, who appear to have been passive members."

[3] In *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 844, the Board stated: "The discrimination by an employer against those who express their intention of striking, if called upon, is a rebuke to concerted activity by members of a labor organization." As to what constitutes a strike, see *Matter of American Manufacturing Company, etc.*, and *Textile Workers Organizing Committee, C. I. O.*, 5 N. L. R. B. 443.

tion of such membership, attendance at union meetings, negotiation with the employer in behalf of members, and the transacting of other union business. In *Matter of Fruehauf Trailer Co.*,[4] part of the employee's union activity which brought about the discharge consisted in conferring with an attorney of the Board.[5] In *Matter of Nebel Knitting Company*[6] an employee was discharged for testifying in police court concerning an attack on a union organizer outside the mill by a supervisor. The Board found that his discharge was caused in part by "his willingness to assist the union, in indirect fashion, by actively participating in the police-court prosecution." The Board indicated that "the criminal proceedings were intimately associated in the minds of both the respondent and its employees with the organizational activity of the union." And the Board has reached the same result, although the employer attempted to disguise the discrimination by applying an epithet to the union activity protected by the act. In *Matter of The Kelly-Springfield Tire Company*,[7] the employee was chairman of the union grievance committee in his department. The employer referred to the employee's activity, as chairman, as "amateur detective work and snooping around and gathering complaints." The Board found the dismissal of the employee because of this activity a violation of the section, stating:

> The evidence of the circumstances surrounding the furlough of Eline stands uncontradicted and leaves little room for doubt that the lay-off was the result of Eline's union activity in conscientiously representing the employees of his department in their complaints against the respondent. It is evident that the respondent intended to discourage the further handling of employee grievances through union committees * * *. That the respondent's attitude was expressed in colorful descriptive and epithet made its purpose none the less clear.

In *Matter of Botany Worsted Mills*,[8] an employer attempted to justify the discharge of an employee who discussed union matters during working hours on the ground that the employer is privileged to "forbid discussions concerning religion—or politics—or labor unions." The Board held that a "rule prohibiting outside activities during working hours" was "within the lawful power of the respondent to adopt and enforce"; but found a violation because the employer did not object to the talk as such but rather to the fact that the talk was in favor of the union opposed by the employer.[9] Thus the Board, in one case, dismissed the complaint of an employee who was discharged becaused he stayed away from work, although the employee in question stayed away in order to confer with the regional director of the Board as to the lay-off of two men.[10]

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[4] *Matter of Fruehauf Trailer Company* and *United Automobile Workers Federal Labor Union No. 19375*, 1 N. L. R. B. 68, enforced in *National Labor Relations Board* v. *Fruehauf Trailer Company*, 301 U. S. 49 (1937).

[5] Sec. 8 (4) makes it a separate unfair labor practice for an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the act. The section was applied in *Matter of Aluminum Products Company, etc.*, and *Aluminum Workers Union, etc.*, 7 N. L. R. B. 1219.

[6] *Matter of Nebel Knitting Company, Inc.*, and *American Federation of Hosiery Workers*, 6 N. L. R. B. 284.

[7] *Matter of The Kelly-Springfield Tire Company* and *United Rubber Workers of America, Local No. 26, etc.*, 6 N. L. R. B. 325, enforced in *Kelly-Springfield Tire Company* v. *National Labor Relations Board*, 97 F. (2d) 1007 (C. C. A. 4th, 1938).

[8] *Matter of Botany Worsted Mills* and *Textile Workers Organizing Committee*, 4 N. L. R. B. 292.

[9] See also *Matter of American Potash & Chemical Corporation* and *Borax and Potash Workers Union, No. 20181*, 3 N. L. R. B. 140, enforced in *National Labor Relations Board* v. *American Potash and Chemical Corporation*, 98 F. (2d) 488 (C. C. A. 9th, 1938).

[10] *Matter of The Triplett Electrical Instrument Company, etc.*, and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835. See also *Matter of United Fruit Company* and *Richard Schmidt, etc.*, 2 N. L. R. B. 896 (discharge induced by fight; the discharged employee testified that he became involved in a fight because

2. Hire, Tenure, or Any Term, or Condition of Employment

Most commonly the employer's act of discrimination consists in outright discharge, either individually or in groups.[12] The language of the section, however, covers more than discharge. It prohibits discrimination "in regard to hire or tenure of employment or any term or condition of employment." Accordingly the Board has held a wide variety of discriminatory acts to be within the section. In many cases the Board found that the employer discriminated by furloughing or temporarily laying off employees.[13] In several the discriminatory lay-off was a lock-out; that is, a plant shut-down for the purpose of defeating union activity.[14] Similarly the discrimination frequently involves a refusal to reinstate and employ upon reopening the plant or upon increasing personnel, after a business lay-off,[15] strike,[16] or lock-out.[17] In short, whether the discriminatory interruption of tenure is temporary or permanent, the Board has found a violation of section 8 (3).

Because of the broad language of the section and in view of the policy of Congress,[18] the Board has gone further and held that—

> It is not essential in all cases to a finding of unfair labor practice under this section of the statute that the status of an employee be held by the person

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at a union election he urged the men to vote for "Fiffy" who was "not implicated in any way with the bosses"; held: no violation); *Matter of United States Stamping Company* and *Enamel Workers Union, No. 18630*, 5 N. L. R. B. 172. (The Board held: "We believe the evidence clearly establishes the fact that Riggs and Bane were relieved of their duties as watchmen because the respondent feared that they were too sympathetic toward the union's cause to be trustworthy watchmen. However, we do not believe an employer, who during a strike relieves a watchman from his duties as such for this reason, has engaged in an unfair labor practice within the meaning of Section 8 (3) of the Act."

[12] For example of discriminatory mass discharge, see *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509 (158 employees).

[13] *Matter of The Kelly-Springfield Tire Company* and *United Rubber Workers of America*, 6 N. L. R. B. 325, enforced in *Kelly-Springfield Tire Company* v. *National Labor Relations Board*, 97 F. (2d) 1007 (C. C. A. 4th, 1938); *Matter of Scandore Paper Box Co., Inc., etc.*, and *Paper Box Makers Union, etc.*, 4 N. L. R. B. 910; *Matter of Central Truck Lines, Inc.*, and *Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America*, 3 N. L. R. B. 317 (2-week lay-off). In *Matter of The Federal Bearings Co., Inc., etc.*, and *Local 297, International Union, United Automobile Workers of America*, 4 N. L. R. B. 467, the Board said: "Whether the 17 employees were discharged or, as alleged by the respondents, whether they were laid off, is immaterial to the issues except to illustrate the gross insincerity with which the respondents attempted to refute the charges."

[14] *Matter of Hopwood Retinning Company, Inc., etc.*, and *Metal Polishers, Buffers, Platers and Helpers, etc.*, 4 N. L. R. B. 922, enforced in *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2d, 1938). Other examples: *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304; *Matter of Leo L. Lowy, etc.*, and *Tapered Roller Bearing Corporation* and *International Association of Machinists, District No. 15*, 3 N. L. R. B. 938.

[15] For example, *Matter of The Kelly-Springfield Tire Company* and *United Rubber Workers of America*, 6 N. L. R. B. 325, enforced in *Kelly-Springfield Tire Company* and *United Rubber Workers of America*, 97 F. (2d) 1007 (C. C. A. 4th, 1938) (failure to recall persons furloughed by predecessor corporation after production rose); *Matter of Greensboro Lumber Company*, and *Sawmill Workers Local Union, etc.*, 1 N. L. R. B. 629 (discriminatory allocation of work during shut-down).

[16] For example, *Matter of Kuehne Manufacturing Company*, and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304; *Matter of Black Diamond Steamship Corporation* and *Marine Engineers' Beneficial Association, Local No. 33*, 3 N. L. R. B. 84, enforced in *Black Diamond Steamship Corporation* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d, 1938); certiorari denied in 304 U. S. 579 (1938); *Matter of Mackay Radio & Telegraph Company, etc.*, and *American Radio Telegraphists' Association, etc.*, 1 N. L. R. B. 201, enforced in *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333 (1938).

[17] For example, *Matter of The Grace Company* and *United Garment Workers of America, etc.*, 7 N. L. R. B. 766; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, etc.*, 5 N. L. R. B. 409; *Matter of Santa Cruz Fruit Packing Company, etc.*, and *Weighers, Warehousemen, and Cereal Workers, etc.*, 1 N. L. R. B. 454, enforced in *Santa Cruz Fruit Packing Company* v. *National Labor Relations Board*, 303 U. S. 453 (1938).

[18] By sec. 1, the policy of the act is to encourage collective bargaining and to protect "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." Sec. 2 (3) provides that the term employee "shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise."

against whom the alleged discrimination has been directed, for the provision thereof has express application to a discrimination as to hire.[19]

In *Matter of Montgomery Ward and Company*,[20] the Board said:

> We have found that Charles E. Hooper was refused employment by the respondent because of his union membership and that such refusal constituted an unfair labor practice within the meaning of the Act. Such refusal had the effect and will necessarily have the effect of discouraging membership in the Union and thereby infringing upon the rights of its employees to self-organization and collective bargaining.

In other words, protection of prospective employees is necessary for the protection of present employees. As the Board has pointed out, anti-union discrimination against an applicant for employment is as effective a means for communicating to employees the employer's campaign against the union, as discrimination against a present employee.[21]

The Board has had occasion to condemn several types of discrimination other than interruption of, or refusal to give, tenure.[22] In *Matter of Clover Fork Coal Company*,[23] the employer assigned union men to a very difficult section of the mine as a punishment or as a means of forcing them to quit. One employee so assigned would have had to move from 20 to 25 cars of rock and dirt and in so doing would have been required to work for nothing for about a week. Another employee's assignment would have taken a month's or more work, without compensation. In other cases the discrimination consisted in withholding a wage increase,[24] demotion,[25] refusal to reinstate to the position formerly held in one plant coupled with offer of a position in another plant.[26] The Board has refrained from finding a section 8 (3) violation where the disparate treatment is trifling. In *Matter of The A. S. Abell Co.*,[27] the employer accelerated the speed of the machine operated by the employee in question beyond the speed required for business reasons and beyond the speed of the machine operated by a fellow worker. The Board dismissed the complaint, stating:

> While we believe Thamert's membership in the Union may have been responsible for the treatment of which he complained, we consider that treat-

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[19] *Matter of The Kelly-Springfield Company* and *United Rubber Workers of America, etc.*, 6 N. L. R. B. 325, enforced in *Kelly-Springfield Tire Company* v. *National Labor Relations Board*, 97 F. (2d) 1007 (C. C. A. 4th, 1938).

[20] *Matter of Montgomery Ward and Company, etc.*, and *United Mail Order and Retail Workers of America*, 4 N. L. R. B. 1151.

[21] *Matter of Algonquin Printing Company* and *United Textile Workers of America, etc.*, 1 N. L. R. B. 264.

[22] See *Matter of Fansteel Metallurgical Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, etc.*, 5 N. L. R. B. 930, enforcement denied in *Fansteel Metallurgical Corporation* v. *National Labor Relations Board*, 98 F. (2d) 375 (C. C. A. 7th, 1938), certiorari granted November 19, 1938; *Matter of Ingram Manufacturing Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 908; *Matter of Star Publishing Company* and *Seattle Newspaper Guild, etc.*, 4 N. L. R. B. 498, enforced in *National Labor Relations Board* v. *Star Publishing Company*, 97 F. (2d) 465 (C. C. A. 9th, 1938); *Matter of American Potash & Chemical Corporation* and *Borax and Potash Workers Union, etc.*, 3 N. L. R. B. 140, enforced in *National Labor Relations Board* v. *American Potash and Chemical Corporation*, 98 F. (2d) 488 (C. C. A. 9th, 1938).

[23] *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America*, 4 N. L. R. B. 202, enforced in *Clover Fork Coal Company* v. *National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th, 1938).

[24] *Matter of Federal Carton Corporation* and *Local Printing Pressmen's Union, etc.*, 5 N. L. R. B. 879. (The Board found a sec. 8 (3) violation, though the employer had remedied the detriment before issuance of the order.)

[25] *Matter of Waggoner Refining Company, etc.*, and *International Association of Oil Field, Gas Well, and Refinery Workers of America*, 6 N. L. R. B. 731.

[26] *Matter of Aluminum Products Company, etc.*, and *Aluminum Workers Union, etc.*, 7 N. L. R. B. 1219.

[27] *Matter of The A. S. Abell Company* and *International Printing and Pressmen's Union, etc.*, 5 N. L. R. B. 644, enforced in part in *National Labor Relations Board* v. *A S. Abell Company*, 97 F. (2d) 951 (C. C. A. 4th, 1938).

ment to constitute discrimination of so minor a nature as not to warrant a finding that the respondent discriminated, within the meaning of the Act, in regard to Thamert's condition of employment.

3. WHAT CONSTITUTES DISCHARGE, LAY-OFF, REFUSAL TO REINSTATE; APPLICATION FOR REINSTATEMENT

Whether or not the employer did discriminate in regard to hire, tenure, any term or condition of employment depends, of course, on whether action by the employer, or attributable to him, affects an employment relationship. In *Matter of the Grace Company*,[28] several employees were excluded from the plant, upon its reopening, by leaders of the company-dominated Workers Union, who relied upon a closed-shop agreement with the employer for their action. The employer contended that no unfair labor practice had been committed, since no one with authority to hire and discharge had prevented these employees from resuming their position. The Board held the employer responsible because the exclusion "was known to the respondent and was within the scope of the authority purported to be granted the Workers Union by the closed-shop agreement." The Board overruled a somewhat similar defense in *Matter of Clover Fork Coal Company*.[29] In enforcing the Board's order in this case, the Circuit Court of Appeals said:

> The contention that employees were not discharged because of union activities by the petitioner but were forced out by the determined attitude of the petitioner's nonunion men in refusing to work with members of the United Mine Workers, must be rejected in view of evidence which supports findings that the attitude of the petitioner's nonunion men was, if not inspired by, at least encouraged and promoted by the petitioner and its agents.

Though the discharge or other discriminatory act might be without authority, if the employer knows of its occurrence and does nothing "to rectify the situation" he has committed an unfair labor practice.[30]

In the usual case coming before the Board there is no difficulty as to whether the employer has discharged, laid off, or refused to hire or reinstate an employee; or in some way has affected a term or condition of his employment. However, in a number of cases, the question has arisen as to whether the action taken by the employer did or did not effectuate or constitute such a change in or refusal to change an employment relationship. The Board holds that the determination of the question must be based upon a realistic examination of all the surrounding circumstances. In *Matter of United Fruit Company*,[31] the evidence showed that longshoremen were selected for a day's work from a group whenever needed. There was no certainty that any one person would receive employment on any particular day. Hence, the Board held that mere failure to procure employment on a single day was insufficient to prove a discharge. In *Matter of T. W. Hepler*,[32] an employee was sent home because of insubordination by a floorboy, who had no authority to discharge. Before leaving, the employee roundly cursed the floorboy.

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[28] *Matter of the Grace Company* and *United Garment Workers of America, etc.*, 7 N. L. R. B. 766.
[29] *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America*, 4 N. L. R. B. 202, enforced in *Clover Fork Coal Company* v. *National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th, 1938).
[30] *Matter of Trenton Garment Company* and *International Ladies' Garment Workers Union, etc.*, 4 N. L. R. B. 1186.
[31] *Matter of United Fruit Company* and *Richard Schmidt, etc.*, 2 N. L. R. B. 896.
[32] *Matter of T. W. Hepler* and *International Ladies' Garment Workers Union*, 7 N. L. R. B. 255.

Upon returning to work the employee failed to report to the employer though the employer had told the employee to do so before resuming work. The employee never did report and claimed to have been discharged. The employer testified that he had no intention of discharging the employee but merely had desired to see the employee and request an apology before the employee's return to work. The Board held that the employee's failure to report to the employer precluded the finding of a discharge.[33]

In several cases the employer contended that the employee quit voluntarily. In *Matter of Sunshine Mining Company*[34] the employer committed several unfair labor practices within sections 8 (1) and (3). One employee, feeling that his services were not wanted by the employer because of his union activity, left his employment. On these facts the Board sustained the employer's contention that the employee had quit voluntarily. However, the Board held otherwise where evidence showed that the employer compelled the resignation of the employee. In *Matter of Atlas Mills*[35] the employer exacted from three members of the union negotiating committee their promise not to strike, in return for his own promise not to discharge them for union activity. The following day the committee threatened to strike if the employer did not confer with the union spokesman. At once the employer assembled all the employees and made a speech to them, in the course of which he asked each employee whether he wished to remain or strike. Many left the plant. The Board stated:

> The real alternative, inherent in the situation itself was clear; either to give up connection with Local 2269 and abandon their legitimate weapon, the strike, or leave the respondent's employ. To condition employment upon the abandonment by the employees of the rights guaranteed them by the Act is equivalent to discharging them outright for union activities.[36]

Similarly, coercing an employee into quitting, by demotion, transfer, or other discriminatory treatment, has been held to constitute an unfair labor practice. In *Matter of Waggoner Refining Company.*[37] the Board found that the demotion of two employees was due to their union activity and held:

> Birdsall and Phipps might have accepted the discriminatory demotions and subsequently filed charges alleging that the company was engaging in an unfair labor practice. It was equally justifiable for them to have refused to accept the discriminatory demotions and to have resigned. Thus their refusals to submit to an unfair labor practice cannot be considered acts of insubordination and cannot justify the discharges.[38]

The Board does not require an application by the employee for reinstatement following a discriminatory discharge, lay-off, or re-

[33] Also *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well and Refinery Workers of America,* 4 N. L. R. B. 844.
[34] *Matter of Sunshine Mining Company* and *International Union of Mine, Mill, and Smelter Workers,* 7 N. L. R. B. 1252.
[35] *Matter of Atlas Mills Inc.,* and *Textile Workers Union, etc.,* 3 N. L. R. B. 10.
[36] Also: *Matter of Highway Trailer Company* and *United Automobile Workers of America, etc.,* 3 N. L. R. B. 591, enforced in *National Labor Relations Board,* 95 F. (2d) 1012 (C. C. A. 7th, 1938).
[37] *Matter of Waggoner Refining Company, etc.,* and *International Association of Oil Field, Gas Well, and Refinery Workers of America,* 6 N. L. R. B. 731.
[38] Also: *Matter of Aluminum Products Company, etc.,* and *Aluminum Workers Union, etc.,* 7 N. L. R. B. 1219; *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America,* 4 N. L. R. B. 202, enforced in *Clover Fork Coal Company* v. *National Labor Relations Board,* 97 F. (2d) 331 (C. C. A. 6th, 1938); *Matter of American Potash & Chemical Corporation* and *Borax and Potash Workers Union, etc.,* 3 N. L. R. B. 140, enforced in *National Labor Relations Board* v. *American Potash and Chemical Corporation,* 98 F. (2d) 488 (C. C. A. 9th, 1938).

fusal to reinstate, because the unfair labor practice is already complete.[39]

Not all cases of employer discrimination occur while the employee is at work. An employee may have been laid off temporarily for a reason unrelated to his union affiliation or activity, or he may be out on strike. In the normal course of events such an employee will resume work at the end of the lay-off or strike. In the absence of peculiar circumstances, such is his natural expectancy. But during this period after work has ceased and before it has resumed, the employer may take certain action; and the question arises, whether or not this employer action constitutes a discriminatory discharge, a refusal to reinstate, or other action violative of section 8 (3).

In *Matter of Biles-Coleman Lumber Company*,[40] the plant reopened with a small number of men, while a strike which had been caused by unfair labor practices was in progress. The employer placed an advertisement in the newspaper announcing that the jobs of employees who had not returned to work by June 15 would be declared vacant and the employer would be free to fill such positions with new men. A number returned by the deadline. After June 15 the employer hired new men and such strikers as returned from time to time. It was contended that the June 15 announcement constituted a discriminatory discharge. The Board dismissed the complaint as to section 8 (3) in this respect, finding that the announcement did not amount to a discharge or refusal to reinstate, but was a mere threat:

> It is clear that, under the circumstances of this case, the respondent issued the notice only as a threat of the loss of jobs for the purpose of demoralizing the union membership in pursuance of the respondent's unlawful refusal to bargain collectively with the Union. The evidence reveals that the respondent intended the notice only as a threat and that it was so construed by the striking employees. The record shows that striking employees, both those who had designated the Union as their representative and those who had not, who applied for work during the period from June 15, 1936, to the date of the hearing were reinstated.[41]

In *Matter of Fansteel Metallurgical Corporation*,[42] upon the commencement of a sit-down strike induced by the employer's violation of section 8 (5), the employer announced in loud tones to employees engaged in the sit-down that they were all discharged for seizure and retention of the buildings. The Board, in dismissing the section 8 (3) allegations because there was no discharge or refusal to reinstate, stated:

> We do not construe Swiren's announcement, coming as it did after the strike had begun, as a discriminatory discharge of the men in the plant. We are

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[39] *Matter of Pennsylvania Greyhound Lines, Inc.*, and *Local Division No. 1063* of the *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*, 1 N. L. R. B. 1, enforced in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 91 F. (2d) 178 (C. C. A. 3d, 1937), 303 U. S. 261 (1938).

[40] *Matter of Biles-Coleman Lumber Company & Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679, enforced in *National Labor Relations Board* v. *Biles-Coleman Lumber Co.*, 96 F. (2d) 197, 98 F. (2d) 16, 18 (C. C. A. 9th, 1938).

[41] See also *Matter of Stackpole Carbon Company* and *United Electrical and Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171; wherein the Board stated: "On the record we cannot find that the respondent had indicated that it would not reinstate striking members of Local No. 502 upon application. That such application would not necessarily have been futile is indicated by evidence that some employees—members of Local No. 502 who struck on March 3, 1937—did return to work thereafter."

[42] *Matter of Fansteel Metallurgical Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 66*, 5 N. L. R. B. 930, enforcement denied in *Fansteel Metallurgical Corporation* v. *National Labor Relations Board*, 98 F. (2d) 375 (C. C. A. 7th, 1938), certiorari granted, November 19, 1938.

convinced by the record before us that this announcement was not so regarded by the strikers. The evidence does not show that they were deterred from applying for their jobs by reason of these assertions of Swiren. On the contrary, it was well known throughout the strikers' ranks that the respondent was taking back many of those who had occupied the plant. As a matter of fact the respondent did reinstate 35 of the sit-down strikers, or over one-third of the total. Emissaries of the respondent were actively seeking out individual strikers and imploring them to return to work. At the same time, the evidence clearly shows that the position of practically all of those strikers who did not go back, and who are named in the complaint, was that they were determined to stay out until the Union reached a settlement with the respondent.

In *Matter of American Manufacturing Concern*,[43] upon receiving information that a strike was about to start, the employer notified the employees that a walk-out would automatically sever their employment. As the men walked out, they were instructed to surrender their time cards. The Board dismissed the section 8 (3) complaint upon the ground that the purported discharge was not real but merely tactical, saying:

As we have previously observed, such statements are primarily intended, not to effectuate a discharge, but as a tactical step designed to coerce the employees into resuming work or to defer those remaining at work from going out on strike.[44]

However, the action taken by the employer may operate as an effective discharge which prevents the employee from resuming work upon the termination of the strike. Whether the employer's behavior is a mere "tactical step" or constitutes an effective discharge depends on all the circumstances in the case.[45]

In *Matter of Kuehne Manufacturing Company*,[46] the employer operated plants in two towns, 60 miles apart: the employees in one of the two plants went on strike and enrolled in a union; thereupon the employer notified all the employees in the struck plant by letter that it had abandoned operations at the plant, advised them to seek employment elsewhere, and served notice of the cancelation of their group insurance policies; the employer moved part of the machinery to the other plant and sold another portion, though it still retained the buildings. Operations at the other plant were increased from day shift to steady day and night shift with augmented force. On these facts the Board found a discriminatory lock-out.[47] In its consequences, an unequivocal assumption of a position by an employer during a strike or lay-off not to resume the normal employer status upon the termination of the strike or lay-off, because of discrimina-

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[43] *Matter of American Manufacturing Concern* and *Local No. 6, Organized Furniture Workers*, 7 N. L. R. B. 753.

[44] The Board held this "tactical step" in violation of section 8 (1).

[45] Whether the employer's purported discharge or purported refusal to reinstate is a mere "tactical step" or a genuine declaration, it can have no effect on the employee's status as conferred upon the employee by section 2 (3) of the act. In *Matter of Carlisle Lumber Company* and *Lumber and Sawmill Workers' Union, Local 2511, etc.*, 2 N. L. R. B. 248, enforced in *National Labor Relations Board* v. *Carlisle Lumber Company*, 94 F. (2d) 138 (C. C. A. 9th, 1937), certiorari denied, 304 U. S. 575, 1938, the Board stated: "The respondent by its notice of discharge sought to alter its legal relationship to these employees. This it was powerless to do under the Act, without their consent * * * Under Section 2 of subsection 3 of the Act an employee whose work has ceased as a consequence of or in connection with a labor dispute retains his employee status as long as such labor dispute remains current and as long as he has not obtained regular and substantially equivalent employment." See also *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333 (1938), enforcing *Matter of Mackay Radio & Telegraph Company, etc.*, and *American Radio Telegraphists' Association, etc.*, 1 N. L. R. B. 201.

[46] *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304.

[47] See also cases cited below, pp. 79, 80, notes 59–63.

tory reasons, is no different from the ordinary discriminatory discharge or refusal to reinstate.[48]

Since a temporary disruption of work, incident to a nondiscriminatory lay-off or a strike, and not followed by an unequivocal assumption of a position such as the one just described, involves no unfair labor practice within section 8 (3), ordinarily no infraction arises, if at all, until the employee induces employer action by making application for reinstatement.[49] Thus, in *Matter of Art Crayon Company*,[50] the strike ended on July 9; practically all the striking employees returned to work about July 11; the employee in question did not apply for reinstatement until July 20, at which time there were no more vacancies; the delay was caused by his unfounded belief that he would not get his job back. The failure to make timely application was held fatal to the employee's claim of a discriminatory refusal to reinstate.

Of course, discriminatory rejection of an application for reinstatement is in violation of the section.[51] The Board has on occasion determined what constitutes an application for reinstatement. In *Matter of Canvas Glove Manufacturing Works*,[52] the employee, 16 years old, obtained employment during the school vacation period in summer, then went on strike. During the strike, the school term started. Under the State law, she could work during the school year only if she obtained a certificate from the school authorities upon the signed request of the employer. Upon the settlement of the strike, she sought the employer's signed request. He stated he did not "want to have anything to do with" her. The Board found a discriminatory refusal to reinstate. The same result was reached in a case involving a collective application for reinstatement.[53] In *Matter of Fansteel Metallurgical Corporation*,[54] the Board refused to find a collective request for reinstatement of the strikers, it appearing that the strikers themselves were refusing to return to work unless the employer bargained with them. That the employer would have denied an unconditional application for reinstatement was only a "reasonable speculation." Whether an application for reinstatement was conditional or not, came up for decision in *Matter of Black Diamond*

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[48] See *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333 (1938), reversing 92 F. (2d) 761 (C. C. A. 9th, 1937), 87 F. (2d) 611 (C. C. A. 9th, 1937), and enforcing *Matter of Mackay Radio & Telegraph Company, etc.*, and *American Radio Telegraphists' Association, etc.*, 1 N. L. R. B. 201.

[49] *Matter of Elbe File and Binder Co., Inc.*, and *Bookbinders Manifold and Pamphlet Division, Local Union No. 119, International Brotherhood of Bookbinders*, 2 N. L. R. B. 906; *Matter of Alabama Mills, Inc.*, and *Local No. 2051, United Textile Workers of America*, 2 N. L. R. B. 20; *Matter of Timkin Silent Automatic Company, a corporation*, and *Earl P. Ormsbee, etc., Oil Burner Mechanics' Association*, 1 N. L. R. B. 335; *Matter of Jeffrey-DeWitt Insulator Company* and *Local No. 455, United Brick and Clay Workers of America*, 1 N. L. R. B. 618, enforced in *Jeffrey-DeWitt Insulator Company* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th, 1937), certiorari denied, 302 U. S. 731 (1937).

[50] *Matter of Art Crayon Company, etc.*, and *United Artists' Supply Workers*, 7 N. L. R. B. 102.

[51] See above, notes 15–17, p. 72.

[52] *Matter of Canvas Glove Manufacturing Works, Inc.*, and *International Glove Makers Union, Local No. 88*, 1 N. L. R. B. 519.

[53] For example, *Matter of Black Diamond Steamship Corporation and Marine Engineers' Beneficial Association, Local No. 33*, 3 N. L. R. B. 84, enforced in *Black Diamond Steamship Corporation* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, 304 U. S. 579 (1938); *Matter of Alabama Mills, Inc.*, and *Local No. 2051, United Textile Workers of America*, 2 N. L. R. B. 20; *Matter of United Aircraft Manufacturing Corporation* and *Industrial Aircraft Lodge No. 119, Machine, Tool and Foundry Workers Union*, 1 N. L. R. B. 236.

[54] *Matter of Fansteel Metallurgical Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 66*, 5 N. L. R. B. 930, enforcement denied in *Fansteel Metallurgical Corporation* v. *National Labor Relations Board*, 98 F. (2d) 375 (C. C. A. 7th, 1938), certiorari granted November 19, 1938.

Steamship Corporation.[55] There the employees went out on strike; during the strike on December 11, the Board certified the union as the exclusive collective bargaining representative; nevertheless, on December 14 the employer refused to bargain collectively; the strike continued; on December 31 the union asked the employer to reinstate all the strikers and to bargain with the union. The Board found that the application for reinstatement was not conditional, and that the refusal was in violation of section 8 (3): "The respondent can find no refuge in the fact that the application for reinstatement may have been coupled with demands for collective bargaining."

The Board has held that under some circumstances an application for reinstatement is not prerequisite to finding a refusal to reinstate in violation of section 8 (3); as where the employer's policy was to notify laid-off employees when they were to resume work.[56] In *Matter of Waterman Steamship Corporation*,[57] the respondent contended through Ingram, its assistant port engineer, that an engineer on vacation notifies the respondent when ready to resume work, and that the employee in question, O'Connor, did not do this. The Board, finding a discriminatory discharge and refusal to reinstate, said:

> However, the evidence discloses that the respondent was well aware of the fact that O'Connor was ready to resume work. O'Connor testified that he met Ingram on the street one day after he had left the ship and had asked him if he thought that the respondent would give him employment. Ingram did not consider this request formal enough, and indeed, testified that he thought that O'Connor was joking when he made the request. Moreover, it was customary for the respondent to notify an engineer when his services were wanted, and in the past O'Connor had been so notified on numerous occasions.

The employer may take other discriminatory action that induces a reasonable employee to believe that application would be futile. Here, too, the Board has not required a timely application. In *Matter of Mackay Radio & Telegraph Company*,[58] at the close of a strike, the employer blacklisted four employees because of their union leadership and induced in them "the reasonable belief that they would not be permitted to return to work" with the others; this caused them to postpone their applications for reemployment; by the time they applied, the available positions were taken. The Board held: "To apply the 'first come, first served' principle to these four operators under these circumstances constituted a violation of Section 8, subdivisions (1) and (3)." In *Matter of Sunshine Mining Company*,[59] the Board found that application for reinstatement by pickets, upon the collapse of the strike, would be futile because the power of reinstatement had been delegated by the employer to a committee (formed with the unlawful assistance of the employer) whose policy it was to deny reinstatement to pickets.

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[55] *Matter of Black Diamond Steamship Corporation* and *Marine Engineers' Beneficial Association of Iron, Steel and Tin Workers of North America, etc.*, 3 N. L. R. B. 84, enforced in *Black Diamond Steamship Corporation* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, 304 U. S. 579 (1938).

[56] *Matter of Atlanta Woolen Mills* and *Local No. 2367, United Textile Workers of America*, 1 N. L. R. B. 316; *Matter of Columbia Radiator Company* and *International Brotherhood of Foundry Workers, Local No. 79*, 1 N. L. R. B. 847.

[57] *Matter of Waterman Steamship Corporation* and *National Maritime Union of America*, 7 N. L. R. B. 237.

[58] *Matter of Mackay Radio & Telegraph Company, a corporation*, and *American Radio Telegraphists' Association, etc.*, 1 N. L. R. B. 201, enforced in *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333 (1938).

[59] *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252.

Typically, the discriminatory action rendering an application unnecessary is an offer of reinstatement by the employer based upon an unlawful condition. In *Matter of Sunshine Mining Company*, just referred to, the Board stated:

> The machinery set up by the respondent to handle the reinstatement of strikers conditioned the reinstatement of "neutral" strikers upon the denial of reinstatement to the active strikers. This interposed a discriminatory condition to the employment of the "neutral" strikers, namely, that they could return to work only upon their acceptance of the denial of reinstatement and the discharge of the active strikers, in effect, the destruction of the Union. Under these circumstances the "neutral" strikers were not required to make application for reinstatement.

In several cases the unlawful condition of reinstatement imposed by the employer provides for renunciation of an employer-opposed union, the notorious "yellow dog" contract. In *Matter of Carlisle Lumber Company*,[60] following a strike, the employer reopened the plant and notified the strikers that as a condition of returning to work they must renounce "any and all affiliation with any labor organization"; consequently most union members made no formal application. The Board found a refusal to reinstate in violation of section 8 (3), stating:

> To say that because they have not made application to go to work they were not refused employment would be to place a penalty upon them for not doing what they knew would have proved fruitless in the doing. The respondent's illegal conduct in publishing the aforesaid notice precluded all possibility of employment and relieved them of the necessity of making a formal application. Nor is it an answer to say that they were striking and would not have applied in any event. That was for them to decide. Furthermore, under the Act an employee cannot be required to renounce his union affiliation as a condition of employment.

The Board has reached the same result where the unlawful condition attached to reinstatement was joining an employer-favored union: "The erection of this illegal barrier against reemployment of these employees relieved them of the necessity of making formal application for work."[61] Similarly, an employer who violates section 8 (3) does not interrupt the continuance of the unfair labor practice by making an offer of reinstatement to the employees discriminated against which is qualified by the unlawful condition of their joining an employer-favored union. The Board has held that failure to make application pursuant to such a discriminatory offer is immaterial;[62] even though the employees might not have responded to an offer not so conditioned.[63] The offer of reinstatement must be unequivocal, else the Board will not consider it bona fide.[64]

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[60] *Matter of Carlisle Lumber Company* and *Lumber and Sawmill Workers Union, Local 2511, etc.*, 2 N. L. R. B. 248, enforced in *National Labor Relations Board* v. *Carlisle Lumber Company*, 94 F. (2d) 138 (C. C. A. 9th, 1937), certiorari denied, 304 U. S. 575 (1938).

[61] *Matter of Jacob A. Hunkele, trading as Tri-State Towel Service, etc.*, and *Local No. 40, United Laundry Workers Union*, 7 N. L. R. B. 1276; *Matter of The Grace Company* and *United Garment Workers, etc.*, 7 N. L. R. B. 766.

[62] *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509.

[63] *Matter of National Motor Bearing Company* and *International Union United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409.

[64] *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304

4. PROOF OF DISCRIMINATION BECAUSE OF UNION ACTIVITY—WEIGHING THE EVIDENCE

The foregoing cases represent the Board's construction of the scope of section 8 (3). Briefly, it forbids the employer to affect or change an employment relationship because of the employee's union membership or activity. If the employer goes to hearing, he rarely admits that he discriminated for antiunion reasons.[65] Occasionally, clear evidence of such discrimination goes uncontradicted.[66] Generally, however, the Board must weigh conflicting evidence and the entire proof. By statutory provision, the rules prevailing in courts of law or equity are not controlling.[67] However, in considering the evidence, the Board will dismiss the allegation of an unfair labor practice if not convinced by the entire proof that an unfair labor practice has been committed. The Board, in according weight to evidence, gives such weight as a reasonable person does in the conduct of his more important affairs.

The Board's method of weighing the evidence to determine whether the employer discriminated because of union affiliation or activity can best be understood through the examination of the detailed findings of fact made by the Board accompanying each of its orders. Each case stands on its own because of the variety of fact situations. Nevertheless, continually changing surfaces do not conceal many similar undercurrents. The Board has articulated a number of these recurrent patterns; it also has crystallized several general, necessarily flexible, criteria for determining the credibility of witnesses, for resolving conflicts in the testimony, and otherwise for making the proper findings of fact. For illustrative purposes some of these types and criteria are here noted.

Any antiunion activity by the employer tends to show that the employer discriminated against particular employees on that ground. Therefore, as stated in *Matter of Pennsylvania Greyhound Lines*,[68] the Board considers "the entire background of the discharges, the inferences to be drawn from testimony and conduct, and the soundness of the contentions when tested against such background and inferences."[69] The background is not confined to employer activity

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[65] In *Matter of Whiterock Quarries, Inc.*, and *Limestone Workers' Union, No. 19450*, 5 N. L. R. B. 601, the respondent filed an answer in which he failed to deny the allegations of the complaint that the discharge was because of union activity; this failure to deny was held to constitute an admission. Failure to file an answer was not held to constitute an admission of the allegations in the complaint: *Matter of The Triplett Electrical Company, etc.*, and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835.

[66] *Matter of Tiny Town Togs, Inc.*, and *International Ladies' Garment Workers Union*, 7 N. L. R. B. 54; *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America*, 4 N. L. R. B. 202, enforced in *Clover Fork Coal Company* v. *National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th, 1938); *Matter of Fruehauf Trailer Company* and *United Automobile Workers Federal Labor Union, etc.*, 1 N. L. R. B. 68, enforced in *National Labor Relations Board* v. *Fruehauf Trailer Company*, 301 U. S. 49 (1937).

[67] Sec. 10b.

[68] *Matter of Pennsylvania Greyhound Lines, Inc., etc.*, and *Local Division No. 1063 of Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America*, 1 N. L. R. B. 1, enforced in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261 (1938).

[69] In *National Labor Relations Board* v. *The Kentucky Fire Brick Company*, 99 F. (2d) 89 (C. C. A. 6th. 1938), enforcing *Matter of Kentucky Fire Brick Company* and *United Brick and Clay Workers of America, Local Union No. 510*, 3 N. L. R. B. 455, the Circuit Court of Appeals stated: "We think that the attitude of respondent toward its Union employees both before, during, and after the strike of June 18, 1935, carries a substantial inference that these 30 men were refused reinstatement because of their union activities. This inference is sufficient to support the order unless it is destroyed and refuted by other evidence now to be considered." The Circuit Court held the other evidence insufficient to destroy the inference. Rehearing denied October 12, 1938.

subsequent to the effective date of the act;[70] though, of course, the violation must occur after the act went into operation.[71] Antiunion activity by the employer has helped persuade the Board that a section 8 (3) violation occurred with respect to specific discriminations.[72] The absence of such antiunion activity has been persuasive that the employer did not violate the section.[73]

The employer's activities specifically relating to discharges, layoffs, and refusals to reinstate, come into the foreground. Thus, the delegation of power to a union to discharge, lay off, or reinstate, evidences an intent to discriminate against employees hostile to that union.[74] The Board also has frequently found persuasive evidence of discrimination in an unduly high percentage of union members or union leaders included among employees discharged, laid off, or refused reinstatement.[75] Thus, in *Matter of The Louisville Refining Company*,[76] the Board found:

> The union affiliation and activity of those who were eliminated from the respondent's employ as a result of change to the eight-hour day is the strongest evidence of the actual basis upon which the respondent made its selection. It is significant that the 20 men whose employment was terminated included the president, the vice president, and the secretary-treasurer of the local, a majority of those who served on the committee which met with Brown on January 21 and 22, and a majority of the charter members of the Local. Nor does it appear that any except members of the Local were discharged at this time, although only 56 of the 85 employees of respondent were members thereof.

In dismissing section 8 (3) claims, the Board has often called attention to the absence of any such disparity.[77]

The Board lays stress on employer statements which are in effect admissions that the cause for the discharge or other discrimination was union activity. In *Matter of Tiny Town Togs*,[78] the day of the discharge, the forelady stated that the employee had been "fired for joining the I. L. G. U." In *Matter of Memphis Furniture Manufacturing Company*,[79] the foreman in discharging an employee stated:

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[70] *Matter of Jeffery-DeWitt Insulator Company* and *Local No. 455. United Brick and Clay Workers of America*, 1 N. L. R. B. 618, enforced in *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th, 1938), certiorari denied, 302 U. S. 731 (1937).

[71] Ibid.

[72] For example, *Matter of Lenox Shoe Company, Inc.*, and *United Shoe Workers of America*, 4 N. L. R. B. 372; *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well, and Refinery Workers of America*, 4 N. L. R. B. 844; *Matter of Hill Bus Company, Inc.*, and *Brotherhood of Railroad Trainmen, etc.*, 2 N. L. R. B. 781. Employer animosity toward a union: *Matter of Missouri-Arkansas Coach Lines, Inc.*, and *The Brotherhood of Railroad Trainmen*, 7 N. L. R. B. 186.

[73] For example, *Matter of Seagrave Corporation* and *United Automobile Workers of America*, 4 N. L. R. B. 1093.

[74] Cases cited above, p. 69, notes 91–93; p. 74, notes 28, 29; p. 79, note 59.

[75] For example, *Matter of Consolidated Edison Company of New York, Inc., etc.*, and *United Electrical and Radio Workers of America, etc.*, 4 N. L. R. B. 71, enforced in *Consolidated Edison Company* v. *National Labor Relations Board*, 95 F. 2d 390 (C. C. A. 2d, 1938), certiorari granted, 304 U. S. 555 (1938), wherein the Board said: "When we consider all the six discharges involved in this case, it is apparent that the respondents succeeded in eliminating from their employ all the principal organizers and officers of the Independent Brotherhood. Their success was too complete to have been a consequence of the disinterested operation of reductions in personnel." Also, *Matter of The Grace Company* and *United Garment Workers of America, etc.*, 7 N. L. R. B. 766; *Matter of Frederick R. Barrett* and *International Longshoremen's Association, etc.*, 3 N. L. R. B. 513.

[76] *Matter of The Louisville Refining Company* and *International Association Oil Field Gas Well, and Refinery Workers of America*, 4 N. L. R. B. 844.

[77] For example, *Matter of New Idea, Inc.* and the *American Federation of Labor*, 5 N. L. R. B. 381; *Matter of Sheba Ann Frocks, Inc.* and *International Ladies' Garment Workers' Union of America, etc.*, 5 N. L. R. B. 12.

[78] *Matter of Tiny Town Togs, Inc.* and *International Ladies Garment Workers Union*, 7 N. L. R. B. 54.

[79] *Matter of Memphis Furniture Manufacturing Company* and *Furniture Workers Local Union, No. 1174, United Brotherhood of Carpenters and Joiners of America*, 3 N. L. R. B. 27, enforced in *Memphis Furniture Manufacturing Company* v. *National Labor Relations Board*, 96 F. (2d) 1018 (C. C. A. 6th, 1938), certiorari denied October 10, 1938.

"I have nothing to fire you for * * * but at the office they want you fired * * * Is your husband a member of the Union? * * * The reason you are being fired is because your husband is." The Board in these, as in many other cases,[80] has given weight to anti-union statements made by employers in connection with discharges or other alleged discriminations.

Deliberate efforts by the employer to ascertain the identity of union members and leaders have been considered by the Board.[81] Similarly, the Board has dismissed the complaint upon finding that the employer was ignorant of the employee's union sympathy claimed to be the basis for the discrimination.[82] Also, an employer is more likely to act against the aggressive union leaders than against the relatively inactive employees.[83] For these reasons, the union activity of the employee claiming discrimination, usually looms large in the proof. Just as active participation by employees in union affairs has helped establish a case, its absence has led the Board to dismiss.[84] Not infrequently the discharge or other alleged discrimination follows close upon the election of the employee to union office, affiliation with the union, attendance at one of its meetings, or aggressive negotiation

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[80] For example, *Matter of American Manufacturing Company, Inc.* and *International Association of Machinists, etc.*, 7 N. L. R. B. 375; *Matter of Beloit Iron Works* and *Pattern Makers League of North America*, 7 N. L. R. B. 216; *Matter of Missouri-Arkansas Coach Lines, Inc.* and *The Brotherhood of Railroad Trainmen*, 7 N. L. R. B. 186; *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America*, 4 N. L. R. B. 202, enforced in *Clover Fork Coal Company* v. *National Labor Relations Board*, 97 F (2d) 331 (C. C. A. 6th, 1938) (in discharging an employee, the employer said: "I got a right to fire who I please, I won't ask Turnblazer (District 19 president) or nobody else;" as to another, when the employee asked whether his work had been satisfactory, the employer replied: "It has been, but maybe the Union can do more for you than I can").

[81] For example, *Matter of Consolidated Edison Company of New York, Inc., etc.*, and *United Electrical and Radio Workers of America, etc.*, 4 N. L. R. B. 71, enforced in 2d), certiorari granted, 304 U. S. 555 (1938); *Matter of Jacob Cohen, etc.*, and *Local No. 227, International Ladies' Garment Workers' Union*, 4 N. L. R. B. 720; see above, p. 52.

[82] For example, *Matter of Tupelo Garment Company* and *Kathleen Patey, etc.*, 7 N. L. R. B. 408; the Board, in dismissing the allegation, said: "There is nothing to indicate that the respondent knew of McCaffey's support of the proposed organization prior to his discharge or that any of the respondent's supervisory employees or agents had questioned him concerning any possible connection he may have had with the organizers." Also, *Matter of General Industries Company, etc.*, and *Hobart Flenner, etc.*, 1 N. L. R. B. 678.

[83] For example, *Matter of Art Crayon Company, Inc., etc.*, and *United Artists' Supply Workers*, 7 N. L. R. B. 102; (The Board stated: "Even if the incident did occur, it is clear from the manner in which Bortoluzzi was discharged and the surrounding circumstances that Bob Lester was concerned not so much with the significance of Bortoluzzi's alleged remarks as he was with getting rid of one of the spearheads of the union movement"); *Matter of Wald Transfer and Storage Company, Inc., and Local Union No. 367, International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, etc.*, 3 N. L. R. B. 712 (the Board concluded that the employer had "discriminated illegally by singling out in the process of reinstatement those he believed to be aggressive in collective action—in his own words, 'leaders,' 'engineers,' and 'speech-makers'—from those he believed to be docile and harmless"); *Matter of Mackay Radio & Telegraph Company, etc.*, and *American Radio Telegraphists' Association, etc.*, 1 N. L. R. B. 201, enforced in *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333 (1938).

[84] For example, *Matter of Electric Auto-Lite Company, etc.*, and *International Union, United Automobile Workers of America, etc.*, 7 N. L. R. B. 1179; *Matter of Swift & Company* and *United Automobile Workers of America, etc.*, 7 N. L. R. B. 287. (The Board, in dismissing the allegation, said: "The evidence does not show that Ditterline was active in the United; it shows merely that he was a member of that union. Yet a number of employees wore their union buttons, signifying United membership, openly in the plant. If the respondent wished to curb United activity by discharging employees, it is hardly plausible that Ditterline should have been selected for discharge"); *Matter of Marks Brothers Company* and *United Toy and Novelty Workers Local Industrial Union, etc.*, 7 N. L. R. B. 156. (The Board dismissed the allegation that one, Sanella, had been discriminatorily refused reinstatement at the close of a strike on Aug. 24, saying: "It does not appear in the record that Sanella was unusually active on the picket line or in any other union activity until September 4, when she was elected secretary of the United. Other union members were returned to work on Aug. 24 without discrimination.") *Matter of Art Crayon Company, Inc., etc.*, and *United Artists' Supply Workers*, 7 N. L. R. B. 102; *Matter of Wald Transfer and Storage Company, Inc.*, and *Local Union No. 367, International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, etc.*, 3 N. L. R. B. 712.

with the employer. The Board has sometimes found that the proximity in occurrence revealed a causal connection between the employee's union activity and his discharge. For example, in one case the Board found:

> * * * Although Miss Kule had not taken a noticeably active part in Union affairs, the evidence incontrovertibly establishes that Mrs. Bauer had knowledge of her Union affiliation at least after her argument with Miss Van Dyke, in which she emphatically stated her preference for the Union. Her peremptory discharge, coming during the working day, without giving her an opportunity to finish the bundle she was inspecting, and immediately following her vigorous expression of preference for the Union cannot be characterized as nondiscriminatory. The unusual circumstances attendant upon the discharge leave no doubt of the respondents' reason for their action.[85]

In support of his defense that the dismissal had nothing whatsoever to do with organization activity, the employer ordinarily produces evidence for the purpose of establishing what reason did induce him to act.[86] The Board finds it difficult to believe that the asserted reason is the real reason when it does not possess "either color or substance," as in *Matter of American Potash & Chemical Corporation*,[87] where the employer claimed he discharged the employee because the employee requested "that the rumor which had caused his demotion also be investigated."[88] Perhaps the most common explanations offered by the employer in defense are that the employee is inefficient, or that a drop in production required a reduction of personnel which was accomplished pursuant to criteria not antiunion in character. The Board considers all relevant facts tending to prove or disprove that the employer's purported reason for the release is his true reason; e. g., length of total employment, experience in the particular position from which the employee was discharged, efficiency ratings and estimates by qualified persons, specific acts showing degree of efficiency, skill, care, comparison with other employees. If a drop in production is alleged, the Board also inquires into the bona fides of this claim. Other common reasons offered by employers to explain a release, and whose bona fides the Board examines, are insubordination, infraction of company rules, fighting, violence. Whether the employee is in fact efficient, or whether he has seniority, or whether production really did slump, are important only insofar as they enable the Board to determine whether the employer sincerely

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[85] *Matter of Arthur L. Colton, etc.*, and *Amalgamated Clothing Workers of America*, 6 N. L. R. B. 355; also *Matter of Montgomery Ward and Company, etc.*, and *United Mail Order and Retail Workers of America*, 4 N. L. R. B. 1151; *Matter of Consolidated Edison Company of New York, Inc., etc.*, and *United Electrical and Radio Workers of America, etc.*, 4 N. L. R. B. 71, enforced in *Consolidated Edison Company* v. *National Labor Relations Board*, 95 F. (2d) 390 (C. C. A. 2d, 1938), certiorari granted, 304 U. S. 555 (1938); *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America*, 4 N. L. R. B. 202, enforced in *Clover Fork Coal Company* v. *National Labor Relations Board*, 97 F. (2d) 331 (1938) (C. C. A. 6th); *Matter of Suburban Lumber Company* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, etc.*, 3 N. L. R. B. 194.

[86] Failure to explain a discharge at the hearing may indicate that the reason was antiunion in character: *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America*, 4 N. L. R. B. 202, enforced in *Clover Fork Coal Company* v. *National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th, 1938).

[87] *Matter of American Potash & Chemical Corporation* and *Borax and Potash Workers' Union, etc.*, 3 N. L. R. B. 140, enforced in *National Labor Relations Board* v. *American Potash and Chemical Corporation*, 98 F. (2d) 488 (C. C. A. 9th, 1938).

[88] *Matter of The Federal Bearings Co., etc.*, and *Local 297, International Union, United Automobile Workers of America*, 4 N. L. R. B. 467. (The respondent contended that an employee was discharged for using improper language in the wash room. The Board said it could not "take seriously the reasons" urged: "A factory wash room is not a place where decorum in the use of language is commonly observed.")

acted on those grounds and not on the ground of union activity. In *Matter of The Seagrave Corporation*,[89] the Board found:

> While there was reason to believe that Dennis' alleged incompetence was more imaginary than real, we see no reason in this fact alone for finding that the Act was violated * * * there is reason to believe that the respondent did in fact conclude that Dennis could not perform his work satisfactorily, even though the record indicates strongly that this conclusion was erroneous.[90]

Accordingly, the complaint was dismissed. Conversely, though inefficiency or some other alleged fact existed, union activity might still be the true reason for the release.[91] Thus, in *Matter of Harry G. Beck*,[92] the employer and employees were engaged in transportation. The Board, finding that the employees were discharged "in an effort to stem the tide of organizational activities," said:

> It is undoubtedly true that these discharged employees were guilty of some of the offenses charged against them. However, as was said in *Matter of Houston Cartage Company*[93] * * * "Experience has shown this Board that there is no field of employment where employers can so easily find means to cloak their real motives for discharging employees as in the employment of bus or truck drivers. In practically every case which has come before us involving such employees, it has been charged and proven that the discharged employees have exceeded the speed limit, left their route or made stops not strictly in line with their duties. But from the very nature of the work of bus or truck drivers it is apparent that an employer has only to follow any truck or bus driver for a comparatively short time to find him guilty of many such violations. We are, therefore, not impressed with the sincerity of an employer who advances such reasons for a discharge where he fails to show that such violations were flagrant or repeated and where the surrounding circumstances indicate that the employee was active in union activities to which the employer was opposed."

In addition to antiunion activity by the employer, union activity by the employee known to the employer, pettiness of the reason offered, and nonexistence of the facts upon which the alleged legitimate reason is based, the Board has had occasion to point out other elements tending to show whether an alleged reason is only a convenient pretext. The Board has found significant the unexplained failure of the employer to call as witnesses the supervisors who would have personal knowledge of the facts underlying the claimed reason for

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[89] *Matter of The Seagrave Corporation* and *United Automobile Workers of America*, 4 N. L. R. B. 1093.

[90] Also, *Matter of Wald Transfer and Storage Company, Inc.*, and *Local Union No. 367, International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, etc.*, 3 N. L. R. B. 712; the Board found it impossible to decide whether the employee discharged was in fact dishonest, but the Board dismissed the complaint upon finding that the employer had strong suspicions of the employee's dishonesty and that the suspicions motivated the discharge.

[91] *Matter of American Manufacturing Company, Inc.*, and *International Association of Machinists, etc.*, 7 N. L. R. B. 375. (The Board said: "The evidence clearly indicates, however, that whether or not Gutoski was guilty of insubordination, such insubordination was not the cause of his subsequent discharge.") In *Matter of Kelly-Springfield Tire Company* and *United Rubber Workers of America, Local No. 26, etc.*, 6 N. L. R. B. 325, enforced in *The Kelly-Springfield Tire Company* v. *National Labor Relations Board*, 97 F. (2d) 1007 (C. C. A. 4th, 1938), the Board stated: "If the respondent discharged Reed on June 1, 1936, because of his organizational activity and affiliation, it committed an unfair labor practice, whatever 'proper causes' may then have existed for terminating his employment. While proof of the presence of proper causes at the time of discharge may have relevancy and circumstantial bearing in explaining what otherwise might appear as a discriminatory discharge, such proof is not conclusive. The issue is whether such causes in fact induced the discharge or whether they are but a justification of it in retrospect. On the other hand, it is equally true that a failure to show proper causes, indeed, any cause, for the dicharge does not necessarily establish an unfair labor practice."

[92] *Matter of Harry G. Beck, etc.*, and *International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, etc.*, 3 N. L. R. B. 110.

[93] *Matter of Houston Cartage Company, Inc.*, and *Local Union No. 367, International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, etc.*, 2 N. L. R. B. 1000.

the discharge.[94] Neither are vague general accusations likely to receive credence.[95] They are "too intangible to refute.[96] The Circuit Court of Appeals, in enforcing a Board order, stated:

> The record shows that the Board gave painstaking and detailed consideration to the circumstances of each case. Its determination that each discharge was occasioned by Union activity, rather than by the rather vague and general reasons assigned by the respondent at the hearing below, is amply supported by the evidence.[97]

The unexplained failure to produce specific evidence allegedly in existence also renders the purported reason dubious.[98] The Board is not impressed by the sincerity of an accusation where the employer makes no effort to ascertain whether the accused employee is guilty. Thus in *Matter of The Clover Fork Coal Company*,[99] the Board, in rejecting the defense, pointed to "the fact that no investigation was made of the cause of these cars jumping the track, although it is clear that Killian may not have been at fault."[1]

The alleged facts underlying the claimed defense may be inherently improbable; as in the case of an employee who worked for the employer for 7 years, and was allegedly discharged upon the basis of a 30-day check initiated the day he appeared as a member of the negotiating committee. The Board stated: "It is unlikely that the work of a man employed by the respondent as long as Barry had been, would fall off so badly in a 30-day period to warrant his discharge and the substitution of a man inexperienced in that type of work."[2] The Board has rejected alleged reasons based solely on employee acts of which the employer manifested no disapproval until the employee's union activity became apparent to the employer. For example, in one case the Board found:

> The fact that prior to the strike the respondent saw fit to retain Jensen, without so much as an admonition concerning his alleged frequent absences, is a clear indication that the reason advanced by the respondent for its refusal to reinstate him was culled *ex post facto* to screen its true motive.[3]

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[94] *Matter of Fruehauf Trailer Company* and *United Automobile Workers Federal Labor Union No. 19375*, 1 N. L. R. B. 68, enforced in *National Labor Relations Board* v. *Fruehauf Trailer Company*, 301 U. S. 49 (1937).

[95] *Matter of National Weaving Company, Inc.*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 743; *Matter of Missouri-Arkansas Coach Lines, Inc.*, and *The Brotherhood of Railroad Trainmen*, 7 N. L. R. B. 186; *Matter of Omaha Hat Corporation* and *United Hatters, Cap, and Millinery Workers International Union, etc.*, 4 N. L. R. B. 878.

[96] *Matter of Harry G. Beck, etc.*, and *International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Local Union No. 355*, 3 N. L. R. B. 110.

[97] *National Labor Relations Board* v. *American Potash and Chemical Corporation*, 98 F. 2d 488 (C. C. A. 9th, 1938), enforcing *Matter of American Potash & Chemical Corporation* and *Borax and Potash Workers' Union, etc.*, 3 N. L. R. B. 140.

[98] *Matter of Missouri-Arkansas Coach Lines, Inc.*, and *The Brotherhood of Railroad Trainmen*, 7 N. L. R. B. 186; *matter of Kentucky Firebrick* and *United Brick and Clay Workers of America, etc.*, 3 N. L. R. B. 455, enforced in *National Labor Relations Board* v. *Kentucky Firebrick Company*, 6 Cir., 99 F. (2d) 89 (rehearing denied Oct. 12, 1938).

[99] *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America*, 4 N. L. R. B. 202, enforced in *Clover Fork Coal Company* v. *National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th, 1938).

[1] Also: *Matter of National Weaving Company, Inc.*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 743.

[2] *Matter of Boss Manufacturing Company* and *International Glove Workers of America, Local No. 85*, 3 N. L. R. B. 400. Also: *Matter of Beloit Iron Works* and *Pattern Makers League of North America*, 7 N. L. R. B. 216. (The Board overruled the defense that the employee was discharged for inefficiency, saying: "We can give little credence to the explanation offered on behalf of the respondent that raises were given to Boulby because he started at a low rate and because it was hoped that an increase of his earnings would 'pep him up.' ")

[3] *Matter of Highway Trailer Company* and *United Automobile Workers of America, Local No. 135, etc.*, 3 N. L. R. B. 591, enforced in *National Labor Relations Board* v. *Highway Trailer Company*, 95 F. (2d) 1012 (C. C. A. 7th, 1938).

In another case, though the employee's defect, arriving late for work, was alleged to be of long standing, the employer did not attempt to discipline the employee until he manifested interest in the union.[4] Of course, where warnings followed the employee's infraction and preceded the discharge, the employer's defense is more credible.[5] Occasionally, the evidence shows that the employer kept a special look-out to find a pretext for discharging an active union employee. In *Matter of Lenox Shoe Company*,[6] immediately after the employee became active in distributing membership cards, the superintendent of the factory began to keep a very close watch on the quality of his work for 15 or 20 minutes at a time, three or four times a day. Neither this employee's work as a learner, nor that of any other employee, had received such close scrutiny. The Board concluded "that inefficient work was the pretext."[7] In another case the Board said:

> Under all the circumstances, we are constrained to view Mack Lester's refusal to allow Bortoluzzi the use of the telephone as an act designed to provoke Bortoluzzi into leaving the building or into other conduct which would furnish the respondent a pretext upon which to discharge Bortoluzzi.[8]

Statements by supervisors contemporaneous with the discharge often throw light on the defense. In *Matter of Memphis Furniture Manufacturing Company*,[9] the employer claimed that several employees were laid off because of a lag in production; but the evidence showed that one of the foremen in laying off an employee told him: "Not dull business * * * your work is perfect * * * can't tell why. Have orders from the superintendent to lay you off." In another case, the employer assigned two reasons for a discharge on the employee's unemployment compensation card. The Board stated: "It is significant that Wright was not apprised of this latter reason when he was dismissed. The respondent's silence, unexplained at the hearing, leads to a reasonable inference that this excuse was an afterthought, used as a pretext to cover the fact that Wright was discharged for his union activity." In the same case, the employer discharged the vice president of the union for "unsatisfactory conduct," and when pressed for an explanation, stated he did not "care to go into this thing any further."[10] The Board has pointed to shifts

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[4] *Matter of Harry G. Beck, etc.*, and *International Brotherhood of Teamsters, Chauffeurs and Stablemen and Helpers of America, Local Union No. 355*, 3 N. L. R. B. 110. Also: *Matter of Electric Boat Company* and *Industrial Union of Marine and Shipbuilding Workers of America, etc.*, 7 N. L. R. B. 572; *Matter of Trenton-Philadelphia Coach Company* and *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*, 6 N. L. R. B. 112.

[5] For example *Matter of Leo L. Lowy, etc.*, and *Tapered Roller Bearing Corporation* and *International Association of Machinists, District No. 15*, 3 N. L. R. B. 938: Cf. *Matter of The Grace Company* and *United Garment Workers of America, etc.*, 7 N. L. R. B. 766. (The Board said: "The reasons advanced by the respondent for their discharge are even more improbable when it is considered that all of such employees had been complimented on their work, and not one of them had been reprimanded for any cause)".

[6] *Matter of Lenox Shoe Company, Inc.*, and *United Shoe Workers of America, etc.*, 4 N. L. R. B. 372.

[7] Also: *Matter of Bradford Dyeing Association, etc.*, and *Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604.

[8] *Matter of Art Crayon Company, Inc., etc.* and *United Artists Supply Workers*, 7 N. L. R. B. 102.

[9] *Matter of Memphis Furniture Manufacturing Company* and *Furniture Workers Local Union No. 1174, United Brotherhood of Carpenters and Joiners of America*, 3 N. L. R. B. 26, enforced in *Memphis Furniture Manufacturing Company* v. *National Labor Relations Board*, 96 F. (2d) 1018 (C. C. A. 6th, 1938); certiorari denied, 59 S. Ct. 91 (1938).

[10] *Matter of American Potash & Chemical Corporation* and *Borax and Potash Workers' Union No. 20181*, 3 N. L. R. B. 140, enforced in *National Labor Relations Board* v. *American Potash and Chemical Corporation*, 98 F. (2d) 488 (C. C. A. 9th, 1938). Also: *Matter of American Manufacturing Company, Inc.* and *International Association of Machinists, etc.*, 7 N. L. R. B. 375. *Matter of Beloit Iron Works* and *Pattern Makers League of North America*, 7 N. L. R. B. 216.

by the employer from one reason to another, in rejecting an affirmative defense.[11]

A minor infraction followed by a serious penalty like discharge also raises an inference that the claimed reason is only a pretext; as where the employer claimed he discharged an employee for resuming work after lunch 7 minutes late, i. e., 4 minutes after the period of grace; though the employer's practice with respect to other employees had been to use warnings and lighter penalties before discharging. The Board found the "unusual measures * * * so extraordinary under the circumstances" as to satisfy the Board that the alleged tardiness was not the honest reason.[12] Frequently, the penalty imposed on the complaining employee was not imposed on other employees for identical or for equally serious offenses. The Board has found in this disparate treatment convincing evidence that the alleged reason is not sincere; as, for example, in *Matter of Botany Worsted Mills:*[13] the alleged reason was, talking during working hours; the employees, with the knowledge of, and without complaint or penalization by, the supervisors, customarily discussed a wide miscellany of subjects during working hours.[14] In *Matter of Kentucky Firebrick Company,*[15] following a strike attended by some violence, the employer refused to reinstate several employees allegedly on the ground that they were guilty of the violence. The employer did reinstate many others equally guilty. This disparate treatment cast doubt on the honesty of the purported ground. The Board found the alleged violence of the strikers a "pretext" and not the "real motive" pointing out that "despite the fact that the respondent knew that violence had been committed by both its union and nonunion employees, not a single nonunion employee was denied reinstatement."[16]

5. The Closed-Shop Proviso

For the employer to require membership in a labor organization as a condition of employment is ordinarily an unfair labor practice within section 8 (3). However, the so-called closed-shop proviso to the section permits such a condition provided certain statutory requirements are met. The condition, membership in a labor organization, is in violation of the section, unless it satisfies the requirements of the proviso. In a number of cases the Board has been called upon to determine whether the discrimination was privileged; that is, to determine whether the discrimination was saved from the section, generally, by the proviso.[17]

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[11] For example *Matter of Waterman Steamship Corporation* and *National Maritime Union of America, etc.*, 7 N. L. R. B. 237; *Matter of Scandore Paper Bow Co., Inc., etc.*, and *Paper Box Makers Union, etc.*, 4 N. L. R. B. 910.

[12] *Matter of The Jacobs Bros. Co., Inc.*, and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620.

[13] *Matter of Botany Worsted Mills* and *Textile Workers Organizing Committee*, 4 N. L. R. B. 292.

[14] Also, *Matter of Electric Boat Company* and *Industrial Union of Maine and Shipbuilding Workers of America, etc.*, 7 N. L. R. B. 572.

[15] *Matter of Kentucky Firebrick Company* and *United Brick and Clay Workers of America, Local Union No. 510*, 3 N. L. R. B. 455, enforced in *National Labor Relations Board* v. *Kentucky Firebrick Company*, 6 Cir., 99 F. (2d) 89, (rehearing denied Oct. 12, 1938).

[16] Whether or not the Board will order reinstatement of an employee guilty of violence, is discussed below at p. 211.

[17] Discussion of agreements and section: 8 (1), at p. 57; 8 (2), at p. 120; 9 (c), at p. 134; and 10 (c), at p. 212.

The discharge or other discrimination is, of course, not privileged under the proviso unless occurring pursuant to a bona fide agreement which actually does require as a condition of employment membership in a labor organization. In *Matter of Waterman Steamship Corporation*,[18] the employer discharged members of one union, citing a preferential hiring agreement with a rival union. The Board rejected the defense because the agreement stated it did not "require the discharge of any employee who may not desire to join the Union." In *Matter of National Electric Products Corporation*,[19] the agreement provided: "The Employer * * * agrees to employ only members of the Union or those who have made proper arrangements for becoming members within 21 days after being employed, or in the event of failure of employee to join the union within the aforesaid period, the Company will deduct from such employee's wage the union dues for each calendar month * * * which such employee would pay if he or she had become a member of the Union." The Board stated: "The proviso speaks of an agreement with a labor organization requiring as a condition of employment 'membership therein.' The contract proviso here in question is not so limited; it requires membership in the Brotherhood or deductions of pay equal to Brotherhood dues. Either contingency comes within the prohibition of Section 8 (3) unless saved by the proviso." The Board found it unnecessary to determine whether the proviso of section 8 (3) could be applicable to this kind of contract because the contract failed to meet the other conditions of the proviso. In *Matter of M. & M. Woodworking Company*,[20] the employer had a closed-shop agreement with Plylock Local, No. 2531, affiliated with the carpenters' union. The Plylock Local, following the applicable provisions of its charter and bylaws, voted almost unanimously to transfer its affiliation from the carpenters' union and became Local No. 102, affiliated with the International Woodworkers of America. Thereafter the carpenters' union chartered New Local 2531. The employer discharged those refusing to join the new carpenters' union local, in reliance on the closed-shop agreement. The Board held:

> It is not necessary to decide here, however, whether or not the contract remained in force with the Plylock Local after the change in name and affiliation. If the contract continued as a valid contract with Local No. 102, as the successor of Local No. 2531, plainly the respondent had no authority thereunder to require membership in new Local No. 2531 as a condition of employment. On the other hand, if the contract expired as a result of withdrawal of the Plylock Local from the Carpenters' Union, the respondent likewise cannot rely upon the contract as justification for requiring membership in New Local No. 2531. In either event the respondent's activities constitute unlawful discrimination against its employees contrary to Section 8 (3) of the Act.[21]

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[18] *Matter of Waterman Steamship Corporation* and *National Maritime Union of America, Engine Division, etc.*, 7 N. L. R. B. 237.

[19] *Matter of National Electric Products Corporation* and *United Electrical and Radio Workers of America, Local No. 609*, 3 N. L. R. B. 475.

[20] *Matter of M. and M. Woodworking Company* and *Plywood and Veneer Workers' Union, Local No. 102, affiliated with International Woodworkers of America*, 6 N. L. R. B. 372.

[21] Also, *Matter of Smith Wood Products, Inc.*, and *Plywood and Veneer Workers, Local No. 2691, International Woodworkers of America*, 7 N. L. R. B. 950. In this case it was contended that the original local did not legally withdraw from the parent organization. The constitution provided that a local could not withdraw so long as 10 members in good standing objected thereto. Sixty-three persons signed a petition stating that they wished to retain the original affiliation. The Board found that "the evidence indicates not only that several of the persons who signed the petition were not members of the local but that many of the signatures were obtained within the respondent's plant by supervisory officials of the respondent. Such petition cannot, therefore, be considered an objection to the withdrawal of Carpenters' Local 2691 from the Carpenters' Union."

The only labor organization to whom the proviso can apply is one not established, maintained, or assisted by any action defined in the act as an unfair labor practice. Accordingly, in an early case, the Board found the respondent's refusal to reinstate 96 employees, in reliance upon a closed-shop agreement, violative of section 8 (3) because the labor organization had been established by acts defined in section 8 (2) as unfair labor practices.[22] The Board said: "The tainted origin of the Association thus prevents the respondent from using its agreement with the Association as a shield behind which it may operate in a manner forbidden by the Act." [23] The Board has consistently applied this view without regard to the affiliation of the union favored by the employer and without regard to the affiliation of the union disfavored by the employer.[24] In *Matter of National Electric Products Corporation*,[25] the Board found that the agreement did not come within the proviso because the labor organization involved had been assisted by acts defined in section 8 (1) as unfair labor practices.[26]

The labor organization also must be the representative of the employees as provided in section 9 (a) of the act in the appropriate collective bargaining unit. Accordingly, the Board has overruled the defense when based on an agreement with a union not designated as collective bargaining representative by a majority of the employees in the appropriate bargaining unit at the time the agreement was made.[27]

C. COLLECTIVE BARGAINING

1. REFUSAL TO NEGOTIATE

Many of the cases in which the Board has found that the employer did not discharge its obligation under section 8 (5) of the act have revealed simply a refusal by the employer to enter into negotiations with the representatives of its employees. Thus, the Board has frequently found that an employer had committed an unfair labor practice in instances where it expressly refused to negotiate or to meet

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[22] The Board held that the proviso would not apply, although the acts of employer assistance and support occurred prior to the effective date of the Act. Otherwise, said the Board: "An employer could perpetuate an organization of his creation prior to July 5, 1935, by entering into a closed-shop agreement with it after July 5, 1935, thus enabling it to thrive on the support afforded by the agreement and permitting it to dispense with the constant assistance obtained from company domination and support which would otherwise be necessary."

[23] *Matter of Clinton Cotton Mills* and *Local No. 2182, United Textile Workers of America*, 1 N. L. R. B. 97.

[24] For example, *Matter of The Grace Company* and *United Garment Workers' Local 47*, 7 N. L. R. B. 766; *Matter of Highway Trailer Company* and *United Automobile Workers of America, Local No. 135 and Local No. 136*, 3 N. L. R. B. 591, enforced in *National Labor Relations Board* v. *Highway Trailer Company*, 95 F. (2d) 1012 (C. C. A. 7th, 1938). *Matter of Hill Bus Co., Inc.*, and *Brotherhood of Railway Trainmen, etc.*, 2 N. L. R. B. 781.

[25] *Matter of National Electric Products Corporation* and *United Electrical and Radio Workers of America, Local No. 609*, 3 N. L. R. B. 475.

[26] Also, *Matter of Jacob A. Hunkele, etc.*, and *Local No. 40, United Laundry Workers' Union*, 7 N. L. R. B. 1276; *Matter of Missouri-Arkansas Coach Lines, Inc.*, and the *Brotherhood of Railway Trainmen*, 7 N. L. R. B. 186; *Matter of Zenite Metal Corporation* and *United Automobile Workers of America Local 442*, 5 N. L. R. B. 509; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; *Matter of Lenox Shoe Company, Inc.*, and *United Shoe Workers of America, etc.*, 4 N. L. R. B. 372.

[27] *Ibid.*

with union representatives,[28] or made its refusal manifest by such unequivocal conduct as failing to reply to letters requesting a bargaining conference,[29] refusing to accept a registered letter containing a proposed agreement,[30] returning the letter which requests a conference,[31] returning a proposed agreement,[32] failing to attend meetings which had been arranged,[33] and refusing to discuss terms and conditions of employment at meetings with union representatives.[34]

In *Matter of Kuehne Manufacturing Company*[35] the president of the union local, by letter, requested the employer to recognize the union and to set a date for a conference. The employer replied by a letter dated Saturday, April 3, which stated that its president would meet with the president of the union local on Monday, April 5, at 2 p. m. The employer's president then refused the union's request, made by telephone, to postpone the meeting to a later hour so as to enable the American Federation of Labor official who was

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[28] *Matter of Suburban Lumber Company* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Local Union No. 676*, 3 N. L. R. B. 194; *Matter of Bradford Dyeing Association (U. S. A.) (a Corporation)* and *Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604 (the employer informed the Steel Workers Organizing Committee that it would not recognize or deal with the Steel Workers Organizing Committee); *Matter of Omaha Hat Corporation* and *United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8*, 4 N. L. R. B. 878 (the president of the employer company stated that he could not see his way clear "to having the union in his shop in any way, manner, shape or form"); *Matter of Cating Rope Works, Inc.*, and *Textile Workers' Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100; *Matter of The Jacobs Bros. Co., Inc.*, and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620; *Matter of The Warfield Company, a Corporation Formerly Known as the Thomson & Taylor Company* and *International Union of Operating Engineers, Local No. 399*, and *International Brotherhood of Firemen and Oilers, Local No. 7*, 6 N. L. R. B. 58; *Matter of C. A. Lund Company* and *Novelty Workers Union, Local 1866 (A. F. of L.), successor*, 6 N. L. R. B. 423; *Matter of Missouri-Arkansas Coach Lines, Inc.*, and *The Brotherhood of Railroad Trainmen*, 7 N. L. R. B. 186.

[29] *Matter of C. A. Lund Company*, supra; *Matter of The Triplett Electrical Instrument Company, The Diller Manufacturing Company, Doing Business Under the Firm Name and Style of Readrite Meter Works*, and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835; *Matter of Somerset Shoe Company* and *United Shoe Workers of America*, 5 N. L. R. B. 486 ("the respondent's failure to answer the United's request for a bargaining conference constituted a refusal to bargain with the exclusive representatives of its employees"); *Matter of Sheba Ann Frocks, Inc.*, and *International Ladies' Garment Workers' Union of America, Locals 121 and 204*, 5 N. L. R. B. 12.

In some cases, where a refusal to bargain collectively has been found, the Board, in analyzing the employer's conduct, has taken note of the fact that after a union representative called personally, but was unable to reach any responsible official of the employer, the employer, though aware of such call, failed to make any effort to communicate with the representative who had called. *Matter of Suburban Lumber Company*, supra; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409.

[30] *Matter of The Warfield Company, a Corporation Formerly Known as the Thomson & Taylor Company*, and *International Union of Operating Engineers, Local No. 399*, and *International Brotherhood of Firemen and Oilers, Local No. 7*, 6 N. L. R. B. 58.

[31] *Matter of Jacob Cohen, Lee M. Cohen, Lawrence L. Cohen, Milton Cohen, Morton Cohen and Hyman Cohen, Trading as S. Cohen & Sons*, and *Local No. 227, International Ladies' Garment Workers' Union*, 4 N. L. R. B. 720; *Matter of The Warfield Company, a Corporation Formerly Known as The Thomson & Taylor Company*, and *International Union of Operating Engineers, Local No. 399*, and *International Brotherhood of Firemen and Oilers, Local No. 7*, 6 N. L. R. B. 58.

[32] *Matter of The Warfield Company*, supra.

[33] *Matter of Taylor Trunk Company* and *Luggage Workers Union, Local No. 50, of the International Ladies' Hand Bag, Pocketbook and Novelty Workers Union*, 6 N. L. R. B. 22; *Matter of N. Kiamie* and *International Fur Workers Union of the United States and Canada*, 4 N. L. R. B. 808.

[34] *Matter of N. Kiamie* and *International Fur Workers Union of the United States and Canada*, 4 N. L. R. B. 808; *Matter of J. W. Beasley, Individually and Trading as Standard Memorial Works* and *Granite Cutters' International Association of America, Charlotte Branch*, 7 N. L. R. B. 123. In the latter case the Board based a finding that the employer had been guilty of an unfair labor practice in refusing to bargain collectively on substantially the following facts:

"* * * although the respondent stated on several occasions his willingness to bargain collectively with the Union, at each conference with representatives of the union Beasley [the respondent] refused to recognize the Union or to bargain with it Beasley at first refused to discuss matters with the committee. Then he took a copy of a proposed contract for inspection and study but put it in his pocket at that time. A further meeting took place on November 12 when Beasley told the committee that he had read the agreement, that he had no counter proposals to make, and that he still refused to discuss its terms or to sign it."

[35] *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304.

handling the negotiations for the union to travel from his headquarters in another city to the place of the meeting. As a result, the meeting was not held. The Board found that on April 5 the employer had refused to bargain collectively with respresentatives of its employees.

In *Matter of Atlas Mills, Inc.*,[36] the employer, immediately after being asked to meet with the union representative, called a meeting of its employees and gave them the alternative of giving up their membership in the union or leaving its employ. The Board, in analyzing the situation, stated that, "To condition employment upon the abandonment by the employees of the rights guaranteed them by the act is equivalent to discharging them outright for union activities"; the Board then asserted the principle that—

> To answer a request for collective bargaining from a duly authorized labor organization by the discharge of all employees who refuse to give up their affiliation with it is, taken by itself, a conclusive and effective refusal to bargain.[37]

In many cases in which the employer argued that the situation then existing justified its refusal to bargain, the Board held that the excuse advanced was inadequate and that the employer had not been relieved of its duty to bargain collectively.

The duty of an employer to bargain collectively with the representative of its employees is not extinguished by the occurrence of a strike.[38] This is true both of the strike which is the result of an employer's unfair labor practice and the strike which is not. In *N. L. R. B.* v. *Black Diamond Steamship Corporation*,[39] the Circuit Court of Appeals for the Second Circuit, in dealing with the duty of an employer to bargain during a strike said:

> All engineers were employees under the act, having left work in consequence of labor disputes. But having done so before any unfair labor practice, they were relying, and were only entitled to rely, upon a test of economic strength. They struck at a time when the Board was conducting an election. Since the act expressly leaves the right to strike unaffected, any remedies they had were unaffected by continuing on strike. When, on December 14, 1936, the Black Diamond refused to bargain with the certified bargaining agent of its employees, it violated the act * * *.[40]

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[36] *Matter of Atlas Mills, Inc.*, and *Textile House Workers Union, No. 2269, United Textile Workers of America*. 3 N. L. R. B. 10.

[37] Cf. *Matter of Suburban Lumber Company* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Local Union No. 676*, 3 N. L. R. B. 194 (discharge of union members on the day that the employer's president learned that the union's business representative had called and left his card and a proposed contract); *Matter of Jacob Cohen, Lee M. Cohen, Lawrence L. Cohen, Milton Cohen, Morton Cohen and Hyman Cohen, Trading as S. Cohen & Sons* and *Local No. 227, International Ladies' Garment Workers' Union*, 4 N. L. R. B. 720 (two union leaders discriminatorily discharged the day after the union sent a letter requesting a bargaining conference); *Matter of Omaha Hat Corporation* and *United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8*, 4 N. L. R. B. 878 (discriminatory discharges the day following the first meeting between the union and the employer).

[38] *Matter of Black Diamond Steamship Corporation* and *Marine Engineers' Beneficial Association Local No. 33*, 3 N. L. R. B. 84; *Matter of Suburban Lumber Company* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 676*, 3 N. L. R. B. 194; *Matter of The Jacobs Bros. Co., Inc.* and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620; *Matter of Art Crayon Company, Inc., and Its Affiliated Company, American Artists Color Works, Inc.* and *United Artists Supply Workers*, 7 N. L. R. B. 102.

[39] 94 F. (2d) 875 (C. C. A. 2d., 1938).

[40] In *Matter of Art Crayon Company, Inc.* and *Its Affiliated Company, American Artists Color Works, Inc.*, and *United Artists Supply Workers*, 7 N. L. R. B. 102, the employer refused to confer after its employees had gone on strike because of unfair labor practices. The Board stated: "We find that on May 24 the respondents refused to bargain collectively with the union, basing its refusal to bargain on the ground that the employees had gone on strike. The strike, which resulted from the discharge of Rothfeld and Bortoluzzi and the previous course of conduct of the respondent in intimidating and coercing its employees, was clearly caused by a labor dispute. The respondents clearly were not, on the basis of the strike, justified in refusing to bargain."

When the employer has committed an unfair labor practice by closing its plant and locking out its employees, it is not relieved of its obligation to bargain collectively because of the shut-down.[41] The Board has emphasized the need for collective bargaining in such a situation:

> The shut-down of the plants did not relieve the respondent of its obligation under Section 8 (5) of the Act to bargain with its employees. It cannot be contended that such bargaining would have been pointless then in view of the fact that the respondent admits that labor trouble was directly responsible for the shut-down. It is altogether possible that had the respondent met with the United the labor difficulties might have been adjusted.[42]

In several cases, employers have advanced other untenable reasons for their failure to bargain collectively. The Board has found that the fact that the union representatives were seeking a closed shop did not excuse the employer from bargaining collectively.[43]

In *Matter of Sheba Ann Frocks, Inc.*[44] the Board issued a complaint alleging that the employer had refused to bargain collectively. Subsequent to a hearing on the complaint and the issuance of the trial examiner's intermediate report, but before the Board issued its decision, the employer again refused to bargain collectively. The employer then contended that its second refusal was justified because it was not required to bargain until the Board had rendered a decision on the issues of the original complaint. In dismissing this contention, the Board said: "The issuance or withholding of a decision on a complaint cannot relieve the respondent of its obligation to observe the provision of the Act. A finding that the respondent has not refused to bargain collectively cannot condone a subsequent refusal to bargain within the meaning of the Act."

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[41] *Matter of Omaha Hat Corporation* and *United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8*, 4 N. L. R. B. 878 (the employer's action in closing its New York City plant and preparing to remove to Garwood, N. J., was found to be motivated by its desire to avoid collective bargaining and by its intention to discourage membership in the union and thus was held to be an unfair labor practice within the meaning of sec. 8 (1)); *Matter of Somerset Shoe Company* and *United Shoe Workers of America*, 5 N. L. R. B. 486; *Matter of American Radiator Company, a Corporation*, and *Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, Affiliated With the Committee for Industrial Organization*, 7 N. L. R. B. 1127; Matter of *Kuehne Manufacturing Company and Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304. In the latter case the Board said:

"Since we have found that the closing down of the Flora plant involved a discriminatory lock-out, the shut-down did not relieve the respondent of its obligation under the act to bargain with its employees or their duly chosen representatives. Obviously, the respondent can neither rely upon its own wrongful 'abandonment' of the plant as an excuse for its refusal to bargain collectively with the union nor argue with good grace that such bargaining would have been fruitless. Had the respondent met with the union, the labor dispute might have been adjusted. By the course of action it took on April 1 and thereafter, the respondent has disqualified itself to contend otherwise."

[42] *Matter of Somerset Shoe Company* and *United Shoe Workers of America*, 5 N. L. R. B. 486.

[43] *Matter of United States Stamping Company* and *Enamel Workers Union, No. 18630*, 5 N. L. R. B. 172: "The proposed contract of September 28, 1936, contained a closed-shop provision. As respondent and its counsel well know, the incorporation of such a provision in a proposed contract does not indicate that the union will not accept a contract without such a provision * * *. The minutes of this meeting do not indicate that the union committee took the position that an agreement without this provision would not be acceptable."

Matter of The Warfield Company, a Corporation Formerly Known as The Thomson & Taylor Company, and *International Union of Operating Engineers, Local No. 399*, and *International Brotherhood of Firemen and Oilers, Local No. 7*, 6 N. L. R. B. 58, was another case in which the employer raised the excuse of a closed-shop demand to excuse its failure to bargain. In this case, the Board found the excuse to be spurious.

In *Matter of Farmco Package Corporation* and *United Veneer Box and Barrel Workers Union, C. I. O.*, 6 N. L. R. B. 601, the employer refused to bargain on the ground that the proposed contract presented to him contained only "preposterous" wage and hour demands. The contract, however, had, besides the wage and hour provisions, 16 other provisions, and the Board found that the employer's contentions were not raised in good faith.

[44] *Matter of Sheba Ann Frocks, Inc.*, and *International Ladies' Garment Workers' Union of America, Locals 121 and 204*, 5 N. L. R. B. 12.

In *Matter of Kuehne Manufacturing Company*,[45] the employer asserted that the union had interfered with the moving of lumber out of the plant, and that it had been agreed that noninterference with the movement of the lumber was to be a condition precedent to the employer's attendance at the bargaining conference. The Board said:

> In our view of the case it is unnecessary to decide whether or not there was a breach of the alleged agreement. The act imposes an unconditional duty upon an employer to bargain collectively with the representatives designated by a majority of his employees in an appropriate unit. If we assume that the strikers interfered with the movement of the respondent's property, their misconduct, for which appropriate remedies exist under State laws, does not justify the respondent in ignoring Federal law by its refusal to bargain collectively with the Union.[46]

The Board has held that the fact that the employer's production was intermittent in nature, because he produced monuments only upon receipt of orders, did not absolve him from the duty of bargaining with the duly designated bargaining agency.[47]

In *Matter of Scandore Paper Box Co., Inc.*,[48] the employer stated that it would not enter into an agreement with the union and declared that negotiations by the union as to conditions of employment constituted interference with the management of the business. An employee, arguing that the employer's hostility to the union rendered the union's cause hopeless, then started a bargaining committee which worked out with the employer individual contracts of employment which were entered into by the employees. The Board stated that the negotiation of these individual contracts did not absolve the employer from the failure to bargain collectively:

> This negotiation of individual contracts by the respondent, Continental Container Corporation, does not fulfill its obligation under Section 8 (5) of the Act to bargain collectively with the duly authorized representatives of its employees. While there is nothing in the evidence to indicate that the employer was directly responsible for the formation of the bargaining committee, it is plain that the employees designated the committee as their representative

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[45] *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304.

[46] In *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d, 1938) certiorari denied, 304 U. S. 578 (1938), the court, referring to the effect of misconduct by the union on the duty of the employer to bargain collectively, said: "As we have already said, the act does not attempt to settle industrial disputes; it leaves the parties to the resultant of their opposed economic powers; and while it does force them to treat with each other, it may be assumed to contemplate only bona fide negotiation. Hence it is no doubt true that it does not require further negotiation after it becomes apparent that a settlement is impossible. A union may at times seek to give the appearance of wishing to treat, after it knows that all chance of agreement is gone; in such conflicts each side generally wishes to place the odium of rupture upon the other. For this reason the conduct of a union, like that of an employer, not only during the negotiations, when there are any, but before they are, may be relevant in ascertaining whether the proposal to confer is genuine, or only part of the tactics of the fight. Nothing else can be material; though the union may have misconducted itself, it has a locus poenitentiae; if it offers in good faith to treat, the employer may not refuse because of its past sins. In the case at bar there was no warrant whatever for supposing that further negotiations would have been useless. The respondent had not met with the men except through a subordinate official, and even then, had misstated or concealed the facts about Elmira. Even though the wage increase had been definitely refused and though the issue was closed, the proposed shift to Elmira and especially the equivocation about it remained; they had been the chief causes of the men's anxiety, and they had not been disposed of. That they wished further conferences about these matters cannot be doubted. For these reasons it was unnecessary to go into any past delinquencies of the union."

Nor does the fact that the union has changed its demands during the course of the negotiations necessarily relieve the employer from his duty to bargain collectively. *Matter of Federal Carton Corporation* and *New York Printing Pressmen's Union No. 51*, 5 N. L. R. B. 879.

[47] *Matter of J. W. Beasley, Individually and Trading as Standard Memorial Works* and *Granite Cutters' International Association of America, Charlotte Branch*, 7 N. L. R. B., 1069.

[48] *Matter of Scandore Paper Box Co., Inc.*, and *Continental Container Corporation and Paper Box Makers Union, Local 18239*, 4 N. L. R. B. 910.

solely because the employer refused to deal with the Union, their proper representative. Under such circumstances, to hold that the committee is the freely chosen representative of the employees or that the employer is under no further obligation to bargain with the Union, would be to nullify the provisions of Section 8 (5) of the Act.

In several instances, employers who engaged in other unfair labor practices in an effort to avoid their obligation to bargain collectively, succeeded in destroying the majority status of the union which had sought to bargain collectively by causing employees to revoke their designation of that union as bargaining agent or to designate instead a company-dominated labor organization. Such revocation or change of designation, however, has been given no effect by the Board.[49]

The Board has held that the employer, after undermining by means of unfair labor practices the majority status of the union seeking to bargain collectively, could not excuse its failure to bargain on the ground that the union no longer was the bargaining agent of the majority of employees in an appropriate unit.[50] In *Matter of Arthur L. Colten, and A. J. Colman*,[51] the Board said, "The respondents seek to justify their refusal to bargain on the ground that subsequent to the week of March 22 the Union no longer represented the majority of their employees. We have found, however, that the majority membership in the Union was dissipated as a result of the unfair labor practices of the respondents." In *Matter of Bradford Dyeing Association*,[52] the employer contended that, at a time when it was charged with a failure to bargain collectively, a majority of the employees in the appropriate unit had designated another labor organization as the bargaining agency. The Board, in refusing to give any effect to this contention, stated:

* * * The record is clear that had it not been for the unfair labor practices of the respondent in organizing and fostering the Federation and in persuading, intimidating, and coercing its employees to join the Federation and leave the T. W. O. C., the respondent's employees would have remained members of the T. W. O. C. The unfair labor practices of the respondent cannot operate to change the bargaining representative previously selected by the untrammelled will of the majority.

* * *

We are ordering the respondent to inform its employees that they are free to become or remain members of the T. W. O. C. and are not required to become or remain members of the Federation. In the presence of such a finding and order, to refrain from ordering the respondent to bargain collectively with the T. W. O. C., would be to hold that the obligation of one subdivision of the Act may be evaded by the successful violation of another; that the freely expressed wishes of the majority of the employees may be destroyed if the employer brings to bear sufficient interference, restraint, and coercion to undermine the

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[49] *Matter of C. A. Lund Company* and *Novelty Workers Union, Local 1866 (A. F. of L.), successor*, 6 N. L. R. B. 423; *Matter of Taylor Trunk Company* and *Luggage Workers Union, Local No. 50, of the International Ladies' Hand Bag, Pocketbook and Novelty Workers Union*, 6 N. L. R. B. 32; *Matter of Federal Carton Corporation* and *New York Printing Pressmen's Union, No. 51*, 5 N. L. R. B. 879; *Matter of Cating Rope Works, Inc.* and *Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100.

[50] *Matter of Arthur L. Colten and A. J. Colman, Co-partners, Doing Business as Kiddie Kover Manufacturing Company*, and *Amalgamated Clothing Workers of America*, 6 N. L. R. B. 355; *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee*, C. I. O., 5 N. L. R. B. 443; *Matter of Bradford Dyeing Association (U. S. A.) (a Corporation)* and *Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604.

[51] *Matter of Arthur L. Colten and A. J. Colman, Co-Partners, Doing Business as Kiddie Kover Manufacturing Company*, and *Amalgamated Clothing Workers of America*, 6 N. L. R. B. 355.

[52] *Matter of Bradford Dyeing Association (U. S. A.) (a Corporation)* and *Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604.

representative's majority support. We cannot permit the purposes of the Act to be thus circumvented.[53]

In *Matter of Sunshine Mining Company* [54] the Board said, in ordering the employer to bargain collectively:

* * * the respondent by its refusal to accord the Union recognition forced it to resort to a strike, thereby causing it to alienate a number of its members. To recognize these renunciations, therefore, as defections in the Union's majority status on August 2, 1937 [the date of the strike], would be to permit the respondent to use the fruits of its unfair labor practices in refusing to bargain on June 28 and July 9, 1937, as a defense to its refusal to bargain on August 2, 1937. Thus the respondent, by two evasions of the Act, would be permitted to build up a defense for a third evasion of the Act. This, we have held, cannot be done.

2. FAILURE TO NEGOTIATE IN GOOD FAITH

Since a bona fide attempt by the employer to reach an agreement with the representatives of its employees is essential to collective bargaining,[55] the Board, in each case, has examined the dealings between the parties and has scrutinized the activities of the employer during the course of the negotiations in an effort to determine whether the employer has been bargaining in good faith.

Matter of Atlas Mills, Inc.,[56] is illustrative of the Board's approach and method of analysis. In that case, the Board said:

There is no doubt that the respondent negotiated with the respresentatives of Local 2269, meeting with them, receiving proposals, and putting forward counter-proposals of its own. But there is equally little doubt that if the obligation of the Act is to produce more than a series of empty discussions, bargaining must mean more than mere negotiation. It must mean negotiation with a bona fide intent to reach an agreement if agreement is possible. Negotiations with an intent only to delay and postpone a settlement until a strike can be broken is not collective bargaining within the meaning of Section 8 (5) of the act * * *.

The present record persuades us that the respondent did not bargain in good faith with Local 2269. The discharges which met the first request to bargain; the delays and postponements,[57] always at the instance of the respondent's representative, that characterized the negotiations once they were begun; the refusal to sign a written agreement; the constant changes in the basis of negotiations, each time further away from the desires of Local 2269; the efforts made by one of the respondent's agents while the negotiations were still going on to win the higher paid leaders away from Local 2269, break the strike, and avoid the necessity to bargain at all; these are not indicia of a bona fide effort to reach an agreement. Rather they suggest a design, facilitated by the youth and inexperience of the striking employees, to use the negotiating process as a strikebreaking device.

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[53] See also *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B., 1252; *Matter of Burnside Steel Foundry Company* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge No. 119*, 7 N. L. R. B. 714; *Matter of Missouri-Arkansas Coach Lines, Inc.*, and *The Brotherhood of Railroad Trainmen*, 7 N. L. R. B. 186; *Matter of Fansteel Metallurgical Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local 66*, 5 N. L. R. B. 930.

[54] *Matter of Sunshine Mining Company* and *International Union of Mine, Mill, and Smelter Workers*, 7 N. L. R. B. 1252.

[55] In the absence of this element of good faith on the employer's part, any negotiations that take place must inevitably be fruitless and cannot prevent resort to industrial warfare as a method of settling disputes.

[56] *Matter of Atlas Mills, Inc.* and *Textile House Workers Union, No. 2269, United Textile Workers of America*, 3 N. L. R. B. 10.

[57] Cf. *Matter of Jacob A. Hunkele, trading as Tri-State Towel Service of the Independent Towel Supply Company* and *Local No. 40, United Laundry Workers Union*, 7 N. L. R. B. 1276, and *Matter of Bemis Bros. Bag Company* and *Local No. 1838, United Textile Workers of America*, 3 N. L. R. B. 267, where the employer's dilatory and evasive tactics were noted. In the latter case, however, because the union did not represent a majority of the employees in an appropriate unit the Board found that the employer had not refused to bargain.

The Board has indicated that the manner in which the employer has negotiated may be indicative of its good faith. In *Matter of National Licorice Company* [58] the conduct of the employer at a conference, which was completely dominated by the employer's president, and at which "The union officials were to all intents and purposes relegated to the position of bystanders and were permitted scant opportunity to present their demands," was a factor which justified the conclusion that the employer had not bargained in good faith. And the Board has considered counter proposals so important an element of collective bargaining that it has found the failure by the employer to offer counter proposals to be persuasive of the fact that the employer had not bargained in good faith.[59] In *Matter of Globe Cotton Mills*,[60] the Board pointed out that—

> Although * * * the respondent met with the Union representatives, received proposals, accorded such proposals ostensible consideration, and engaged in discussions of them, an analysis of this conduct compels the conclusion that in fact the respondent did not recede from or alter in any material particular its position of May 17. Throughout the conferences, the respondent not only systematically rejected each and every Union proposal, including those which were admittedly unobjectionable, but also persistently declined to make any counterproposals. Counsel for the respondent argues in his brief that since it expressed its views in open conferences and since its ideas were not acceptable to the committee, it would have been a vain and foolish thing to submit a formal proposal to the same effect. This argument has a surface plausibility but the difficulty with it lies in the fact that while rejecting the Union's proposals in open discussion the respondent not only did not give but in fact carefully avoided any affirmative indication of possible terms upon which it would be willing to agree. It is obvious that this technique was calculated to and did make any productive negotiations impossible.

The Board concluded that—

> The respondent's tactics in readily participating in discussions in which its agents carefully avoided any semblance of agreement to proposed terms and offered no suggestions for changes acceptable to them convince us that the respondent only sought to give the appearance of obedience to Act without ever entering into genuine collective bargaining.

In many cases, the Board has drawn inferences from the employer's course of conduct after it was requested to bargain collectively, which have supported a finding that the employer had not entered into negotiations in good faith in a bona fide attempt to reach a collective bargaining agreement.

Thus, in *Matter of Leo L. Lowy*,[61] the employer called a meeting of his employees on the day following a meeting with a union committee. At the meeting with the employees, the employer attacked the union and said he would not recognize it, and asked the employees to vote on the question of remaining in the union, informing them that the plant would be closed if they chose to do so. The employees voted to remain in the union, and the employer then paid them off and dis-

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[58] *Matter of National Licorice Company* and *Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity*, 7 N. L. R. B. 537.

[59] *Matter of J. W. Beasley, Individually and Trading as Standard Memorial Works* and *Granite Cutters' International Association of America, Charlotte Branch*, 7 N. L. R. B. 1069; *Matter of Farmco Package Corporation* and *United Veneer Box and Barrel Workers Union, C. I. O.*, 6 N. L. R. B. 601; *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443.

[60] *Matter of Globe Cotton Mills* and *Textile Workers Organizing Committee*, 6 N. L. R. B. 461.

[61] *Matter of Leo L. Lowy, Individually, Doing Business as Tapered Roller Bearing Corporation* and *International Association of Machinists, District No. 15*, 3 N. L. R. B. 938.

charged them. The Board, stating that "The fact that Lowy was willing to meet with union representatives is of no importance in the face of his closing down of his plant in preference to negotiating with the union," held that there had been a refusal to bargain.

In several cases, the employer, subsequent to a collective bargaining request, dominated or interfered with the formation or administration of a labor organization. The Board inferred that such activity was motivated by a desire to eliminate as the collective bargaining agency the union which had made the request and was an attempt by the employer to avoid its obligation to bargain collectively.[62]

In *Matter of Cating Rope Works, Inc.*,[63] the Board pointed to the fact that the employer's activities in connection with "Collective Bargaining Committee," whose formation and administration it dominated, followed closely upon the request for a collective bargaining conference by the union organizer, "whom the respondent had obviously put off upon a false pretext in order to have an opportunity to undermine and dissipate the Union's strength." In *Matter of American Manufacturing Company*[64] the Board referred to the fact that during the period when an organizer for the Textile Workers Organizing Committee, which represented the majority of the employees in an appropriate unit, was making repeated but unsuccessful efforts to telephone the employer's officers for the purpose of arranging a meeting, the employer was actively engaged in dominating the administration of another labor organization and in contributing support to it. This was held to indicate that the employer did not at any time during the attempted negotiation intend in good faith to bargain collectively with the Textile Workers Organizing Committee.

When the employer attempts to bargain with his individual employees after efforts at collective bargaining have been initiated, it is evident that the employer repudiates the collective bargaining principle. The Board has asserted that dealing with individual employees in such a situation is intended to evade the obligation to bargain collectively by destroying the effectiveness of the union as a collective bargaining agency.[65]

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[62] *Matter of National Licorice Company* and *Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity*, 7 N. L. R. B. 537; *Matter of The Triplett Electrical Instrument Company, The Diller Manufacturing Company, doing business under the firm name and style of Readrite Meter Works* and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835; *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443; *Matter of Cating Rope Works, Inc.*, and *Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100. In *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171, the Board in finding a refusal to bargain, stated: "It is clear from the facts as presented above that during the week of January 4, 1937, which the respondent requested for consideration of the contract presented by Local No. 502, no such consideration was in fact given. During that week, the respondent deliberately negotiated an agreement with a labor organization which it had fostered and was at the time fostering for the purpose of defeating the attempt of Local No. 502 to bargain collectively."

[63] *Matter of Cating Rope Works, Inc.* and *Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100.

[64] *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; The Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443.

[65] One employer described in picturesque terms its practice of bargaining individually with employees while attempts at collective bargaining were being made as one intended to "smoke out" its employees and to play "both ends against the middle, listening to one end and talking to the other." *Matter of Taylor Trunk Company* and *Luggage Workers Union, Local No. 50, of the International Ladies' Hand Bag, Pocketbook and Novelty Workers Union*, 6 N. L. R. B. 32.

The Board has held that, under certain circumstances, the action of the employer in bargaining with its employees individually, in itself constituted an effective refusal to bargain collectively and was an unfair labor practice within the meaning of section 8 (5)[66]; in other cases such action was one of the factors leading to the Board's determination that the employer had refused to bargain.[67]

In *Matter of Biles-Coleman Lumber Company*,[68] the president of the employer company called the employees together in a mass meeting 2 days after the union had presented the employer with a proposed collective bargaining contract. The president told the employees, in substance, that he had been presented with a list of demands from the "so-called" union; advised them that it was impossible to meet any of the demands; stated that the workers would be better off if they paid no heed to outside organizers; told them his answer was final and that they had best go home and talk it over with their wives. The Circuit Court of Appeals for the Ninth Circuit evaluated this evidence and asserted that—

> There is sufficient evidence to warrant the Board's finding that this conduct on the part of respondent was a refusal to bargain collectively within the meaning of section 8 (5). Collective bargaining does not require the employer to reach an agreement. It does require sincere negotiations with the *representatives* of the employees. *Jeffrey-DeWitt Insulator Co.* v. *N. L. R. B.* (C. C. A.–4), 91 F. (2d) 134; *N. L. R. B.* v. *Sands Mfg. Co.* (C. C. A.–6), 96 F (2d) 721. Here, in effect, the employer says to his employees, "I will not treat with your representatives; their demands are impossible; furthermore if you attempt to deal with me through them, you will lose your individuality; forget about it and go home."
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> This is not collective bargaining * * *.[69]

A strike was called as a consequence of this refusal to bargain. The employer, during the course of the strike, again resorted to

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[66] *Matter of The Louisville Refining Company* and *International Association, Old Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 844; *Matter of Hopwood Retinning Company, Inc. and Monarch Retinning Company, Inc.* and *Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 8*, and *Teamsters Union, Local No. 584*, 4 N. L. R. B. 922. In the latter case the Board said that "* * * by the letters of April 5 and 8, the Hopwood Company solicited its employees to return to work by signing these individual contracts. It thus attempted to bargain with the employees individually, although negotiations had been initiated for collective bargaining. By its tactics the Hopwood Company manifesly attempted to destroy the Unions here involved as effective instruments of representation of its employees. Such action by itself constituted an unfair labor practice within the meaning of Section 8 (1) and (5) of the Act." The Court of Appeals of the Second Circuit, in reviewing the Board's order, stated that "the Board could find, as it did, that Hopwood maintained an attitude of refusal to bargain with unions as the proper representative of the employees * * *." *National Labor Relations Board* v. *Hopwood Retinning Company, Inc.*, 98 F. (2d) 97 (C. C. A. 2d, 1938).

[67] *Matter of Jacob A. Hunkele, trading as Tri-State Towel Service of the Independent Towel Supply Company* and *Local No. 40, United Laundry Workers Union*, 7 N. L. R. B. 1276; *Matter of McNeely & Price Company* and *National Leather Workers Association, Local No. 30, of the C. I. O.*, 6 N. L. R. B. 800; *Matter of Taylor Trunk Company and Luggage Workers Union, Local No. 50, of the International Ladies' Hand Bag, Pocketbook, and Novelty Workers Union*, 6 N. L. R. B. 32; *Matter of The Jacobs Bros. Co., Inc.* and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620; *Matter of Leo L. Lowy, Individually, Doing Business as Tapered Roller Bearing Corporation*, and *International Association of Machinists, District No. 15*, 3 N. L. R. B. 938; *Matter of The Boss Manufacturing Company* and *International Glove Workers' Union of America, Local No. 85*, 3 N. L. R. B. 400; *Matter of Atlas Mills, Inc.* and *Textile House Workers Union No. 2269, United Textile Workers of America*. 3 N. L. R. B. 10.

[68] *Matter of Biles-Coleman Lumber Company* and *Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679, order enforced in *National Labor Relations Board* v. *Biles-Coleman Lumber Company*, 96 F. (2d) 197 (C. C. A. 9th, 1938).

[69] *National Labor Relations Board* v. *Biles-Coleman Lumber Company*, 96 F. (2d) 197 (C. C. A. 9th, 1938).

The union had considered the respondent's speech to the employees a flat refusal to negotiate. The Board said, "We find that the contents of the address itself and the circumstances that it was made to all the employees and not merely to the representatives of the Union, as collective bargaining in good faith would require, fully justified their construction."

individual bargaining with its employees. The Board summed up the situation as follows:

> The evidence is quite clear that by May 16 the respondent had decided that the union committee was not likely to yield without gaining recognition as exclusive bargaining agency and something more than was contained in the five hollow clauses offered by the respondent on May 11. The respondent therefore determined to reopen its plant by going over the heads of the committee and dealing with the union adherents individually—in short, to discard collective bargaining as a means for settling the strike.

In *Matter of The Louisville Refining Company*,[70] the employer, on February 16, refused to confer with the union representative. The next day the respondent told its employees individually that it had decided to change from a 6-hour workday to an 8-hour workday. The subject of hours of employment had been a subject of attempted discussion, and the Board found that the question of the 8-hour day had not been so fully explored as to lead to the belief that further negotiations would be fruitless.[71] Its analysis of these circumstances led the Board to find that—

> * * * the respondent, in discharging its employees as the result of the change to the 8-hour schedule, again violated its duty to bargain collectively with the Union. The question of hours of employment was already the subject of attempted discussion in the conferences between the respondent and the union representative. The respondent was under a duty to discuss the proposed change and the discharges with the Union in order to give its representatives an opportunity to offer substitute proposals and to suggest an equitable basis of making the discharges, if necessary. Instead of this, the respondent, by its officers, first rejected Stickel's [the union representative] offer to bargain and then approached its men, not through the Union which was requesting further negotiations, but individually, and apprised them of its will. We can think of no more direct method of destroying the possibility of collective bargaining than this complete disregard of the duly selected representatives of the employees.[72]

3. Refusal to Grant Exclusive Representation

Since, under section 8 (5) and 9 (a) of the act, it is an unfair labor practice for an employer to refuse to bargain collectively and exclusively with representatives selected by the majority of employees in an appropriate unit,[73] the employer cannot fulfill its obligation to a labor organization which is the exclusive representative of the employees in an appropriate unit by offering to bargain with that labor organization for its members only.[74]

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[70] *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 844.

[71] "In the meetings which had taken place on Jan. 21 and 22, it does not appear that the question of the 8-hour day was so fully explored as to warrant Brown [the respondent's president] in believing that further negotiations on this issue were futile. Although Stickel [the union representative] and the committee appear to have rejected the 8-hour proposal when suggested, they also stated at the conferences on Jan. 21 and 22 that if an 8-hour day was to be installed, nevertheless, the principles upon which the resulting lay-offs would be made gave scope for collective bargaining."

[72] Cf. *Matter of Leo Lowy, Individually, Doing Business as Tapered Roller Bearing Corporation*, and *International Association of Machinists, District No. 15*, 3 N. L. R. B. 938. The union asked for a 40- instead of a 50-hour week. The employer said he would check up on his production and comply if possible; that evening the employer called a meeting of the employees, referred to the union in opprobrious terms, and then told the employees that he would install a 40-hour week.

[73] The method of determination of the unit appropriate for the purposes of collective bargaining and the methods of determining whether the representative has been selected by a majority of the employees in an appropriate unit are dealt with at pages 156 ff. and 126 ff., respectively.

[74] *National Labor Relations Board* v. *Biles-Coleman Lumber Company*, 96 F. (2d) 197 (C. C. A. 9th, 1938), enforcing Board's order in the *Matter of Biles-Coleman Lumber Company* and *Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679; *Matter of Fedders Manufacturing Co., Inc.* and *Amalgamated Association of Iron, Steel & Tin Workers of N. A., Lodge 1753*, 7 N. L. R. B. 817; *Matter of Burnside Steel Foundry Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America*,

It is incumbent upon the employer to recognize the union which is the exclusive representative of the employees and to negotiate with it as such.[75] The requirements of the act are not satisfied by meeting with the union representatives and discussing terms with them if union recognition is withheld.[76] Thus, in *Matter of The Griswold Manufacturing Company*[77] the Board found that—

By treating the committee of Lodge 1197, not as a representative of the Union, but as a committee of its employees, the respondent denied its employees the right to select the agency to negotiate for them as guaranteed by the Act.

To meet and negotiate with a committee of employees while deliberately withholding union recognition does not satisfy the requirements of the Act. The paramount importance of the fact of union recognition alone in securing collective bargaining has been asserted repeatedly in our decisions.

The employer must meet and negotiate with the representatives chosen by a majority of its employees in an appropriate unit. It is an unfair labor practice for the employer to impose its preferences as to the representatives of its employees or to insist upon representatives of a certain character as a condition precedent to negotiation. Thus, in *Matter of Fansteel Metallurgical Corporation*[78] the Board found that—

Anselm [the plant superintendent] specified that only employees of five years standing should be on the committee. This condition, it happened, was satisfied at the time. While much grosser examples of antiunion conduct followed, we may point out here that the imposition of such a condition on the personnel of the union committee was totally unwarranted. The right of employees, guaranteed by the act, to representatives of their own choosing, necessarily negatives any privilege on the part of the employer to place limitations upon the representatives whom the employees are permitted to designate.

In *Matter of Piqua Munising Wood Products Company*[79] the employer was found to have committed an unfair labor practice by refusing to meet with an American Federation of Labor organizer[80] or to negotiate with anyone who was not in its employ. In *Matter of The Louisville Refining Company*[81] the employer stated that it preferred to deal with local people and that it thought its employees should have a company union. The Board found that these facts were indications of the employer's determination not to deal with the

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Lodge No. 1119, 7 N. L. R. B. 714; *Matter of The Boss Manufacturing Company* and *International Glove Workers' Union of America, Local No. 85*, 3 N. L. R. B. 400. Where, however, a labor organization has achieved the majority status, the employer is not excused for failing to bargain with it by the fact that the labor organization seeks to bargain only for its members. In *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 844, the Board said: "Nor do we find that the respondent is relieved of its obligation under the Act to bargain collectively because of the fact that the proposed contract presented by Stickel [the union representative] stated in its title that the union was acting only on behalf of such employees of the respondent as were members of the union. Where, as in this case, the union in fact has a majority at the time of the conferences, the employer must bargain collectively with the designated representatives, even though the union does not ask for recognition, in writing, of its right to act as the exclusive representative of all employees in the appropriate unit."

[75] *Matter of Piqua Munising Wood Products Company* and *Federal Labor Union, Local 18787*, 7 N. L. R. B. 782.

[76] *Matter of McNeely & Price Company* and *National Leather Workers Association, Local No. 30, of the C. I. O.*, 6 N. L. R. B. 800.

[77] *Matter of The Griswold Manufacturing Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1197*, 6 N. L. R. B. 298.

[78] *Matter of Fansteel Metallurgical Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 66*, 5 N. L. R. B. 930, enforcement denied in *Fansteel Metallurgical Corp.* v. *N. L. R. B.*, 98 F. (2d) 375 (C. C. A. 7th, 1938). On November 21, 1938, the Supreme Court granted certiorari.

[79] *Matter of Piqua Munising Wood Products Company* and *Federal Labor Union, Local 18787*, 7 N. L. R. B. 782.

[80] The employer asserted that it would not deal with a "professional organizer."

[81] *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 844.

chosen representatives of its employees.[82] In holding that the employer had not fulfilled its duty to bargain collectively, the Board said:

> Under the Act, it is the respondent's duty to bargain collectively with the representative selected by a majority of its employees for the purposes of collective bargaining. The respondent cannot legally refuse to negotiate with the Union because it prefers that another represent it. It cannot legally refuse to negotiate with the International Association selected by a majority of its employees to represent them because it prefers to deal with the Local of the Association. Its duty is to negotiate in good faith with whatever agent or agency a majority of its employees have selected.

4. The Collective Bargaining Agreement

The net result sought by the collective bargaining provision is the making of a collective bargaining agreement. The Board has repeatedly affirmed the principle asserted in *Matter of St. Joseph Stock Yards Company*,[83] that the act imposes upon the employer not only the duty to meet with the duly designated representatives of its employees and to bargain with them in good faith in a genuine attempt to achieve an understanding on the proposals and counter-proposals advanced, but also the duty, if an understanding should be reached, to embody that understanding in a binding agreement.[84] The Board has pointed out that—

> The term collective bargaining denotes in common usage, as well as in legal terminology, negotiations looking toward a collective agreement. If the employer adheres to a preconceived determination not to enter into any agreement with the representatives of his employees, as we have found here, then his meeting and discussing the issues with them, however frequently, does not fulfill his obligations under the Act.[85]

In this connection the Board has made it clear that "The final attainment of an understanding and the signing of the contract embodying the fruits of this understanding are part and parcel of the process of collective bargaining. The contract or agreement is part of and the culmination of the successful negotiations, and not a

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[82] In *Matter of McNeely & Price Company* and *National Leather Workers Association, Local No. 30, of the C. I. O.*, 6 N. L. R. B. 800, evidences of a similar determination on the part of the employer were found in its equivocal answer to the question of whether it would recognize the union as the representative of the employees, in its suggestion that the employees join a union of another national affiliation, and in the fact that the employer reviled the union as "radical and communistic."

[83] *Matter of St. Joseph Stock Yards Company* and *Amalgamated Meat Cutters & Butcher Workmen of North America, Local Union No. 159*, 2 N. L. R. B. 39. In that case the Board said—

"An assertion that collective bargaining connotes no more than discussions designed to clarify employer policy and does not include negotiation looking toward the adoption of a binding agreement between employer and employees is contrary to any realistic view of labor relations. The development of those relations had progressed too far when the Act was adopted to permit the conclusion that the Congress intended to safeguard only the barren right of discussion. The protection to organization of employees afforded by the first four subdivisions of Section 8 can have meaning only when the ultimate goal is viewed as the stabilization of working conditions through genuine bargaining and agreements between equals. That such is the goal is made clear in section 1 of the act, wherein the policy of the United States is stated to be the protection of self-organization of workers and the designation of their representatives for the purpose of negotiating the terms and conditions of their employment."

[84] *Matter of National Licorice Company* and *Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity*, 7 N. L. R. B., 537; *Matter of Globe Cotton Mills* and *Textile Workers Organizing Committee*, 6 N. L. R. B. 461; *Matter of Federal Carton Corporation* and *New York Printing Pressmen's Union, No. 51*, 5 N. L. R. B. 879. In *Matter of United States Stamping Company* and *Enamel Workers Union, No. 18630*, 5 N. L. R. B. 172, the employer refused to negotiate concerning an agreement. The Board indicated that negotiations which do not look toward an agreement do not constitute the collective bargaining envisaged by the act.

[85] *Matter of Globe Cotton Mills* and *Textile Workers Organizing Committee*, 6 N. L. R. B. 461.

segment separate from the negotiations which have preceded it." [86] It follows, therefore, that the employer must accept those representatives chosen by its employees as the duly designated representatives throughout the entire process of collective bargaining, and that an employer cannot refuse to recognize the representatives of its employees for the purpose of contracting any more than for the purpose of negotiation. The Board has held that a refusal to recognize a union for the purposes of contracting is an unfair labor practice; [87] the final agreement must be between the employer and the duly designated representatives of its employees.[88] In *Matter of United States Stamping Company* [89] the Union presented a proposed contract, the heading of which indicated that it was to be an agreement between the employer and the union. The employer suggested that the heading be worded as follows:

> This Agreement, made and entered into, by and between the United States Stamping Company, Moundsville, W. Va., and five or six names—whatever the case may be—or their successors, who may be elected from employees of the United States Stamping Company by ballot to negotiate and bargain collectively with respect to wages, working conditions, affecting those employees who have authorized the above employees to represent them.

The contention of the employer was that the signing of a contract with the union would be a violation of the act in that it would grant a preference to the union over another labor organization within the plant. The Board answered the contention by stating that—

> The * * * defense of the respondent requires no discussion. The Act requires negotiations by an employer, with a view to reaching an agreement, with the organization representing the majority of his employees to the exclusion of all other possible representatives. By express provision, such a majority representative is the exclusive representative of all the employees.[90]

In *Matter of McNeely & Price Company*,[91] the representatives of the employer and the union arrived at a proposed agreement. The employer then refused to put this understanding in the form of a definite agreement between the employer and the union. The Board interpreted this refusal as a deliberate attempt to ignore the union in order to deprive it of any credit or advantage which might have accrued from having conducted the negotiations.

The collective agreement must, of course, be a bilateral one between the employees' duly authorized representative and the employer. In *Matter of United States Stamping Company* [92] the employer

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[86] *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well and Refinery Workers of America*. 4 N. L. R. B. 844.

[87] *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well, and Refinery Workers of America*. 4 N. L. R. B. 844. An employer's statement that he would never sign a contract with the Union, but would do so only with a committee of his employees, was declared by the Board to amount to "a stubborn refusal to bargain collectively with the representatives of his employees in an effort to reach an agreement." *Matter of Hopwood Retinning Company, Inc. and Monarch Retinning Company, Inc.* and *Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 8*, and *Teamsters Union, Local No. 584*. 4 N. L. R. B. 922.

[88] *Matter of Piqua Munising Wood Products Company* and *Federal Labor Union, Local 18787*. 7 N. L. R. B. 782.

[89] *Matter of United States Stamping Company* and *Enamel Workers Union, No. 18630*, 5 N. L. R. B. 172.

[90] Cf. *Matter of Federal Carton Corporation* and *New York Printing Pressmen's Union, No. 51*, 5 N. L. R. B. 879. The employer, in a written statement to its employees, said: "We have no objection to your duly elected representatives advising you or negotiating for you. But after such negotiations are finished, our agreement must be with our own employees, and not with the Union . . ." The Board found that there had been a refusal to bargain collectively.

[91] *Matter of McNeely & Price Company* and *National Leather Workers Association, Local No. 30, of the C. I. O.*, 6 N. L. R. B. 800.

[92] *Matter of United States Stamping Company* and *Enamel Workers Union, No. 18630*, 5 N. L. R. B. 172.

claimed that it had bargained with shop committees and made some adjustments in wages or working conditions. The Board, however, pointed out that this was not collective bargaining:

> These agreements, however, were not reduced to writing, nor made for any definite period of time. When the respondent acceded to the requests, it issued a bulletin which it placed on its bulletin board, stating that the enumerated changes would be put into effect. Such a procedure by the respondent is clearly consistent with the respondent's policy of dealing with a committee composed of its employees, but refusing to deal with a labor organization, especially with one affiliated with the American Federation of Labor, whether the chosen representatives of its employees or not. A procedure such as this does not fulfill the requirements of collective bargaining imposed by the Act.

In *Matter of The Griswold Manufacturing Company*[92a] the employees had gone out on strike because of the employer's unfair labor practices. The Union which had called the strike was compelled, because of the sentiment engendered by the employer's agents against continuation of the strike and the presence of a company-dominated organization, to enter into an agreement with that organization whereby the two unions together negotiated with the employer. A joint committee representing both unions entered into a "Memorandum of Understanding" with the employer. The Board held that this "Memorandum of Understanding" was not the result of genuine collective bargaining, as contemplated by the act.[93]

And the Board has ordered employers who were recalcitrant with regard to entering into an agreement with the employees' representative when an understanding had been attained, to bargain collectively, and if an understanding was reached as a result of the bargaining, to "embody said understanding in an agreement for a definite term, to be agreed upon, if requested to do so by said Union."[94]

5. The Fulfillment of the Duty to Bargain

The employer is not required to continue to bargain collectively with the representatives of its employees when negotiations already held make plain that to do so would be futile.[95] In *Matter of Trenton Garment Company*,[96] the Board examined the course of negotiations and, finding that the employer had made a bona fide effort to reach an agreement and that the possibilities of achieving an understanding through the bargaining process had been exhausted, held that

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[92a] *Matter of The Griswold Manufacturing Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1197*. 6 N. L. R. B. 298.

[93] Cf. *Matter of Farmco Package Corporation* and *United Veneer Box and Barrel Workers Union, C. I. O.*, 6 N. L. R. B. 601.

[94] *Matter of Federal Carton Corporation* and *New York Printing Pressmen's Union No. 51*, 5 N. L. R. B. 879; *Matter of Globe Cotton Mills* and *Textile Workers Organizing Committee*, 6 N. L. R. B. 461; *Matter of National Licorice Company* and *Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity*, 7 N. L. R. B. 537; *Matter of Piqua Munising Wood Products Company* and *Federal Labor Union Local 18787*, 7 N. L. R. B. 782; *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252. In the latter case, the Board ordered the employer to enter into a "written signed agreement if an understanding were reached."

[95] *Matter of Seas Shipping Company, Inc.*, and *National Marine Engineers' Beneficial Association*, 4 N. L. R. B. 757; *Matter of Trenton Garment Company* and *International Ladies' Garment Workers Union, Local 278*, 4 N. L. R. B. 1186; *Matter of John Minder and Son, Inc.*, and *Butchers Union, Local No. 174*, 6 N. L. R. B. 764; and *Matter of Aluminum Products Company Metal Rolling and Stamping Company, Lemont Stamping Corporation, Banner Stamping Company, and Stainless Steel Products Company* and *Aluminum Workers Union No. 19064 and Aluminum Workers Union No. 19078*, 7 N. L. R. B. 1219.

[96] *Matter of Trenton Garment Company* and *International Ladies' Garment Workers Union, Local 278*, 4 N. L. R. B. 1186.

there had not been a refusal to bargain collectively. The Board said—

> On April 13, 1937, definite negotiations were begun between the respondent and the Union with regard to an agreement covering the matter of wages, hours, and working conditions. The negotiations continued regularly over a period of weeks until May 22, 1937. The Union representatives insisted throughout the negotiations upon either a closed-shop or a preferential shop. The respondent stated its willingness to meet many of the Union demands, but was not willing to sign an agreement for a closed-shop or a preferential shop. The respondent suggested an agreement providing that lay-offs during slack seasons and rehiring be on the basis of seniority. The record establishes that the respondent acted in good faith in the negotiations and honestly attempted to reach an agreement with the Union.[97]

The Board has emphasized the fact, however, that "Every avenue and possibility of negotiation must be exhausted before it should be admitted that an irreconcilable difference creating an impasse has been reached." [98]

Although an impasse has been reached, the situation may change and new issues may be introduced. The employer must then resume its collective bargaining.[99]

6. Presentation of Proof of Majority

The employees must ordinarily make a demand upon the employer to bargain collectively with them,[1] and the person or persons seeking to negotiate with the employer must, on request, show to the employer that they are the duly designated representatives of a ma-

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[97] In another case where an impasse had been reached in the negotiations, the Board said: "The respondent is a relatively small concern in the meat-producing industry. It appears to us from the record that the respondent was sincere in its belief that it could not conform to the Union scale of wages and hours and continue to operate successfully on a competitive basis in the industry. The Union on the other hand, insisted that the respondent sign the particular contract containing the Union wage scale and hours, maintaining that the respondent's business was no different from that of others in the industry. The differences which developed between the parties concerned real and substantial issues. Although the respondent's position apparently precluded the particular collective agreement sought by the Union, the respondent indicated a willingness to bargain with the Union on some other basis.

"Under these circumstances, we find that the respondent has not refused to bargain collectively with the Union."

Matter of John Minder and Son, Inc., and *Butchers Union, Local No. 174*, 6 N. L. R. B. 764.

[98] *Matter of The Sands Manufacturing Company* and *Mechanics' Educational Society of America*, 1 N. L. R. B. 546. The order in this case was set aside by the Circuit Court of Appeals for the Sixth Circuit, *N. L. R. B.* v. *Sands Manufacturing Company*, 96 F. (2d) 721 (C. C. A. 6th, 1938), certiorari granted by the Supreme Court of the United States, 59 S. Ct. 91 (Oct. 10, 1938). This Circuit Court based its decision on the ground, inter alia, that the employer sincerely attempted over a long period to negotiate with the Union. The Court stated the principle that the sincerity of the employer's effort is to be tested by the length of time involved in the negotiations, their frequency, and the persistence with which the employer offers opportunity for agreement.

[99] Thus, in *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304, the Board said, in finding a refusal to bargain:

"The respondent contended that it had bargained collectively with the employees on March 22, the day of the beginning of the strike. But where in the course of a strike, supervening events, such as the organization of a union, which demands recognition, or the discharge of strikers, introduce new issues, the employer must meet with the representatives of its employees in order to realize the full benefits of collective bargaining. [Citing *Matter of Jeffery-DeWitt Insulator Company* and *Local No. 455, United Brick and Clay Workers of America*, 1 N. L. R. B. 618; *Matter of Carlisle Lumber Company* and *Lumber and Sawmill Workers Union, Local 2511, Onalaska, Washington*, and *Associated Employees of Onalaska, Inc., intervener*, 2 N. L. R. B. 248: *Matter of S. L. Allen & Company, Inc.* and *Federal Labor Union, Local No. 18526*, 1 N. L. R. B. 714.] This the respondent refused to do."

[1] In *Matter of Sheba Ann Frocks, Inc.* and *International Ladies' Garment Workers' Union of America, Locals 121 and 204*, 5 N. L. R. B. 12, the Board found that the employer was not compelled to engage in collective bargaining when the union representative made what was merely a social call. The Board, in that case, said: "From all the evidence, we are of the opinion that it was incumbent upon the Union to have used greater diligence or to have made some effort to meet with the respondent immediately before or after it called the strike. The evidence shows that immediately following the strike of February 11 the Union was always ready and willing to negotiate with the respondent. However, the Union never, by word or act, apprised the respondent of its desires."

jority of its employees in an appropriate bargaining unit. This does not mean, however, that the union is compelled to present a Board certification to the employer.[2]

The Board has held that the employer is under the correlative obligation of cooperating with the union to a reasonable extent when the latter is attempting to prove its majority.[3] In *Matter of McNeely & Price Company*,[4] the union, though refusing to permit the employer's attorney to inspect the union membership cards, suggested two methods of resolving the uncertainty as to its majority status, namely, an inspection of the cards by agents of the Board and a consent election conducted by the Board's regional director. Both of these suggestions were rejected by the employer. The Board, characterizing the suggested methods as reasonable, held that, under those circumstances, the employer could not claim in good faith that its uncertainty as to the union's majority justified its refusal to bargain.[5]

In two instances, the employer entered into a closed-shop contract with a competing union before the union which was in fact the majority representative had had an opportunity to prove its majority, and at a time when the respondent was in doubt as to the majority representative. The Board held that the employer's action constituted a refusal to bargain with the duly designated representative of its employees.[6]

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[2] *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d, 1938), enforcing order in *Matter of Remington Rand, Inc.* and *Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626.

[3] In *Matter of Burnside Steel Foundry Company* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge No. 1119*, 7 N. L. R. B. 714, the Board found that:

"The Amalgamated attempted in good faith to convince the respondent it represented a majority of the employees. Its proposal mentioned above was apparently a fair, practicable, and not unduly burdensome method of substantiating its contention. The respondent's officials simply rejected it, making no counter-proposal other than that the Amalgamated obtain the Board's certification. Even according to Wardwell's [the president of the respondent] testimony they indicated no respect in which they considered the method proposed by the Amalgamated unsatisfactory, but merely stated that the respondent would submit its pay roll to the Board only under compulsion. In the circumstances here set forth the respondent's duty to bargain collectively included the duty to cooperate with the Amalgamated to a reasonable extent in an inquiry as to that organization's claim to have been designated as exclusive bargaining representative. The respondent could not with impunity capriciously refuse to submit its pay roll to a representative of an agency such as the Board. If the method proposed by the Amalgamated to prove its majority was for any reason unsatisfactory, the respondent, if acting in good faith, would have stated such reason to the committee. It would, furthermore, not have taken the position that it would be satisfied with no evidence short of the Board's certificate [citing *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (C. C. A. 2d, 1938)], and it will be noted that it did not take such a position when dealing with the foundry workers only 9 days later. We are convinced that in its negotiations with the Amalgamated the respondent did not attempt to carry out its duty to cooperate in determining who represented the employees, but sought only to obstruct and delay the Amalgamated efforts to bargain for the employees. The respondent's alleged ignorance of the Amalgamated's status, therefore, could not constitute a justification for its failure to bargain with the Amalgamated as the employees' exclusive representative."

Cf. *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171.

[4] *Matter of McNeely & Price Company* and *National Leather Workers Association, Local No. 30, of the C. I. O.*, 6 N. L. R. B. 800.

[5] In *Matter of Piqua Munising Wood Products Company* and *Federal Labor Union Local 18787*, 7 N. L. R. B. 782, the Board asserted that the employer's contention that it was reluctant to recognize the Union in the absence of proof that the Union represented a majority of the employees carried no weight, in view of the employer's refusal to agree to a consent election.

[6] *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509. In the latter case the Board pointed out that "the respondent had realized that it could not determine which union had a majority; had seen the utility of an unbiased count, and had taken the initiative in asking both unions to submit to such a check. To sign a closed-shop contract with the union which had consistently refused to submit its cards

In *Matter of National Motor Bearing Company*[7] the Board said:

The respondent thus signed a contract with a union which did not represent, and which it could not have thought represented, more than a handful of its employees, if any, and at the same time turned its back on a union which represented a majority of its employees in a unit appropriate for the purposes of collective bargaining, as well as a majority of the employees in any unit which the respondent could have considered appropriate. We do not find that the respondent, in the absence of more proof of the U. A. W. majority than was here given, could not have asked for that proof before entering into negotiations. But we do find that by hastily entering into a contract with the I. A. M., which it at all times treated as a closed-shop contract, it announced its firm intention to have nothing to do with the U. A. W. and precluded all further attempts on the part of that union to secure the recognition to which it was entitled. Such conduct constituted a refusal to bargain with the duly designated representative of its employees in an appropriate unit, and was an unfair labor practice within the meaning of the Act.

Where an employer refuses to bargain collectively for reasons not related to the question of a majority, it may not later assert doubt as to majority or failure of the union to prove its majority at the time it sought to bargain as a justification for the refusal to bargain.[8] In *National Labor Relations Board* v. *Remington Rand, Inc.*,[9] the Court stated:

* * * even though the respondent were in doubt as to the Joint Board's authority, that doubt did not excuse it; for it is quite plain that its position was not based upon anything of the sort, but upon its unwillingness to treat with "outside" representatives of its employees; that is to say, to recognize the solidarity of the craft as such. The greater included the less, and having taken that position, it may not now say that it could say that it could not know

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for the comparative tally, without even bothering to check the claims of the opposing union, and notwithstanding the pendency of an investigation of the Board, can hardly be said to be comformable to the neutral policy the respondent says it has maintained."

In considering whether an employer has fulfilled its obligation of reasonably cooperating with a union which is attempting to prove its majority, the Board has looked to the treatment accorded a competing union. Thus, in *Matter of Burnside Steel Foundry Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1119*, 7 N. L. R. B. 714, the Board pointed to the fact that the employer, while insisting that the union which was the majority representative present it with a Board certification, recognized a competing union and negotiated with it after the latter union had merely shown its membership cards.

[7] *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409.

[8] In *Matter of American Radiator Company, a Corporation*, and *Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, Affiliated with the Committee for Industrial Organization*, 7 N. L. R. B. 1127, the Board stated that it was obviously futile for the Union to offer proof of its majority when the respondent had given an entirely unrelated reason [a shut-down of the plant] for its refusal to bargain. The Board found that the employer had refused to bargain collectively.

In *Matter of Omaha Hat Corporation* and *United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8*, 4 N. L. R. B. 878, the Board said:

"The respondent contends that at the July 12 conference it requested proof of a majority and was refused. * * * Even assuming that such a request was actually made, it is apparent that it was not pressed and that it was a matter of complete indifference to the respondent whether or not the Locals represented a majority. Ferzig [the respondent's president] admitted telling the officers of the Locals that it was useless to bargain because he was moving. Furthermore, there is not an iota of evidence that at the conferences of August 24 and September 2, the respondent either challenged or denied the claim that the Locals represented a majority."

In *Matter of National Labor Relations Board* v. *Biles-Coleman Lumber Company*, 96 F. (2d) 197 (C. C. A. 9th, 1938), the Circuit Court of Appeals for the Ninth Circuit stated that it was not a defense for the respondent "to point out that the Union, in presenting its proposed contract, did not claim to be the representative of the sawmill and factory employees only, as distinguished from all respondent's workers. Respondent made no objection to the contract on the basis of the propriety of the unit for which it was being presented. The Board was entitled to draw the inference that respondent's refusal to negotiate with the Union was motivated, not by doubt as to the appropriate unit, but by a rejection of the collective bargaining principle. N. L. R. B. v. Remington Rand (CCA–2) 94 Fed. (2d) 862, 868."

[9] 94 F. (2d) 862 (C. C. A. 2d, 1938).

whether the Joint Board was properly accredited. Had that been the real reason for its refusal, presumably it would have been persuaded by the evidence which the Joint Board could have presented. It made no effort to learn the facts and took the chance of what they might be.

7. The Effect of a Refusal to Bargain

In the period from July 1, 1937, through June 30, 1938, the Board issued 44 orders, based upon findings that the employer had refused to bargain collectively within the meaning of section 8 (5) of the act.[10] An examination of these cases reveals that in 21 of the 44 a strike followed the refusal to bargain, in one case a lock-out followed the refusal to bargain, and in another, the Board found that the refusal to bargain prolonged an existing strike. In only six cases was the employer's refusal to bargain the only unfair labor practice found to have been committed. In the others, the employer was found to have committed acts which constituted unfair labor practices within the meaning of section 8 (2), (3), or (1), besides having refused to bargain.

These figures verify the accuracy of the Congressional findings in the act that, "The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes * * *." They indicate also that recalcitrant employers have resorted to other unfair labor practices so as to avoid the necessity of having to bargain collectively by destroying the organization of their employees. This emphasizes the fact that the other unfair labor practices specified in the act are intended to safeguard the self-organization of the employees, to the end that collective bargaining may be made possible.[11]

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

1. Introduction

The vast increase in the number of cases involving charges under section 8 (2) during the past fiscal year reflects the increase which has occurred in all phases of the Board's work. During its first

[10] This does not include 11 cases in which orders were issued by consent of the parties or pursuant to stipulations. The figure also does not include *Matter of Standard Lime & Stone Company* and *Branch No. 175, Quarry Workers International Union of North America*, 5 N. L. R. B. 106, and *Matter of Fansteel Metallurgical Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 66*, 5 N. L. R. B. 930. In both of these cases, the Board's order was set aside by a Circuit Court of Appeals.

[11] In many cases, therefore, the Board has considered the other activities of the employer, and has utilized this background as an aid in interpreting the conduct of the employer in the determination of whether there had been a refusal to bargain. Cf. *Matter of Art Crayon Company, Inc. and Its Affiliated Company, American Artists Color Works, Inc.* and *United Artists Supply Workers*, 7 N. L. R. B. 102; *Matter of Trenton-Philadelphia Coach Company* and *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*, 6 N. L. R. B. 112; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509. In *National Labor Relations Board* v. *The Sands Manufacturing Company*, 96 F. (2d) 721 (C. C. A. 6th, 1938), the Circuit Court of Appeals for the Sixth Circuit, in finding that there had been no refusal to bargain, referred to the background of the employer's conduct:

"In view of the background, the uncontroverted facts as to the complete lack of any attempt to prevent organization or to discourage affiliation with the M. E. S. A., the want of espionage or coercion practiced on the part of the management, and the express findings of the Board as to repeated conferences, honest differences of opinion, and diametrical opposition of views, we think that only one conclusion can be drawn, namely, that the respondent sincerely attempted over a long period to negotiate with the M. E. S. A."

fiscal year ending June 30, 1936, the Board considered 11 such cases, in 3 of which it dismissed the complaints to the extent that they contained charges arising under section 8 (2). During the following fiscal year, the Board considered 12 cases involving charges under section 8 (2) in 1 of which the charge was dismissed. During the past fiscal year, the Board rendered decisions in 94 cases involving such charges, in 4 of which the charges were dismissed. Significant is the number of such cases in which the Board has issued consent orders, that is, orders issued with the consent of the parties and on the basis of stipulations to which they agreed. During each of the first 2 years of the Board's existence, only one such consent order was issued. Of the 94 orders involving charges under section 8 (2) which were issued during the fiscal year ending June 30, 1938, however, 21 were consent orders.

Section 8 (2) of the act declares that it shall be an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."[12] Section 7 of the act guarantees to employees "the right to self-organization" and "to bargain collectively through representatives of their own choosing." Section 8 (2) is clearly intended to protect this right by proscribing any form of employer participation in the formation or administration of a labor organization of employees.

The term "labor organization," as used in section 8 (2) is defined in section 2 (5), to mean "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Organizations which have been involved in cases arising under section 8 (2) vary greatly in type and characteristics. The organization may be complex in structure and engage in a wide range of activities including collective bargaining, the conduct of social affairs, the administration of sick benefits, and other forms of insurance.[13] Again it may not function except to prevent an outside union from being established among the employees of a particular plant.[14] No matter how many activities the organization engages in or what form the organization takes, however, if it exists in part for the purpose of dealing with the employer concerning grievances, labor disputes, and the other matters above specified, it is a labor organization within the

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[12] A proviso to this section reads as follows: "Provided, that subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay." To date the Board has found it neither necessary nor expedient to issue any rules or regulations on this point. During the past year none of the cases decided by the Board has involved this proviso. But see *Matter of International Harvester Company* and *Local Union No. 57, International Union, United Automobile Workers of America*, 2 N. L. R. B. 310.

[13] See, for example, *Matter of American Potash & Chemical Corporation* and *Borax & Potash Workers' Union No. 20181*, 3 N. L. R. B. 140.

[14] In *Matter of American Manufacturing Concern* and *Local No. 6, Organized Furniture Workers*, 7 N. L. R. B. 753, the organization involved never adopted a name, nor did it request the respondent to bargain collectively. After holding two meetings it became completely inactive. The only motion passed was one providing that all those present at the meeting resign from the outside union. See also *Matter of A. S. Abell Company, a Corporation*, and *International Printing and Pressmen's Union, Baltimore Branch, Baltimore Web Pressmen's Union, No. 31*, 5 N. L. R. B. 644, order modified and enforced *sub nom. National Labor Relations Board* v. *A. S. Abell Company*, 97 F. (2d) 951 (C. C. A. 4th, 1938). *Matter of Union Die Casting Company, Ltd., a corporation; Udico Collecting Bargaining Union* and *International Union United Automobile Workers of America, Local No. 188*, 7 N. L. R. B. 846.

meaning of the act.[15] Employer control of an organization included within the type described in section 2 (5) does not prevent the organization from being designated a "labor organization" as that term is defined in the act. The designation of such employer-controlled organization as a "labor organization" accordingly does not vest that organization with the distinction of legitimacy as a genuine and independent organization of employees. On the contrary, a finding that an employer's activities constitute an unfair labor practice within the meaning of section 8 (2) must be predicated upon a preliminary finding that the employer's activities are directed against a "labor organization" as defined in section 2 (5) of the act. The term is used merely as a matter of statutory draftsmanship for the purpose of bringing all employer-controlled organizations having, at least in part, collective bargaining as a function, within the ban of section 8 (2), no matter what form they may take.[16]

2. RESPONSIBILITY OF EMPLOYERS FOR ACTIVITIES OF SUBORDINATES AND OTHERS

The Board has found that an employer has engaged in an unfair labor practice within the meaning of section 8 (2) when he is responsible for activities which produce, or are intended to produce, the result proscribed as an unfair labor practice. Employers necessarily act through numerous individuals with varying degrees of authority. In determining the culpability of an employer under section 8 (2) it has been frequently necessary for the Board to decide whether particular individuals are so related to the employer as to charge him with responsibility for their activities.

The Board has always considered the president,[17] vice president,[18] secretary,[19] treasurer,[20] or other officer [21] of a corporate employer to be acting for the corporation. It has treated the activities of a general manager,[22] plant superintendent,[23] departmental superintend-

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[15] *Matter of J. Freezer & Son, Inc.*, and *Amalgamated Clothing Workers of America and Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath*, 3 N. L. R. B. 120, order enforced *sub nom. National Labor Relations Board* v. *J. Freezer & Sons*, 95 F. (2d) 840 (C. C. A. 4th, 1938). In *Matter of the Triplett Electrical Instrument Company, The Deller Manufacturing Company, doing business under the firm name and style of Readrite Meter Works*, and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835, the Board found that one of the organizations involved, the T R Club, was "purely a social club to which all employees of the respondents, their wives, and children," belong and to which no dues were paid, and that it was not a "labor organization" within the meaning of the act. Thus where an organization does not exist "for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work," it is not a labor organization.

[16] *Matter of International Harvester Company* and *Local Union No. 57, International Union, United Automobile Workers of America*, 2 N. L. R. B. 310; *Matter of Atlanta Woolen Mills* and *Local No. 2307, United Textile Workers of America*, 1 N. L. R. B. 328. See also *Matter of Wallace Manufacturing Company, Inc.* and *Local No. 2237, United Textile Workers of America*, 2 N. L. R. B. 1081, order enforced *sub nom. National Labor Relations Board* v. *Wallace Manufacturing Company*, 95 F. (2d) 818 (C. C. A. 4th, 1938).

[17] *Matter of Stackpole Carbon Company* and *United Electrical and Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171.

[18] *Matter of Industrial Rayon Corporation, a Delaware Corporation*, and *Textile Workers Organizing Committee; Matter of Industrial Rayon Corporation of Virginia, a Virginia Corporation*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 877.

[19] *Matter of The Jacobs Bros. Co., Inc.*, and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620.

[20] *Matter of Trenton-Philadelphia Coach Company* and *Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America*, 6 N. L. R. B. 112.

[21] *Matter of Empire Worsted Mills, Inc.*, and *Textile Workers Organizing Committee of the Committee for Industrial Organization*, 6 N. L. R. B. 513.

[22] *Matter of The Heller Brothers Company of Newcomerstown* and *International Brotherhood of Blacksmiths, Drop Forgers, and Helpers*, 7 N. L. R. B. 646.

[23] *Matter of Swift & Company* and *United Automobile Workers of America, Local No. 265; Matter of Swift and Company* and *United Packing House Workers L. I. Union No. 328, affiliate C. I. O.*, 7 N. L. R. B. 287.

ent,[24] foreman,[25] or personnel director,[26] in the same manner. When lesser personages in the industrial hierarchy are involved, the Board has attempted to determine whether they are employed in a supervisory capacity. If such is the case, the employer is charged with responsibility for their activities.[27] The determination of whether an employee has supervisory powers requires a close analysis of his duties.

In *Matter of T. W. Hepler*,[28] the employer denied that his floorboys were supervisory employees and that he was responsible for their activities. He relied heavily on the fact that the floorboys had no authority to hire or discharge. The board answered this contention in the following language:

> * * * the record indicates that the floorboys distribute work to the girls, that they are in charge of production, that they are placed in control of the plant whenever Hepler is not personally present, and that they are considered by the girls as supervisors. As we have held in analogous situations [citing *Matter of American Manufacturing Company, et al.*, 5 N. L. R. B. 443], the extent of the supervisory authority in fact exercised by the floorboys, coupled with the fact they were recognized by the employees as supervisors, clearly supports the conclusion that such employees must be classed as supervisors.

In another case the Board, finding that certain assistant department heads were supervisory employees, said:

> The respondent contends that these employees cannot be considered as supervisory employees, and that their activities were entirely independent of the respondent. In particular, the respondent points out that the sole power to hire and discharge rests with its personnel manager. There can be little doubt, however, that one executive cannot pass on the merits of more than 300 employees without the advice of persons in intermediate positions, who are in close contact with those under them. The employees named above have the responsibility for discipline in their respective departments. They assign the work that is to be done and report disturbances in office efficiency to the executives.[29]

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[24] *Matter of The Griswold Manufacturing Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1197*, 6 N. L. R. B. 298.

[25] *Matter of New Idea, Inc.* and *The A. F. of L.; Matter of New Idea, Incorporated*, and *American Federation of Labor*. 5 N. L. R. B. 381.

[26] *Matter of Yates-American Machine Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1187*. 7 N. L. R. B. 627.

[27] In *Matter of M. Lowenstein & Sons, Inc.*, and *Bookkeepers', Stenographers' and Accountants' Union, Local No. 16, United Office and Professional Workers of America, C. I. O.; M. Lowenstein & Sons, Inc.*, and *Textile Workers' Organizing Committee Local No. 65, C. I. O.; M. Lowenstein & Sons, Inc.*, and *United Wholesale Employees of N. Y.*, 6 N. L. R. B. 216, the Board, in discussing the respondent's contention that it was not responsible for the acts of its supervisory employees, stated:

> "It may well be that none of the respondent's executives ever gave instructions to any of its employees to form or to encourage an organization in opposition to the Bookkeepers', Stenographers', and Accountants' Union of Textile Workers Organizing Committee. Nevertheless it is normal for an employee to assume that those who are in positions of authority represent to a large extent the wishes of the employer. The respondent was informed from the start of the activity of the Employees' Group, that it was being actively supported by several employees who had positions of authority, and that its supporters were creating the impression, true or false, that the Employees' Group was the organization which the respondent favored. Yet no effort was made to correct that impression, even though the executives were specifically requested to do so on more than one occasion. The respondent could probably have avoided the impression created by the acts of Levy, Scheideberg, Lessner, and Morrell, as well as the other highly paid employees who professed to know the respondent's attitude toward the unions, by a simple declaration to its employees of its true position. It chose not to do so. The respondent's contention that a statement on its part that it was neutral would have been to the advantage of the Bookkeepers', Stenographers' and Accountants' Union cannot be sustained; the only advantage that would have accrued to the Bookkeepers', Stenographers', and Accountants' Union would have been the elimination of an advantage enjoyed by the Employees' Group which it had no right to enjoy." See also *Ballston-Stillwater Knitting Co., Inc.*, and *Textile Workers Organizing Committee*. 6 N. L. R. B. 470, enforcement denied *sub nom. Ballston-Stillwater Knitting Company, Inc.*, v. *National Labor Relations Board*, 98 F. (2d), 758 (C. C. A. 2nd, 1938).

[28] *Matter of T. W. Hepler* and *International Ladies' Garment Workers Union*, 7 N. L. R. B., 255.

[29] *Matter of M. Lowenstein & Sons, Inc.*, and *Bookkeepers', Stenographers', and Accountants' Union Local No. 16, United Office and Professional Workers of America, C. I. O.;*

The Board has considered the same question in numerous other cases.[30] It is apparent that the determination of whether an employee has supervisory powers and whether his activities will be imputed to his employer must depend upon the circumstances in each case.

The Board has also held the employer responsible for the actions of persons or organizations not in his employ when the employer's conduct has set in motion or encouraged and assisted their activities with the intention of bringing into being a labor organization subservient to his wishes.[31] Thus, an employer has been held to have dominated and interfered with the formation of a labor organization within the meaning of section 8 (2) when he has operated through public officials, both local and State, the militia, vigilante groups, organizations of businessmen, or prominent citizens.[32]

3. Elements of Employer Domination and Interference

The activities of an employer which produce, or have the necessary effect of producing, the result proscribed as an unfair labor practice, are multifarious. The cases do not single out any one activity or circumstance as determinative of the existence of an unfair labor practice under this section. In each of the cases, a series of acts have been revealed which in their totality constitute domination of or interference with a labor organization. Although conduct occurring prior to the passage of the act on July 5, 1935, cannot constitute unfair labor practices, the Board has considered such conduct in determining the significance of an employer's relation to the operation of a labor organization subsequent to that date.[33] Specific activities which the Board has considered in finding domination, interference, or the contribution of support to an organization are described in the following paragraphs.

Commonly, labor organizations which the Board has found to be within the ban of Section 8 (2) are employer-controlled from their inception. Thus, it may be the employer who has suggested to his employees the desirability of establishing an employee organization and has suggested or dictated the form which the particular organization is to assume.[34] The extent and character of employer participa-

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M. Lowenstein Sons, Inc., and *Textile Workers' Organizing Committee Local No. 65, C. I. O.; M. Lowenstein & Sons, Inc.*, and *United Wholesale Employees of N. Y.*, 6 N. L. R. B., 216.

[30] For example, see *Matter of Montgomery Ward and Company, Incorporated, a corporation*, and *United Mail Order and Retail Workers of America*, 4 N. L. R. B. 1151; *Matter of American Manufacturing Company, etc.* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443; and *Matter of Central Truck Lines, Inc.*, and *Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America*, 3 N. L. R. B. 317.

[31] *Matter of Ansin Shoe Manufacturing Company* and *Shoe Workers' Protective Union, Local No. 80*, 1 N. L. R. B. 929; order enforced *sub nom National Labor Relations Board* v. *Ansin Shoe Manufacturing Co.*, consent decree entered on April 13, 1938, 93 F. (2d) 367 (C. C. A. 1, 1938).

[32] See pages 122–124, infra. And see *Matter of Remington Rand, Inc.*, and *Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626; order entered *sub nom National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2, 1938); certiorari denied, 304 U. S. 576; rehearing denied 304 U. S. 590.

[33] *Matter of American Potash & Chemical Corporation* and *Borax & Potash Workers' Union No. 20181*, 3 N. L. R. B. 140, order enforced *sub nom National Labor Relations Board* v. *American Potash and Chemical Corp.*, 98 F. (2d) 488 (C. C. A. 9th, 1938). *Matter of H. E. Fletcher Co.* and *Granite Cutters' International Association of America*, 5 N. L. R. B. 729; *Matter of Industrial Rayon Corporation, a Delaware Corporation, et al.*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 877. See also *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company*, 303 U. S. 261 (1938).

[34] *Matter of Yates-American Machine Company* and *Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1787*, 7 N. L. R. B. 627. See also *Matter of Maryland Distillery, Inc., Calvert Distilling Company, Inc., Calvert Maryland Distilling Company, Inc., now known as Calvert Distillers Corporation, Calvert Maryland Corporation, Inc.*, and *Distillery Workers Union 20270 and H. S. Mullineaux, B. Foster, C. W.*

tion in labor organizations varies from case to case, but factors which the Board has considered in determining whether an employer's activities constitute an unfair labor practice under section 8 (2) include active solicitation on behalf of a labor organization by officials and other supervisory employees,[35] lack of opportunity for the employees to accept or reject a particular organization proposed to them,[36] the disparagement by supervisory employees of any rival labor organization which may be attempting to organize the employees,[37] the linking of benefits arising from group insurance plans and other such activities with membership in the favored organization,[38] and the advance of money by foremen to employees unable to pay their membership fees.[39] The Board has also considered the effects of employers' activities in permitting the conduct of organizational activities on the employer's premises during working hours with the consent of the employer,[40] and in furnishing financial aid [41] and various facilities to employee organizations, such as the use of bulletin boards,[42] mimeograph machines,[43] the company automobile,[44]

Greger, E. Gossman, A. Hanshaud, George Hodgson, R. W. Aldom, Ford Edwards, Julian Boswell, Frank W. Clibourne, and A. Karwoski, 3 N. L. R. B. 176; *Matter of Central Truck Lines, Inc.*, and *Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America*, 3 N. L. R. B. 317 (freight agents having supervisory powers and authority to recommend hire and discharge instigated the organization of the Association); *Matter of Metropolitan Engineering Company and Metropolitan Device Corporation* and *United Electrical and Radio Workers of America Local No. 1203*, 4 N. L. R. B. 542 (the manager suggested the shop representation plan to salesmen; the plan was initiated by the head of the shipping department and other employees).

[35] *Matter of Bemis Brothers Bag Company* and *Local No. 1838, United Textile Workers of America*, 3 N. L. R. B. 267; *Matter of The Cudahy Packing Company* and *Packinghouse Workers Local Industrial Union No. 62, affiliated with the Committee for Industrial Organization*, 5 N. L. R. B. 472; *Matter of C. A. Lund Company* and *Novelty Workers Union, Local 1866 (A. F. of L.)*, successor; *Matter of Christian A. Lund, doing business as C. A. Lund Company and Northland Ski Manufacturing Company, a Corporation*, and *Woodenware Workers Union, Local 20481; Matter of C. A. Lund Company and Northland Ski Manufacturing Company* and *Woodenware Workers Union, Local 20481*, 6 N. L. R. B. 423.

[36] *Matter of H. E. Fletcher Co.* and *Granite Cutters' International Association of America*, 5 N. L. R. B. 729.

[37] *Matter of Indianapolis Glove Company* and *Amalgamated Clothing Workers of America, Local No. 145*, 5 N. L. R. B. 231; *Matter of Aluminum Products Company, Metal Rolling and Stamping Company, Lemont Stamping Corporation, Banner Stamping Company, and Stainless Steel Products Company* and *Aluminum Workers Union No. 19064 and Aluminum Workers Union No. 19078*, 7 N. L. R. B. 1219. See also *Matter of Ingram Manufacturing Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 908, where the Board stated: "Such remarks (remarks discrediting the genuine labor organization) as those of Walling and of Shelton (supervisory employees) are not to be deemed privileged although the respondent contends otherwise, on the ground that they were made in reply to request for information or advice by non-supervisory employees. The duty to remain aloof and impartial under all circumstances is clear. Employees who request advice of supervisors are uncertain as to which course to pursue, and they may also be fearful that the employer may frown upon a contemplated step in the direction of engaging in concerted activities. Interference at this point necessarily restrains or coerces employees in the exercise of rights guaranteed by the act."

[38] *Matter of Titan Metal Manufacturing Company* and *Federal Labor Union No. 19981*, 5 N. L. R. B. 577, *Matter of Industrial Rayon Corporation, a Delaware Corporation et al.*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 877.

[39] *Matter of Ford Motor Company* and *International Union, United Automobile Workers of America*, 4 N. L. R. B. 621.

[40] *Matter of Regal Shirt Company* and *Amalgamated Clothing Workers of America*, 4 N. L. R. B. 567; *Matter of Montgomery Ward and Company, Incorporated, a corporation*, and *United Mail Order and Retail Workers of America*, 4 N. L. R. B. 1151; *Matter of Todd Shipyards Corporation, Robins Dry Dock and Repair Co., and Tietjen and Lang Dry Dock Co.* and *Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 20; *Matter of American Manufacturing Company, Inc.*, and *International Association of Machinists, Local Union No. 791*, 7 N. L. R. B. 375.

[41] *Matter of Idaho-Maryland Mines Corporation* and *International Union of Mine, Mill and Smelter Workers of America, Local 283*, 4 N. L. R. B. 784, enforcement denied *sub nom National Labor Relations Board* v. *Idaho-Maryland Mines Corp.*, 98 F. (2d) 129 (C. C. A. 9th, 1938). *Matter of The Heller Brothers Company of Newcomerstown* and *International Brotherhood of Blacksmiths, Drop Forgers, and Helpers*, 7 N. L. R. B. 646.

[42] *Matter of Central Truck Lines, Inc.*, and *Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America*, 3 N. L. R. B. 317; *Matter of Altorfer Brothers Company* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge No. 1521*, 5 N. L. R. B. 713. (Notices must be approved by the respondent's superintendent before they are posted.)

[43] *Matter of Central Truck Lines, Inc.*, and *Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America*, 3 N. L. R. B. 317.

[44] *Matter of Bradford Dyeing Association (U. S. A.) (A Corporation)* and *Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604.

stenographic services and office space,[45] and mailing lists.[46] As indicated hereinafter, in many cases, the elements of employer interference and support of a labor organization here described are accompanied by the employer's denial of similar advantages to a competing labor organization.

Not infrequently, more coercive measures have been utilized to compel reluctant or recalcitrant employees to join an organization favored by the employer. Employees have been threatened with dismissal[47] and actually dismissed because of their refusal to join the organization for which the employer has expressed his preference.[48] In one case, supervisory employees, although present, did not intervene to prevent the ejection from the plant during working hours of employees belonging to one labor organization by members of another organization.[49]

Supervisors have dominated and interfered with the formation and administration of labor organizations, in numerous other ways. They have attended meetings of such labor organizations,[50] participated in discussions at the meetings,[51] become members,[52] served as officers and committeemen,[53] signed petitions circulated on behalf of such organizations,[54] and themselves circulated such petitions and other literature,[55] and aided in drafting of constitutions and by-

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[45] *Matter of Cating Rope Works, Inc.*, and *Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100; *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171.

[46] *Matter of Todd Shipyards Corporation, Robins Drydock and Repair Co., and Tietjen and Lang Dry Dock Co.* and *Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 20; *Matter of C. A. Lund Company* and *Novelty Workers Union Local 1866 (A. F. of L.) successor, Christian A. Lund et al.* and *Woodenware Workers Union, Local 20181*, 6 N. L. R. B. 423.

[47] *Matter of Phillips Packing Company, Incorporated, and Phillips Can Company, a Corporation*, and *United Cannery, Agricultural, Packing, and Allied Workers of America*, 5 N. L. R. B. 272; *Matter of Titan Metal Manufacturing Company* and *Federal Labor Union No. 19981*, 5 N. L. R. B. 577. See also *Matter of Ford Motor Company* and *International Union, United Automobile Workers of America*, 4 N. L. R. B. 621, where the Board noted that the general foreman in one department refused to deny the rumor that the employees would need a Brotherhood card in order to retain their employment.

[48] For example see *Matter of Highway Trailer Company* and *United Automobile Workers of America Local No. 135 and Local No. 136*, 3 N. L. R. B. 591; see also *Matter of American Potash & Chemical Corporation* and *Borax & Potash Workers' Union No. 20181*, 3 N. L. R. B. 140, where the respondent discharged all except one of the officers of the association in order to discipline the association for attempting to free itself from the control of the respondent.

[49] *Matter of General Shoe Corporation* and *Georgia Federation of Labor*, 5 N. L. R. B. 1005.

[50] *Matter of Highway Trailer Company* and *United Automobile Workers of America, Local No. 135 and Local No. 136*, 3 N. L. R. B. 591; *Matter of New Idea, Inc.*, and *The A. F. of L.; New Idea, Incorporated*, and *American Federation of Labor*, 5 N. L. R. B. 381; *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252.

[51] *Matter of Cating Rope Works, Inc.*, and *Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100.

[52] *Matter of New Idea, Inc.*, and *The A. F. of L.; New Idea, Incorporated*, and *American Federation of Labor*, 5 N. L. R. B. 381; *Matter of Metropolitan Engineering Company*, and *United Electrical and Radio Workers of America, Local No. 1203*, 4 N. L. R. B. 542. Membership in and participation in the activities of a labor organization by supervisory employees may not under all circumstances constitute elements of an unfair labor practice under section 8 (2). Where, however, supervisory employees act at the behest of or on behalf of an employer in becoming members of and participating in the activities of such an organization, clearly this conduct constitutes an unfair labor practice.

[53] *Matter of Metropolitan Engineering Company and Metropolitan Device Corporation* and *United Electrical and Radio Workers of America, Local No. 1203*, 4 N. C. R. B. 542 (publicity committee chairman); *Matter of Cating Rope Works, Inc.*, and *Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100 (chairman of bargaining committee); *Matter of S. Blechman & Sons, Inc.*, and *United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15 (office manager served as president of association).

[54] *Matter of G. Sommers & Co.* and *Warehouse Employees Union No. 20297, of St. Paul*, 5 N. L. R. B. 992.

[55] *Matter of The Jacobs Bros. Co., Inc.*, and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620 (individual contracts between respondent and the employees); *Matter of J. Freezer & Son, Inc.*, and *Amalgamated Clothing Workers of America and Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath*, 3 N. L. R. B. 120 (application cards); *Matter of Metropolitan Engineering Company and Metropolitan*

laws.[56] In its decisions, the Board has also considered instances of less direct participation by supervisors in the affairs of employee organizations, such as solicitation of members by employees during working hours on the employers' premises with the knowledge of and in the presence of supervisors while competing organizations are denied the same privileges.[57]

In determining whether a labor organization is employer-controlled within the meaning of section 8 (2), the Board has also considered the nature and extent of the collective bargaining conducted by the organization. Clearly, the efficacy of a labor organization in dealing and negotiating with the employer on behalf of the employees whom it represents and its efforts to protect and advance the interests of those employees is some indication of that organization's freedom from employer control. Several organizations scrutinized by the Board did not conduct any negotiations or make any effort to bargain with the employer concerned, and in some of these cases the employer's opposition to unions with outside affiliations appears to have furnished the impelling reason for the formation and continued existence of the organization.[58]

Even where negotiations occur, the conduct and character of the negotiations may be such as to reveal the employer's domination of the organization. Such negotiations were analyzed at some length in *Matter of Industrial Rayon Corporation*,[59] where it was found that the respondent had dominated and interfered with the formation and administration of the association. The Board stated:

> In addition to the above, the respondent's own records of its meetings with the association and Local 2096 clearly reveal the subserviency of the association. In fact, it may fairly be said that a customary procedure consisted of (1) the association group requesting a wage increase and citing as one of the principal arguments the fact that the increase was necessary to forestall outside unionization and keep association membership intact; (2) officials of the respondent stating reasons against the increase, although in at least one instance heartily commending the association for its "loyalty," and giving out confidential information on the activities of the rival union; and (3) the meeting winding up with a pledge by the association representatives to sell to the employees the management's viewpoint, this pledge sometimes being supplemented by a discussion of ways and means by which the association could most effectively put across the management arguments and undermine the efforts of the "outside organizers." [60]

In *Matter of The Jacobs Bros. Co., Inc.*,[61] the respondent was found to have summoned the representatives of its employees to meet with

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Device Corporation and *United Electrical and Radio Workers of America, Local No. 1203*, 4 N. L. R. B. 542 (leaflets); *Matter of Bradford Dyeing Association (U. S. A.)* (*a corporation*) and *Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604 (membership cards).

[56] *Matter of New Idea, Inc.*, and *The A. F. of L.; New Idea, Incorporated*, and *American Federation of Labor*, 5 N. L. R. B. 381.

[57] *Matter of Todd Shipyards Corporation* and *Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 20; *Matter of Beloit Iron Works* and *Pattern Makers League of North America; Matter of Beloit Iron Works* and *International Association of Machinists*, 7 N. L. R. B. 216; *Matter of Yates-American Machine Company* and *Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1187*, 7 N. L. R. B. 627.

[58] *Matter of Bemis Brothers Bag Company* and *Local No. 1838, United Textile Workers of America*, 3 N. L. R. B. 267; *Matter of S. Blechman & Sons, Inc.*, and *United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15; *Matter of American Manufacturing Company et al.* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443.

[59] *Matter of Industrial Rayon Corporation, a Delaware Corporation, et al.* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 877.

[60] See also *Matter of Regal Shirt Company* and *Amalgamated Clothing Workers of America*, 4 N. L. R. B. 567.

[61] *Matter of The Jacobs Bros. Co.* and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620. See also *Matter of Cating Rope Works, Inc.*, and *Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1190.

its officials, to have described their powers and duties, ordered them to present demands and dismissed their meetings.

In some cases, the advent of a union with outside affiliations has spurred employers to bargain collectively with employee organizations and to make concessions theretofore denied for the purposes of continuing control of such organizations. In *Matter of American Potash & Chemical Corporation*,[62] the association had attempted since September 1934 to secure the cooperation of the respondent in obtaining adequate housing facilities and to secure a general increase in wages. However, it was only in March and April of 1936, shortly after a union affiliated with the American Federation of Labor had become active, that the respondent appropriated funds to relieve the housing shortage, granted a general wage increase, and arranged for regular meetings with the association.[63]

In determining whether an employer's activities have resulted or were intended to result in his domination of and interference with a labor organization within the meaning of section 8 (2), the Board has also considered, among other factors the contrast in the treatment accorded by the employer to rival organizations. Under certain circumstances, the Board has found significant the employer's willingness to negotiate and come to an agreement with one organization coupled with a reluctance or refusal to deal with representatives of the rival organization. In *Matter of Taylor Trunk Company*,[64] the president of the respondent promised members of the shop union a contract even before the shop union was fully organized and told the employees that it would not sign any contract with the rival union. In *Matter of Metropolitan Engineering Company*,[65] the respondent granted to the association concessions similar to those which it had denied to the representatives of the genuine labor organization. Again, in *Matter of Burnside Steel Foundry Company*,[66] although the respondent refused to recognize the genuine union unless it was certified by the Board, it granted recognition to the "Foundry Workers" without insisting upon such procedure.

A significant contrast between the favoritism displayed by an employer toward one union and hostility directed against a rival union appears in *Matter of Fansteel Metallurgical Corporation*.[67] In summation, the Board stated:

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[62] *Matter of American Potash & Chemical Corporation* and *Borax and Potash Workers' Union No. 20181*, 3 N. L. R. B. 140.

[63] In *Matter of Idaho-Maryland Mines Corporation* and *International Union of Mine, Mill and Smelter Workers of America, Local 283*, 4 N. L. R. B. 784, upon the appearance of the union, the respondent approached the League and effected a written agreement recognizing it for its members. See also *Matter of G. Sommers & Co.* and *Warehouse Employees Union No. 20297, of St. Paul*, 5 N. L. R. B. 992.

[64] *Matter of Taylor Trunk Company* and *Luggage Workers Union, Local No. 50 of the International Ladies' Hand Bag, Pocketbook and Novelty Workers Union*, 6 N. L. R. B. 32. See also *Matter of Highway Trailer Company* and *United Automobile Workers of America, Local No. 135 and Local No. 136*, 3 N. L. R. B. 591.

[65] *Matter of Metropolitan Engineering Company and Metropolitan Device Corporation* and *United Electrical and Radio Workers of America, Local No. 1203*, 4 N. L. R. B. 542.

[66] *Matter of Burnside Steel Foundry Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1719*, 7 N. L. R. B. 714. See also *Matter of C. A. Lund Company* and *Novelty Workers Union, Local 1866 (A. F. of L.) successor; Christian A. Lund et al.*, and *Woodenware Workers Union, Local 20481*, 6 N. L. R. B. 423, where the Board concluded that the respondent hastened to recognize the Independent Order to discourage and defeat the formation of a genuine union.

[67] *Matter of Fansteel Metallurgical Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local 66*, 5 N. L. R. B. 930, enforcement denied *sub nom Fansteel Metallurgical Corporation* v. *National Labor Relations Board*, 98 F. (2d) 375 (C. C. A. 7, 1938). On November 21, 1938, the United States Supreme Court granted certiorari. See also *Matter of The Federal Bearings Co., Inc., and its affiliate or subsidiary, Schatz Manufacturing Company*, and *Local 297, International Union, United Automobile Workers of America*, 4 N. L. R. B. 467; *Matter of Titan Metal Manufacturing Company* and *Federal Labor Union No. 19981*, 5 N. L. R. B. 577.

The union's committee had met with unyielding resistance on the part of Anselm, who had abruptly ordered from his office the "outside" representative selected by the union to serve on its committee; the R. M. W. A. was welcomed and readily granted recognition. The union had been denied the use of the respondent's bulletin boards for announcements of meetings; this favor was at once bestowed upon the R. M. W. A. An attempt had been made to poison the union ranks by the injection therein of a labor spy; far from using espionage against the R. M. W. A., the respondent granted it the use of the Company building and furnished it free typing and mimeographing services. The prior drive to induce the employees to abandon the union in favor of an employee representation plan quite naturally had no counterpart when the R. M. W. A., an organization modelled to comply with the respondent's desires, appeared on the scene. In general, the contrast between the respondent's well-publicized animosity toward the union and its open affection for the R. M. W. A. was so clear and striking that it must necessarily have prevented freedom of choice by the employees.[68]

The written constitution and bylaws of an organization may likewise reveal extensive control of the organization by the employer. In *Matter of H. E. Fletcher Co.*,[69] an employees' representation plan introduced in March 1934 by the respondent provided for a works council consisting of six employee representatives and six representatives of the management to engage in collective bargaining and to handle grievances. The Plan permitted only employees of the respondent to be candidates for election. It provided that the elections were to be supervised by a committee of three, two of whom were selected by employee representatives and one by the management. The respondent was to furnish suitable places for meetings of the council and its committees. The constitution also provided that "representatives in attendance at any meeting of the works council or its committees, and employees required to attend any meetings at the request of the works council or any of its committees, shall receive their regular pay from the Company for such time as they are necessarily absent from work for these purposes." It appeared that the works council could act only by a two-thirds vote of its members. In holding the plan to be company-dominated, the Board concluded:

The works council is plainly the creature of the respondent, subject to its desires and checked by the procedural restraints embodied in the plan. Composed of equal numbers of representatives of both employer and employees, the works council is limited in its activity to the requirement of a two-thirds vote of its membership. Nor can the employees, through their elected representatives, amend, alter, or repeal the plan, since such action would require a three-fourths vote of the council. Any action of the works council is therefore always predicated upon the approval of the respondent's representatives who can frustrate the employees' desires whenever they are so instructed by the respondent.

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[68] See also *Matter of the Triplett Electrical Instrument Company, The Diller Manufacturing Company, doing business under the firm name and style of Readrite Meter Works*, and *United Electrical and Radio Workers of America, Local No. 715*, 5 N. L. R. B. 835, where the Board said:

"The respondents contend that the participation of subforemen and clerical employees in the formation of the Committee of 17 and the association had no more significance than the participation of those employees in the formation of the union. But such participation is significant and does implicate the employer unless the employer makes clear that it has no connection with such activities. In the case of the union, the respondents so clearly indicated their hostility to it that no employee would be intimidated into joining it to save his job merely because a clerical employee or a subforeman was soliciting for the union. The respondents repudiated the actions of those employees on March 11, and again on March 15, and many times thereafter by making no secret of their attitude toward the union. This same attitude was not displayed in the case of the Committee of 17 and the association."

[69] *Matter of H. E. Fletcher Co.* and *Granite Cutters' International Association of America*, 5 N. L. R. B. 729.

In Matter of Highway Trailer Company,[70] the Board noted among other things that under the shop union's constitution and bylaws, any employee was eligible for membership upon recommendation of his foreman; that membership ceased upon termination of employment; and that only the members at work on the day of the election could vote for officers. Other constitutions which have been examined by the Board contain sections providing that in making adjustments the employee representatives are to be confined to the voting group or operating unit affected without placing any such limitation upon the management representatives;[71] that voting shall be by open ballot;[72] and that the constitution and bylaws may be amended only with the approval of the management.[73] It was stated in one constitution that it had been "approved by the management."[74]

4. Illustrative Cases

The various forms of interference with the self-organization of employees noted above occur in numerous different combinations to constitute an unfair labor practice within the meaning of section 8 (2). The cases discussed below illustrate the more usual types of activity engaged in by an employer which the Board has found in the aggregate to constitute such an unfair labor practice.

In *Matter of Stackpole Carbon Company*,[75] the respondent's official questioned the leaders of Local 502 of the United Electrical and Radio Workers on December 30, 1936, the day following the organization of the Local, and accused them of joining with "outside agitators." Stackpole, the respondent's president, threatened to move one of the departments if an "outside" union was formed, but stated that he would be glad to have an "inside" union formed and that he would bargain with it. On December 31, when the leaders of Local No. 502 met with Stackpole he said, "If you boys won't set up a company union, I will—in fact, I have already started to set it up." This was no idle boast for 2 days earlier one of the respondent's supervisors and a "senior press man" had started to revive the N. R. A. Union, a labor organization which the respondent had openly dominated and interfered with during August 1933. They consulted with the respondent's vice president, assistant factory manager, and superintendent, and later arranged a conference between the representatives of the old N. R. A. Union and the respondent's vice president. On the same afternoon, December 31, a meeting was called in the factory during working hours which employees were directed by their supervisors to attend. At the meeting N. R. A. union representatives "resigned," membership application cards for the associa-

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[70] *Matter of Highway Trailer Company* and *United Automobile Workers of America, Local No. 135 and Local No. 136*, 3 N. L. R. B. 591.

[71] *Matter of Maryland Distillery, Inc., et al.*, and *Distillery Workers Union 20270, et al.*, 3 N. L. R. B. 176.

[72] *Matter of S. Blechman & Sons, Inc.*, and *United Wholesale Employees of New York, Local No. 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15.

[73] *Matter of Wilson & Co., Inc.*, and *Independent Union of all Workers or its successor United Packing House Workers*, 7 N. L. R. B. 986.

[74] Ibid. *Matter of Phelps Dodge Corporation, United Verde Branch*, and *International Association of Machinists, Local No. 223; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers, Local No. 106; International Brotherhood of Electrical Workers, Local No. B657;* and *International Brotherhood of Carpenters and Joiners, Local No. 1061*, 6 N. L. R. B. 624.

[75] *Matter of Stackpole Carbon Company* and *United Electrical and Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171.

tion were distributed, and temporary officers were elected. Thereafter employees who were active in the association, some of them at the instigation of their foreman, openly solicited membership in the association during working hours. Foremen further assisted by urging the employees to join under threats of discharge. In contrast, the leaders of Local No. 502, after considerable difficulty, were given permission to solicit, on the condition that they notify the assistant plant manager before entering any department. When they complied with the condition, they found that their activities were effectively curtailed by the surveillance of foremen.

On January 4, 1937, Local No. 502 presented a contract to Stackpole. Stackpole asked for a month to consider the contract but finally agreed to meet with Local No. 502 on January 11 to discuss it. On January 9, the hastily organized association showed its membership cards to the respondent's vice president, who, being "convinced" that it represented a majority, met the "contract committee" of the association on January 10, and negotiated substantially all the terms of a contract with it. When the leaders of Local No. 502 presented themselves on January 11 for the prearranged conference, Stackpole told them that he had already recognized the association as the representative of the employees. Later that day the respondent signed the agreement with the association.

On January 15 departmental representatives of the association were elected in the plant during working hours. Thereafter, monthly meetings of the association were held in the plant during working hours. The respondent furnished stenographic services for preparing minutes, and paid for printing the association's constitution and bylaws.

In February representatives of the association collected dues during working hours and issued therefor receipts prepared in the offices of the foremen. Stackpole offered to match the dues collected by the association, but later retracted this offer. Foremen requested employees to distribute association literature during working hours and such employees who worked long hours were paid for "overtime" in addition to their regular pay. The respondent also made its pay-roll lists available to the association.

During this period the respondent distributed circulars to its employees clearly indicating its antagonism to Local No. 502. It also inserted a paid advertisement in a newspaper which attacked that labor organization. During the last week in February the Daily Press, a local newspaper in which the respondent's vice president was the principal stockholder and a director, carried a news article and two editorials on the respondent's labor problems and the removal of one of its departments to another town. The editorials and news articles, which consisted in part of interviews with the respondent's officials, were disparaging to Local No. 502 and favorable to the "loyal" employees. The association also prepared circulars at this time assuring its members that they were the "loyal" employees referred to by the respondent in the interviews. The respondent ordered reprints of the news article and the editorials prior to their publication in the Daily News. After their publication, the respondent mailed out the reprints, together with the association's circular to all its employees.

The Board in its conclusions described the pervasive character and extent of the respondent's conduct in interfering with the self-organization of its employees as follows:

> From the facts as presented above it is clear that the association was brought into being originally at the instigation of, and under the guidance of, the respondent. Since its resurrection, the respondent has continually interfered with the administration of the association and contributed encouragement and support to it. Meetings of the association have been and are being held on the respondent's property during working hours. Solicitation for membership in the association has been permitted during working hours, and the privilege of similar solicitation has been in effect denied to members of Local No. 502. In at least two instances, the respondent has aided the association financially. The respondent has, in various ways as above indicated, through the press and through the distribution of circulars, contributed support to the association by openly declaring its antagonism and opposition to Local No. 502. Through its encouragement and aid to the association the respondent clearly intended to interfere with the self-organization of its employees in Local No. 502 or any other bona fide labor organization. The respondent has aided in the intimidation and coercion of its employees to join the association. It encouraged membership in the association by assuring its members that none of them would lose by removal of part of its plant to Johnsonburg. It climaxed its support to the association by recognizing it as the exclusive representative of its employees and by signing an agreement with it pursuant to such recognition.

The Board ordered the respondent to cease and desist from such activities and from giving effect to its contract with the association. It further ordered the respondent to withdraw recognition from the association as a representative of its employees and to disestablish it as such representative.

Matter of Cating Rope Works, Inc.,[76] similarly illustrates the numerous activities of the employer which led to his domination of a labor organization. The case has an added significance because it is typical of the six cases[77] decided during the last fiscal year in which the Board has found that an employer has dominated and interfered with a labor organization after receiving the advice of L. L. Balleisen, industrial secretary of the Brooklyn Chamber of Commerce

In the *Cating Rope Works* case, immediately after an organizer for a genuine union had requested an appointment for collective bargaining, the respondent called a meeting of its employees and suggested that they consider the desirability of a company union. On the following day the respondent's vice president consulted L. L. Balleisen, who furnished him with the forms for the organization of a company union. The respondent later called another meeting of its employees at which the respondent's officials disparaged the organizers of the legitimate union and served notice that they would not sign a contract with any "outside" union. The respondent's vice president, reading from a statement prepared by Balleisen, announced that the respondent would enter into a contract with a committee of employees and the employees individually, but that it would not sign a contract with any union. The statement contained an outline of the

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[76] *Matter of Cating Rope Works, Inc.*, and *Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100.

[77] In addition to *Matter of Cating Rope Works, Inc., supra*, the cases are *Matter of Metropolitan Engineering Company and Metropolitan Device Corporation* and *United Electrical and Radio Workers of America, Local No. 1203*, 4 N. L. R. B. 542; *Matter of The Jacobs Bros. Co., Inc.*, and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620; *Matter of David E. Kennedy, Inc.*, and *Isidore Greenberg*, 6 N. L. R. B. 699; *Matter of Art Crayon Company, Inc., and Its Affiliated Company, American Artists Color Works, Inc., and United Artists Supply Workers*, 7 N. L. R. B. 102; *Matter of National Licorice Company* and *Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity*, 7 N. L. R. B. 537.

provisions to be embodied in the proposed contract. He then produced a letter to the respondent, likewise prepared by Balleisen, for signature by the employees and urged them to sign it. It was stated in the letter that the employees had elected a bargaining committee and authorized it to sign a contract containing provisions outlined "by the management." Thereafter, pursuant to the respondent's plans, the employees signed the letter of authorization and selected a collective bargaining committee. So great was the dissatisfaction of the employees with the terms of the proposed contract, however, that they left work. The respondent then selected a second bargaining committee to succeed the first committee, which had ceased to function after the employees left work.

The nature of the respondent's domination of, and interference with, the two "collective bargaining committees" formed among its employees and the relation of the respondent and Balleisen to these labor organizations were described by the Board in the following language:

> This second "collective bargaining committee" may be looked upon as an outgrowth or continuation of the first. One is tainted with the illegality of the other. They are both part of a plan, devised by Balleisen and the respondent, to circumvent the respondent's duty to bargain collectively with the union. We find that the respondent's instigation and sponsorship of the two "collective bargaining committees," and all its activities in connection therewith, constitute domination and interference with the formation and administration of a labor organization or plan of its employees. The respondent encouraged and, in fact, ordered these committees to confer with it, and to call meetings of all the employees, in the plant during working hours; furnished for their use its stenographer and its office; and bore all the expenses incurred for mimeographing the various forms supposedly issued by the committees, for postage, or otherwise, thereby contributing its financial support to a labor organization. The nature and purpose of the respondent's conduct is emphasized by the fact that its activity in connection with these committees followed so closely after the respondent had been approached for the purpose of collective bargaining by the union organizer, representing a clear majority of its employees as we find below, whom the respondent had obviously put off upon a false pretext in order to have an opportunity to undermine and dissipate the union's strength.[78]

In other cases, the employer's range of conduct leading to his interference with a labor organization has been more limited in scope. In *Matter of Ingram Manufacturing Company*,[79] the Board found that on numerous occasions the respondent's supervisory employees disparaged and discredited the genuine union, and during the same period solicited employees to join the council. On the other hand, the respondent had not interfered with the formation of the latter union and had refrained from bargaining collectively with it because it was not satisfied that it represented a majority of its employees. The board concluded:

> In any event, where the Board finds interference, domination, and support of the character set forth above, the absence of employer influence at the crea-

[78] See *Matter of The Jacobs Bros. Co., Inc.*, and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620, also involving a Balleisen client, where the Board described the conduct engaged in by the respondent as follows:

"The actions of the respondent's agents, both officials and supervisory employees, in advising the employees to elect representatives, prepare demands, and meet with the management, initiated the organization of the plan of representation. The respondent prepared the authorization for the representatives, directed the time and method of the circulation among the employees, directed and assisted its circulation and procurement of the employees' signatures, and secured its return. The respondent summoned the representatives to meetings with its officials, described their powers and duties, ordered them to present demands, and dismissed their meetings."

[79] *Matter of Ingram Manufacturing Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 908.

tion of a labor organization and the refusal of an employer to bargain with that organization upon request cannot constitute a complete defense to an allegation under section 8 (2) of the act.

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Upon the basis of the support and assistance rendered the council in solicitation for its membership drive, and upon the basis of indirect aid afforded the council by the means of disparaging and discrediting the Textile Workers Organizing Committee in order to weaken it as an effective rival, we find that the respondent has dominated and interfered with the formation and administration of the council and has contributed support to it, within the meaning of section 8 (2) of the act.

In another case,[80] the respondent's proscribed conduct consisted only of a single activity which the Board found to result in its domination of, and interference with, a labor organization. During a period when a genuine union affiliated with the American Federation of Labor was in the process of organizing and while certain employees were discussing the formation of an independent union, the respondent's president caused a poster to be placed on about 20 of the respondent's bulletin boards and caused certain pamphlets to be made available to the employees. Both the posters and the pamphlets were reprints of an article appearing in Factory Management and Maintenance magazine, and were identical except for a deletion from the posters of some particularly hostile statements directed at "outsiders." Both media were entitled, "employees can form factory unions" and contained a model constitution for a "factory union." They were replete with antiunion statements. When the association was organized, a constitution similar to the one contained in the posters and pamphlets, which had appeared 5 days earlier, was presented and subsequently adopted.

In discussing the relation of the respondent's activities to the association, the Board said:

It is evident from what has been related that the respondent, after hearing of the organization activities of the Federal Local, and at a time when the organizational activities of the Federal Local was at its height, suggested and fostered the formation of the association. The posters and pamphlets posted and distributed by the respondent could have had no other effect. The timing of the formation of the association and the large number of membership applications procured at its very first meeting must be attributed to the stimulus furnished by the respondent.

The posters and pamphlets not only impressed the employees with the fact that they could form a factory union, but also indicated quite definitely that the respondent favored the formation of such a union and looked with disfavor upon any outside organization. To publish, under the existing circumstances, among its employees a spirited argument in favor of an inside union was such interference, restraint, coercion, and support as the act declares unlawful. The association, formed and administered with such encouragement and support from the respondent, became an organization of the employer's choice.

The utilization of employer-controlled organizations and public officials, in connection with other devices, in order to secure control over a labor organization has been of significance in several cases before the Board. This technique in conjunction with the threat of

[80] *Matter of Simplex Wire and Cable Company* and *Wire & Cable Workers Federal Local Union 21020, Affiliated with the A. F. of L.; Matter of Simplex Wire and Cable Company* and *Wire & Cable Workers Federal Local Union 21020, Affiliated with the American Federation of Labor; Matter of Simplex Wire & Cable Co.* and *Simplex Employees Association*, 6 N. L. R. B. 251.

moving the plant from the community in which it was located was adopted by the respondent in *Matter of Regal Shirt Company.*[81]

In that case, the City Builders, an organization of businessmen furnishing the respondent with its factory rent free, the mayor, and several other prominent citizens joined together to intimidate the organizers for the genuine union and to convince the respondent's employees that the respondent would leave town if they joined such union. After the plant was closed and some of the machinery was dismantled, these same individuals aided the respondent in forming a labor organization, the association, whose organizational appeal was the defeat of the genuine union in order to reopen the plant.

In concluding that the association was company-dominated, the Board asserted:

> The members of the City Builders had a substantial financial stake in the operation of the respondent's plant. While the legal relationship existing between the City Builders and the respondent was that of landlord and tenant, in practical operation the parties were joint venturers. The City Builders contributed the use of the factory building in return for the increased business which would flow to its members through the operation of the factory.
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> Thus the impelling motive for the assaults on the organizers and the hostile attitude displayed toward the Amalgamated by the mayor and leading members of the City Builders, was the fear that the factory would close and move elsewhere if the Amalgamated organized the employees. This fear was engendered and encouraged by the respondent's officers through such acts as Jackson's [the respondent's general manager] statement to the group of employees on May 6 and the dismantling of machinery after the shut-down on May 10. Again, at the meeting of the factory employees and local citizens addressed by the mayor on May 6, Jackson lent credence to such fear by his failure to disclaim the mayor's statements and fostered and encouraged this fear by his presence and acquiescence. The respondent's conduct interfered with, restrained, or coerced its employees in the exercise of rights guaranteed in section 7 of the act.
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> The association was the creature of the mayor and the City Builders, who were impelled by fear that the factory would move if the Amalgamated organized the employees. It was their desire to form a labor organization that would be amenable to the respondents, and would at the same time have the effect of keeping a legitimate labor union out of Moorehead City. In *Matter of Ansin Shoe Manufacturing Company* and *Shoe Workers' Protective Union Local No. 80,* we stated with reference to section 8 (2): "Its object is to protect the rights of employees from being hamstrung by an organization which has grown up in response to the will and the purposes of the employer, an organization which would not be, in the sense of section 7, an organization of the employees' choice. The workers may be aware of their employer's antipathy to union organization and seek to propitiate him by acceptable conduct. This may be unavoidable. But the employer can be prevented from engaging in overt activity calculated to produce that result. If labor organizations are to be truly representative of the employees' interest, as was the intention of Congress as embodied in this act, the words 'dominate and interfere with the formation of any labor organization' must be broadly interpreted to cover any conduct upon the part of an employer which is intended to bring into being, even indirectly, some organization which he considers favorable to his interests" (1 N. L. R. B. 929). The respondent actively encouraged membership in the association by permitting a meeting to be held in its plant, during working hours, and further showing its approval by ordering the current of the plant shut off during the meeting. The summary manner in which the agreement

[81] *Matter of Regal Shirt Company* and *Amalgamated Clothing Workers of America,* 4 N. L. R. B. 567.

between the association and the respondent was made confirms the conclusion that the association is nothing but a tool of the respondent.[82]

After the Supreme Court declared the act constitutional on April 12, 1937, the Board was presented with several cases[83] in which employers ostensibly attempted to divest themselves of control of labor organizations which they continued to dominate. Typical of these cases is *Matter of Swift & Company*.[84] In 1933 Swift & Company established an Employee Representation Plan at its Evansville, Ind., plant. After the constitutionality of the act was affirmed by the Supreme Court of the United States on April 12, 1937, Swift & Co., realizing that the plan was proscribed under the act, notified the plant assembly (the governing body of the plan) that "it is not possible to continue the present representation plan." A statement prepared by the main office was read to the employees by Becker, the plant superintendent, at Evansville. After stating that the plan would have to be discontinued, he continued:

> Whether you wish to establish an employees' representation plan for collective bargaining that will comply with the terms of the law, is a matter for you to decide. If you wish to adopt a plan for negotiating with the company on wages, hours, and working conditions, it should not include management participation in elections of employee representatives, the furnishing of printed material by the company, nor company compensation to employee representatives for time spent away from their work, except when conferring with management, as this latter is not prohibited by law.
>
> It shall be the policy of the company to continue to consult with its employees on all matters of mutual interest in an honest effort to find the proper solution to problems. Finally, the company earnestly desires that the understanding growing out of our relationships during these past many years will be the basis upon which the continued good relations between employees and the company will be maintained.

Becker handed a copy of the statement and a digest of the act to the representatives. The employee representatives then agreed to form an unaffiliated organization before adjourning. A petition, which 195 employees signed, was circulated for this purpose. An attorney was hired and formal papers prepared for the "Employees' Association of Swift & Co., Evansville, Ind.," but at a subsequent meeting not more than 7 of 150 employees attending signed membership applications in the association. Subsequently, four meetings were held by the representatives on company property to devise ways

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[82] See also *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252, where the respondent, through the use of a labor organization which it controlled and of public officials, broke the strike and paved the way for the formation of a second company-dominated organization to succeed the original organization

[83] *Matter of The Falk Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of America, Lodge 1528*, 6 N. L. R. B. 654; *Matter of Swift & Company, a Corporation*, and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641*, and *United Packing House Workers Local Industrial Union, No. 300*, 7 N. L. R. B. 269; *Matter of Swift & Company* and *United Automobile Workers of America, Local No. 265*; *Matter of Swift & Company* and *United Packing House Workers L. I. Union No. 328, Affiliate C. I. O.*, 7 N. L. R. B. 287; *Matter of Beloit Iron Works* and *Pattern Makers League of North America; Matter of Beloit Iron Works* and *International Association of Machinists*, 7 N. L. R. B. 216; *Matter of American Radiator Company, a Corporation*, and *Local Lodge No. 1770, Amalgamated Association of Iron, Steel, and Tin Workers of North America, Affiliated With the Committee for Industrial Organization*, 7 N. L. R. B. 1127; *Matter of The Electric Auto-Lite Company, Bay Manufacturing Division* and *International Union, United Automobile Workers of America Local No. 525*, 7 N. L. R. B. 1179. See also *Matter of The Hoover Company* and *United Electrical and Radio Workers of America, Local No. 709*, 6 N. L. R. B. 688.

[84] *Matter of Swift & Company* and *United Automobile Workers of America, Local No. 265*; *Matter of Swift & Company* and *United Packing House Workers L. I. Union No. 328, Affiliate C. I. O.*, 7 N. L. R. B. 287.

to overcome the resistance of the employees to the association. Becker attended each meeting and exhorted the representatives to continue a vigorous organizing campaign. He also made suggestions for their guidance, proposing that dues be lowered and that organizers be given a share of the initiation fees collected. The former suggestion was adopted. The association also changed its name to "Evansville Meat Packers Local 400," in order to avoid the stigma of a "company union," which the original name connoted.

The Board in finding that the respondent dominated and interfered with the formation and administration of Evansville Packers, stated:

> The continuity of events which followed the official dissolution of the plan on April 20, 1937, clearly shows that the formation of the Evansville Packers was the natural sequel to the acts of the respondent substantially inviting the formation of an "inside" organization, and while it was yet in an inchoate state, to the presence and participation of Becker, the plant superintendent.
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> An analysis of the terms of the statement of policy read to the former representatives under the plan and publicly posted reveals it to be a very astutely worded document. It informs the employees that it is up to them to decide whether they wish to form a new employees' representation plan. Reference to such a plan necessarily connotes an organization limited to the respondent's employees. There was no mention of other possible alternatives. The statement in effect advised the employees how to organize a "plan" which would be free from the more obvious badges of employer-domination.
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> The conduct of Becker and the respondent's representatives at the April 20 meeting, even accepting his version, must have given the employee representatives at least a hint of what was expected of them. The statement was read and left, together with a digest of the act, with the employee represenatives. The management representatives then withdrew and left the employee representatives still in session. Clearly, the next move was up to the employees. And they did what was expected of them.
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> We need not decide whether the mere form of the statement consituted such an invitation to form an "inside" union as to render any organization formed in response thereto unlawful under the provisions of section 8, subdivision (2), of the act. Becker's close association with the organizers of Evansville Packers in its embryo state evinced the respondent's preference in the matter. It is highly probably that the new organization would have disappeared after the May 14 meeting, had Becker not interfered. Employees' freedom to choose representatives involved the liberty to change or abandon representatives, free from the employer's domination.

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In considering the effect of the employer's conduct upon the self-organization of employees, there must be borne in mind the control wielded by the employer over his employees—a control which results from the employees' complete dependence upon their jobs, generally their only means of livelihood and economic existence. As the natural result of the employer's economic power, employees are alertly responsive to the slightest suggestion of the employer. Activities, innocuous and without significance, as between two individuals economically independent of each other or of equal economic strength, assume enormous significance and heighten to proportions of coercion when engaged in by the employer in his relationship with his employees. For this reason the Board has been guided by the disparity in economic power between employer and employee in evaluating the significance of an employer's conduct as an unfair labor practice under section 8 (2).

The purpose of section 8 (2) is apparent. The formation and administration of labor organizations are the concern of the employees and not of the employer. The Board has held that any conduct

of an employer which has the effect of defeating the freedom of employees to carry on this function constitutes an unfair labor practice under this section, irrespective of the means adopted by the employer.

E. INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES

Section 9 (c) of the act provides that—

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

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

The purpose of section 9 (c) is to give the Board the necessary investigatory power to determine whether or not a majority of the employees in an appropriate unit desire a particular representative to bargain collectively for them. As stated in section 9 (c), this investigatory power may be exercised in conjunction with a proceeding under section 10 to determine whether an employer has committed an unfair labor practice, but the proceeding under section 9 (c) is separate and apart from proceedings involving unfair labor practices. Thus, a proceeding under section 9 (c) results merely in a certification that a particular representative has been chosen by a majority of the employees in an appropriate unit, if such in fact is the case, and does not result in an order requiring the employer to cease and desist from an unfair labor practice or to take any affirmative action.

An investigation under section 9 (c) involves the determination of many questions which also arise in proceedings involving unfair labor practices. The question of what constitutes an appropriate unit and the question of whether a majority of the employees in such unit have designated and selected a representative for the purposes of collective bargaining must be determined both in a proceeding under section 8 (5) and in a proceeding under 9 (c). These problems are therefore treated separately.[85] The problem of whether or not the question concerning representation affects commerce is identical with the problem of whether an unfair labor practice affects commerce, and is likewise treated elsewhere.[86]

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[85] See sec. F, ch. VII: "Adequate proof of majority representation where no election is held," and sec. G: "The unit appropriate for the purposes of collective bargaining."

[86] See ch. VIII.

1. The Existence of a Question Concerning Representation

Section 9 (c) empowers the Board to certify representatives only when a question concerning the representation of employees has arisen. Whether such a question exists is a question of fact to be determined upon the circumstances existing in each case.

The question is not necessarily dependent upon whether or not an employer has been requested to bargain collectively and refused.[87] But in instances where a demand has been made and the employer has refused to bargain collectively, the employees have a choice of either proceeding under section 8 (5), or asking an investigation and certification under section 9 (c). It is obvious that a labor organization will normally invoke the 9 (c) proceeding after a refusal to bargain only where it is uncertain of the right to represent a majority or as to the propriety of the unit, or where it does not wish to establish that right except through the use of a secret ballot.

The circumstances which the Board has found to establish the existence of a question concerning representation are too diversified to be cataloged. It may be that the employer simply fails to reply to a request of a labor organization for recognition as bargaining representative, as in *Matter of Paragon Rubber Co.-American Character Doll Company*,[88] and in *Matter of Pier Machine Works, Inc.*;[89] or refuses to meet with a labor organization unless it is represented by an employee of the company, as in *Matter of The Ontario Knife Company*.[90] It may be also that the employer, while willing to bargain, refuses to recognize a labor organization as representative except for its own members, as in *Matter of Armour and Company*,[91] and in *Matter of Mackay Radio Corporation of Delaware, Inc.*;[92] or refuses to negotiate a contract until a competitor has done so, as in *Matter of Atlantic Basin Iron Works*.[93]

Many of the cases in which a question concerning representation has been found to exist involve refusals to bargain based upon nonacceptance by an employer of the claim of a labor organization that it represents a majority of the employees. Such a question has been found to exist where the employer expresses doubt as to the validity of the claim of a labor organization that it represents a majority, as

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[87] No demand to bargain collectively had been made in *Matter of Johns-Manville Products Corporation* and *International Union of Mine, Mill & Smelting Workers*, 7 N. L. R. B. 1055, or in *Matter of Ohio Steel Foundry Company* and *International Molders Union of North America*, 6 N. L. R. B. 127. In *Matter of Fitzgerald Cotton Mills* and *Textile Workers Organizing Committee*, 4 N. L. R. B. 1121, and in *Matter of Sheba Ann Frocks, Inc.* and *International Ladies' Garment Workers' Union of America, Locals 121 and 204*, 3 N. L. R. B. 97, the Board held that it was not necessary to resolve the conflicting testimony as to whether or not a demand had been made. In *Matter of Granite Finishing Works of Proximity Mfg. Company* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 364, and in *Matter of National Weaving Company* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 916, the Board denied motions to dismiss which alleged that the petitions were filed prematurely since at the time of filing no demand had been made.

[88] *Matter of Paragon Rubber Co.-American Character Doll Company* and *Toy & Novelty Workers Organizing Committee of the C. I. O.*, 6 N. L. R. B. 23.

[89] *Matter of Pier Machine Works, Inc.* and *Industrial Union of Marine and Ship Building Workers of America, Local No. 13*, 7 N. L. R. B. 401.

[90] *Matter of The Ontario Knife Company* and *Cutlery Workers Local Union No. 20452*, 4 N. L. R. B. 29.

[91] *Matter of Armour and Company* and *United Meat Packing Workers, Local No. 117*, 6 N. L. R. B. 613.

[92] *Matter of Mackay Radio Corporation of Delaware, Inc. and Mackay Radio & Telegraph Company, a Corporation* and *American Radio Telegraphists' Association*, 5 N. L. R. B. 657.

[93] *Matter of Atlantic Basin Iron Works* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13*, 5 N. L. R. B. 402.

in *Matter of The Raleigh Hotel Company;*[94] or denies that a labor organization represents a majority of the employees in an appropriate unit, as in *Matter of Hamrick Mills*[95] and *Matter of National Weaving Company;*[96] or insists that a certification be obtained from the Board, as in *Matter of Pennsylvania Greyhound Lines et al. (Central Greyhound Lines)*,[97] *Matter of Eagle-Phenix Mills*,[98] and *Matter of Pier Machine Works, Inc.*[99]

In *Matter of Proximity Print Works*,[1] the question concerning representation took the form of a demand by the employer for proof of the union's claim of a majority and of a refusal by the union to reveal the names of its members for fear of possible reprisals.[2] The Board has in several instances found that the question exists because the employer has demanded a form of proof which the union is not required to submit. Such a question was found in *Matter of Lane Cotton Mills Company*,[3] where the company's president insisted that proof of a majority "be made by permitting him to inspect each and every membership card and in the presence of the Textile Workers Organizing Committee, to talk individually with each employee who was a member of the Textile Workers Organizing Committee," and in *Matter of H. E. Fletcher Co.*,[4] where the employer indicated that it would not proceed with negotiations without a divulgence of complete details with respect to union members among its employees.[5]

The question concerning representation may also arise because of the impossibility of proving a majority due to duplications in the membership lists of rival labor organizations, as in *Matter of Hunter*

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[94] *Matter of The Raleigh Hotel Company* and *Hotel and Restaurant Employees Alliance, Local No. 80*, 7 N. L. R. B. 353. In its Second Annual Report (p. 106) the Board stated: "An admission by an employer that he does not know whether a particular labor organization represents a majority of his employees, is proof that such a question exists. *Matter of New York and Cuba Mail Steamship Company* and *United Licensed Officers of the United States of America*, 2 N. L. R. B. 595, and *Matter of Richards-Wilcox Manufacturing Company* and *Federal Labor Union No. 18589*, 2 N. L. R. B. 97."

[95] *Matter of Hamrick Mills* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 459.

[96] *Matter of National Weaving Company* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 916.

[97] *Matter of Pennsylvania Greyhound Lines et al. (Central Greyhound Lines)* and *The Brotherhood of Railroad Trainmen*, 3 N. L. R. B. 622, 651.

[98] *Matter of Eagle-Phenix Mills* and *Textile Workers Organizing Committee*, 4 N. L. R. B. 966.

[99] *Matter of Pier Machine Works, Inc.* and *Industrial Union of Marine and Ship Building Workers of America, Local No. 13*, 7 N. L. R. B. 401.

[1] *Matter of Proximity Print Works* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 803.

[2] The Board does not require a union to submit its membership lists. In *Matter of Samson Tire and Rubber Corporation* and *United Rubber Workers of America, Local No. 44*, 2 N. L. R. B. 148, the Board said: ". . . the Union refused to submit its membership rolls for examination. This the Union was at liberty to do, since it is the established policy of the Board not to compel the Union to produce the membership rolls for examination lest its members be exposed to possible discrimination by the employer." See also *Matter of Bradley Manufacturing Company* and *Textile Workers Organizing Committee*, 4 N. L. R. B. 1117, in which the Board concluded that a question concerning representation had arisen after finding that the union claimed a majority but would not submit its membership application cards to the company for comparison with the company's pay roll. The union's request that the company agree to a consent election was met with the response that the matter was one for decision by the Board.

[3] *Matter of Lane Cotton Mills Company* and *Textile Workers Organizing Committee*, 3 N. L. R. B. 369.

[4] *Matter of H. E. Fletcher Co.*, and *Granite Cutters' International Association of America*, 5 N. L. R. B. 729.

[5] The question concerning the proof of a majority has also taken the form of an insistence by the employer that it would not recognize the union unless a majority of those eligible to vote in a consent election which had been agreed upon cast ballots for the union. The union insisted on its right to bargain if a majority of those voting chose it as their bargaining agent. *Matter of Paragon Rubber Co.-American Character Doll Company* and *Toy & Novelty Workers Organizing Committee of the C. I. O.*, 6 N. L. R. B. 23.

Packing Company,[6] and in *Matter of The Globe Machine and Stamping Co.*;[7] or because each of the rival organizations claims to represent a majority, as in *Matter of American Radiator Company*,[8] and in *Matter of Cutler-Hammer, Incorporated*.[9]

The Board has in numerous cases held that a question concerning representation existed where a controversy has arisen with respect to the determination of the appropriate unit. This problem of the unit appropriate for the purposes of collective bargaining may be a matter of dispute between the employer and a single labor organization, as in *Matter of Los Angeles Broadcasting Company, Inc.*,[10] *Matter of Associated Press*,[11] and *Matter of U. S. Testing Co., Inc.*;[12] or between rival organizations which are insisting upon conflicting bargaining units, as in *Matter of Ohio Foundry Company*,[13] *Matter of Waterbury Clock Company*,[14] *Matter of Allis-Chalmers Manufacturing Company*,[15] and *Matter of Waterbury Manufacturing Company*.[16] In *Matter of Phelps Dodge Corporation*,[17] the Board stated:

> At the hearing the Company urged that for purposes of collective bargaining all the employees of the Mine Division should constitute one unit, and the employees at the Smelter Division should constitute another. It argued that craft units were inappropriate, and explained that it had recognized and negotiated with the Metal Trades Council only because legal counsel advised this course in order to preclude any possibility of violating the Act. Although the Company has not refused to negotiate with the Craft Unions, its insistence at the hearing upon bargaining units which conflict with those advanced by the petitioners, gives rise to questions concerning representation.

In *Matter of Shell Oil Company*,[18] subsequent to the Board's certification of five unions as a joint collective bargaining agency,

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[6] *Matter of Hunter Packing Company* and *Industrial Butchers' and Laborers' Union, Local No. 305*, 3 N. L. R. B. 103. The organizers of the rival unions submitted application cards to the company, which, upon comparison with its pay-roll list, indicated that many employees had applied for membership and many had become members of both unions.

[7] *Matter of The Globe Machine and Stamping Co.* and *Metal Polishers Union, Local No. 3; International Association of Machinists, District No. 54; Federal Labor Union 18788, and United Automobile Workers of America*, 3 N. L. R. B. 294. Membership lists were submitted by three petitioning unions. The lists contained many duplications and there was also evidence that the employees had almost unanimously transferred their membership to the third union and then had subsequently swung back to the two original unions.

[8] *Matter of American Radiator Company (Bond Plant and Terminal Plant)* and *Amalgamated Association of Iron, Steel & Tin Workers, Lodges 1199 and 1629*, 7 N. L. R. B. 452.

[9] *Matter of Cutler-Hammer, Incorporated* and *Local No. 278, International Union, U. A. W. A., affiliated with the C. I. O.*, 7 N. L. R. B. 471.

[10] *Matter of Los Angeles Broadcasting Company, Inc.* and *American Radio Telegraphers Association, Broadcast Local No. 15*, 4 N. L. R. B. 443.

[11] *Matter of Associated Press* and *The American Newspaper Guild*, 5 N. L. R. B. 43.

[12] *Matter of U. S. Testing Co., Inc.* and *Federation of Architects, Engineers, Chemists & Technicians, C. I. O.*, 5 N. L. R. B. 696. For similar cases see *Matter of Pennsylvania Greyhound Lines, et al. (Illinois Greyhound Lines, Inc.)* and *The Brotherhood of Railroad Trainmen*, 3 N. L. R. B. 622, 660; *Matter of Minnesota Broadcasting Company Operating WTCN* and *Newspaper Guild of the Twin Cities, Minneapolis and St. Paul, Local No. 2 of the American Newspaper Guild*, 7 N. L. R. B. 867; *Matter of Paramount Pictures, Inc.* and *Newspaper Guild of New York*, 7 N. L. R. B. 1106.

[13] *Matter of Ohio Foundry Company* and *International Molders' Union of North America, Local No. 218, and Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1596*, 3 N. L. R. B. 701

[14] *Matter of Waterbury Clock Company* and *International Association of Machinists*, 4 N. L. R. B. 120.

[15] *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159.

[16] *Matter of Waterbury Manufacturing Company* and *International Association of Machinists, Local 1335*, 5 N. L. R. B. 288. See also *Matter of The Falk Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528*, 6 N. L. R. B. 654.

[17] *Matter of Phelps Dodge Corporation United Verde Branch* and *International Association of Machinists, Local No. 223; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers, Local No. 406; International Brotherhood of Electrical Workers, Local No. B657; and International Brotherhood of Carpenters and Joiners, Local No. 1061*, 6 N. L. R. B. 624.

[18] *Matter of Shell Oil Company* and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 7 N. L. R. B. 417.

the unions took conflicting positions concerning negotiations with the company. The Board, in finding that a question concerning representation has arisen, stated:

> In view of the existing impasse to negotiations, the Oil Workers filed its petition, alleging the existence of a question concerning representation. In the petition and at the hearing the Oil Workers claimed to represent a majority of the employees within the same appropriate bargaining unit for which the joint agency had been certified previously and asked to be named as the exclusive representative of all such employees. During the course of the hearing claims were also made by this organization that it represented a majority of employees within any units which might be contended for by the four craft unions represented in the joint agency.

A stipulation entered into between the company and the petitioning labor organization acknowledging that a question has arisen concerning the representation of the persons employed by the company may be the basis for a finding that such a question exists. *Matter of New York Mail & Newspaper Transportation Co.*[19] The uncontroverted allegation in the petition of facts which show the existence of a question concerning representation may also be the basis for finding that such a question has arisen. In *Matter of Tidewater Associated Oil Company*,[20] the Board said:

> In each petition it was alleged that the Company involved had refused to bargain collectively until the Union was certified by the Board as a proper exclusive bargaining agency on the basis of a ballot vote. Beyond this the record contains nothing, either in support of or refutation of the statements in the petitions.
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> We find that questions have arisen concerning representation of employees of the Companies . . .[21]

In *Matter of Flexo Products Corporation*,[22] the petitioning union claimed that at each of three conferences with the Company it stated that it represented a majority and demanded recognition. The Board's decision continues:

> * * * The Company stated that, although it has been at all times ready and willing to recognize as collective bargaining agent any group which could prove that it represented a majority of the employees, the Union had failed to produce proof that it represented such a majority, and has neither requested recognition as collective bargaining agent nor made any demands for the negotiation of a collective bargaining agreement. We note that despite this testimony, the Company in its answer admitted the existence of a question concerning the representation of its employees.
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> In view of the admitted holding of conferences between the Union and the Company and the latter's admission of the existence of a question concerning representation, we find that a question has arisen concerning the representation of the employees of the Company.

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[19] *Matter of New York Mail & Newspaper Transportation Co.* and *Committee for Industrial Organization, on Behalf of the Employees of the New York Mail & Newspaper Transportation Co.*, 4 N. L. R. B. 1066.

[20] *Matter of Tidewater Associated Oil Company* and *American Radio Telegraphists' Association*, 5 N. L. R. B. 954.

[21] See *Matter of Edna Cotton Mills Corporation* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 709, for a similar finding of a question concerning representation based upon the allegations of the petition, together with the additional factor of a current strike. The Board found: "The T. W. O. C., in its petition, alleges that a question of representation has arisen. The record contains no facts which tend to controvert this allegation. Moreover, the record shows that a strike was in progress at the mill of the Company at the time of the hearing." With reference to the existence of a strike as the basis for finding that a question has arisen, see *Matter of Sheba Ann Frocks, Inc.* and *International Ladies' Garment Workers' Union of America, Locals 121 and 204*, 3 N. L. R. B. 97, in which the company denied that the union had ever requested it to negotiate. Without resolving the conflict of testimony, the Board concluded: "In any event, the evidence shows that . . . a strike was called . . . which, at the time of the hearing, was still in progress."

[22] *Matter of Flexo Products Corporation* and *International Brotherhood of Electrical Workers, Local B-713*, 7 N. L. R. B. 1163.

A question concerning representation has also been found where the Board had previously ordered the employers to cease and desist from bargaining collectively with any labor organization unless and until such labor organization had been selected in an election conducted by the Board as the bargaining agent of the employers, and where no such election had been conducted. *Matter of Canadian Fur Trappers Corporation.*[23]

In *Matter of Alaska Packers Association,*[24] the Board found a question concerning representation to exist where the companies contended that they had no employees of the type covered by the petitions. The companies stated in support of their contention that they were engaged in seasonal operations, that employment terminated at the end of each season, and that they had ceased operations prior to the filing of the petitions and had not resumed operations at the time of the hearing. The Board stated:

> The evidence is clear, however, that an employer-employee relationship exists between these cannery workers as a group and the Companies. The record shows that the great majority of these workers return season after season to work for one or another of these Companies. The fact that, as individuals, they may not work for the same Company season after season, does not in any way deprive them of the relationship which they have with all three Companies as a group. In this respect, their status is comparable to that of longshoremen whose employment shifts from day to day among a small group of employers. We have consistently held that longshoremen are employees within the meaning of the Act and it follows that these cannery workers are none the less employees entitled to all the benefits accorded employees under the Act. Nor can it be argued that because these cannery workers engage in other occupations in off-season periods, their relationship with the Companies is altered. The record indicates that they constitute a clearly defined group of men to whom the Companies turn year after year for their requirements.
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> In view of the foregoing facts it clearly appears that each person who was employed in 1937 by any of the three Companies has an interest with respect to employment in all the Companies for the 1938 season. It would be obviously improper, however, to permit any particular worker to assert such interest in more than one of the Companies. Consequently we shall associate the employee status of the individual at the present time with that company which employed him in 1937. We shall, therefore, in determining the representatives herein, consider the desires of the cannery workers in connection with the individual companies which employed them during the 1937 season.

The Board also found a question concerning representation to exist in *Matter of Metro-Goldwyn-Mayer Studios,*[25] where the companies contended that screen writers, who were the only employees covered by the petitions, were not employees within the meaning of the act. In support of this contention it was urged that the services performed by screen writers are creative and professional in character, whereas the act applies to more standardized and mechanical employments; that screen writers receive high salaries, whereas the act is intended for the protection of wage earners in the lower income brackets; and that screen writers perform their services free from the control of the companies and must, therefore, be considered as independent contractors rather than employees. After

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[23] *Matter of Canadian Fur Trappers Corporation, Canadian Fur Trappers of New Jersey, Inc., Jordan's Inc., Morris Dornfeld, doing business as Werth's Wearing Apparel,* and *Department and Variety Stores Employees Union, Local 115–A,* 4 N. L. R. B. 904.

[24] *Matter of Alaska Packers Association* and *Alaska Cannery Workers Union, Local No. 5, Committee for Industrial Organization,* 7 N. L. R. B. 141.

[25] *Matter of Metro-Goldwyn-Mayer Studios and Motion Picture Producers Assn., et al.,* and *Screen Writers' Guild, Inc.,* 7 N. L. R. B. 662.

analyzing all the evidence and the terms of the written contract between the screen writer and a particular company which normally governs the conditions under which a screen writer renders his services and the nature of his work, the Board rejected the foregoing contentions and found that "the persons engaged by the respective Companies to perform services for them as screen writers are employees within the meaning of the Act."

The Board has held that no question concerning representation exists where it finds that no unit similar to or within the scope of that which is proposed among the employees named in the petition is appropriate for the purposes of collective bargaining. Thus, in *Matter of Columbia Broadcasting System, Inc.*,[26] it was alleged in the petition filed by one union that a question had arisen concerning the representation of the radio technicians and engineers employed by the company in the New York area. An intervening union, which did not file a petition, claimed that a unit limited to one part of the company's nation-wide broadcasting system was not appropriate. The Board upheld the latter contention. Since the Board was unable to find an appropriate unit within the scope of that alleged in the petition, it concluded that no question had been raised concerning the representation of employees in an appropriate unit and consequently dismissed the petition.[27]

Where the Board, in a proceeding in which it has ordered the consolidation of a case under section 9 (c) with a case under section 8 (5), has found that the employer is refusing to bargain collectively within the meaning of section 8 (5), it has held that it is unnecessary to consider the petition for certification of representatives and has consequently dismissed the petition.[28]

(A) JURISDICTIONAL DISPUTES

Although a question concerning representation existed, the Board has dismissed petitions in several cases which it termed jurisdictional disputes.[29] Thus, in *Matter of Curtis Bay Towing Company*,[30] petitions concerning the representation of the licensed deck officers were filed by Masters, Mates, and Pilots, Local No. 14, while Licensed Tug-

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[26] *Matter of Columbia Broadcasting System, Inc.* and *American Radio Telegraphists Association*, 6 N. L. R. B. 166.

[27] See also *Matter of Swift and Company* and *Packing House Workers Union, Local No. 563*, 4 N. L. R. B. 779; *Matter of M. H. Birge and Sons Company* and *United Wall Paper Craftsmen and Workers of North America*, 5 N. L. R. B. 314; *Matter of American Woolen Company, Nat'l. and Providence Mills* and *Independent Textile Union of Olneyville*, 5 N. L. R. B. 144; *Matter of Standard Oil Company of California* and *Oil Workers International Union, Local 299*, 5 N. L. R. B. 750; *Matter of American Steel & Wire Company* and *Steel and Wire Workers Protective Association*, 5 N. L. R. B. 871; *Matter of Pennsylvania Greyhound Lines, Inc.* and *Transport Workers Union of America, Local No. 155*, 6 N. L. R. B. 314; *Matter of Wisconsin Power and Light Company* and *United Electrical, Radio and Machine Workers of Americal, Local No. 1134*, 6 N. L. R. B. 320; *Matter of The Novelty Steam Boiler Works* and *Local 101, Welders, Burners, Apprentices, A. F. of L.*, 7 N. L. R. B. 969; *Matter of Fried, Ostermann Co.* and *Local 80, International Glove Workers of America, A. F. L.*, 7 N. L. R. B. 1075.

[28] *Matter of Omaha Hat Corporation* and *United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8*, 4 N. L. R. B. 878; *Mattea of Somerset Shoe Company* and *United Shoe Workers of America*, 5 N. L. R. B. 486; *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509; *Matter of Farmco Package Corporation* and *United Veneer Box and Barrel Workers Union, C. I. O.*, 6 N. L. R. B. 601; *Matter of McNeely & Price Company* and *National Leather Workers Association, Local No. 30, of the C. I. O.*, 6 N. L. R. B. 800; *Matter of Art Crayon Company, Inc. and its affiliated company, American Artists Color Works, Inc.* and *United Artists Supply Workers*, 7 N. L. R. B. 102.

[29] See Second Annual Report, pp. 119–122.

[30] *Matter of Curtis Bay Towing Company* and *Marine Engineers' Beneficial Association No. 5*, 4 N. L. R. B. 360.

men Protective Association, Local No. 1510, International Longshoremen's Association, was permitted to intervene in the proceedings. The Board's decision states:

* * * M. M. P. and I. L. A. are both affiliated with the American Federation of Labor. The petitions filed by M. M. P. state that I. L. A. likewise seeks to represent the licensed deck officers employed by the Companies. This claim was also made by I. L. A. at the hearing. In conformity with our prior decisions refusing to exercise jurisdiction in cases where two unions, each affiliated with the same parent body, seek to represent the same employees, we will refuse to exercise jurisdiction in the dispute between M. M. P. and I. L. A., and will dismiss the petitions filed by M. M. P.

In *Matter of Showers Brothers Furniture Company*,[31] there were three labor organizations purporting to represent employees in the appropriate unit, the Upholsterers, Furniture, Carpet and Awning Workers, Linoleum Workers Union, Local No. 184, and the United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, and the United Furniture Workers Local Industrial Union No. 496, affiliated with the Committee for Industrial Organization. In order to avoid determination of any jurisdictional dispute that might exist between the Upholsterers and the Carpenters, the Board directed that the name of the American Federation of Labor should appear on the ballot as the one organization opposing the United Furniture Workers. A protest was filed by the Upholsterers based on the contention that the election "would not be conclusive in the event the American Federation of Labor were to win the election," and "it would still not settle the issue between the Carpenters and the Upholsterers * * *." The Board declared that it—

did not, and does not, intend to attempt to determine a jurisdictional dispute between two unions both affiliated with and subject to the discipline of, a single parent body. It will make no determination in this case of the issue between the Upholsterers and Carpenters, either on the basis of the results of an election or otherwise. Whatever the results of this proceeding, that question remains, so far as this Board is concerned, to be determined by the proper authorities of the American Federation of Labor.[32]

Nevertheless, the Board has not blindly followed a technical rule with respect to internal disputes within labor organizations, but has been guided by facts of general knowledge and experience. In *Matter of Federal Knitting Mills Company*[33] the Board said:

The Federation also contends that since the International Ladies' Garment Workers Union has only been suspended, and not expelled, from the American Federation of Labor the dispute which has arisen is an internal dispute within the body of the Federation, in which the Board should not intervene. We have already rejected a similar contention, however, in view of the fact that it is a matter of common knowledge that unions affiliated with the Committee for Industrial Organization have ceased to obey the orders of the Federation.[34]

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[31] *Matter of Showers Brothers Furniture Company* and *The Upholsterers, Furniture, Carpet and Awning Workers, Linoleum Workers Union, Local No. 184*, 4 N. L. R. B. 585.

[32] However, the Board amended its direction of election so that the name of the Upholsterers, which had a much larger membership in the unit than the Carpenters, would appear upon the ballot in place of the American Federation of Labor. The Board made this reservation: "If the Upholsterers should, as a result, be certified as the exclusive representative of the employees, it is to be understood that the Board's action will not affect whatever jurisdictional rights over the employees the Carpenters may have under the governing provisions of the American Federation of Labor."

[33] *Matter of Federal Knitting Mills Company and Bamberger Reinthal Company* and *International Ladies' Garment Workers Union*, 3 N. L. R. B. 257.

[34] The Board cites *Matter of Interlake Iron Corporation* and *Toledo Council, Committee for Industrial Organization*, 2 N. L. R. B. 1036, in which it stated: "In the present case, however, although technically both the contending unions may be said to be affiliated with the same organization, the American Federation of Labor, we should be blind, indeed, to

(B) THE EFFECT OF EXISTING CONTRACTS

The effect of existing contracts upon proceedings for investigation and certification of representatives has been considered by the Board in a number of cases.

An existing contract has been held to constitute no bar to an election or certification if the organization with which it was made did not represent a majority of the employees at the time the contract was executed.[35] In *Matter of Southern Chemical Cotton Company*,[36] the Board, in finding that a closed-shop contract was not a bar to an election, stated:

> If, as in this case, an employer enters into an agreement with one of two labor organizations at a time when both are claiming the right of exclusive representation, we must hold that the agreement cannot bar our conducting an election, unless we are convinced that at the time of its execution the labor organization with which it was made represented a majority of the employees.

Nor will a contract operate as a bar to an election where, because of the unfair labor practices of the employer, the organization with which the contract was made does not represent the free and uncoerced choice of a majority of the employees.[37] In *Matter of Mine B Coal Company*,[38] the evidence indicated that the employer had urged some of its employees to join the United Mine Workers of

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facts of common knowledge if we therefore concluded that both unions would submit to the authority of that body. Since the action by the Executive Council of the American Federation of Labor on September 5, 1936, suspending the international unions affiliated with the Committee for Industrial Organization, if not for a long time before, those unions have ceased to obey the orders of the Federation."

[35] See *Matter of Charles Cushman Shoe Company et al.* and *United Shoe Workers of America*, 2 N. L. R. B. 1015 (terms of the contract not stated); *Matter of American-West African Line, Inc.* and *National Marine Engineers' Beneficial Association*, 4 N. L. R. B. 1086 (closed-shop contract); *Matter of McKesson & Robbins, Inc., Blumauer Frank Drug Division* and *International Longshoremen & Warehousemens Union, Local 9, District 1, affiliated with the C. I. O.*, 5 N. L. R. B. 70 (closed-shop agreements); *Matter of American France Line et al.* (*Shepard Steamship Company*) and *International Seamen's Union of America*, 7 N. L. R. B. 79 (contract granting exclusive recognition and preference in employment).

[36] *Matter of Southern Chemical Cotton Company* and *Textile Workers Organizing Committee*, 3 N. L. R. B. 869.

[37] *Matter of Federal Knitting Mills Company and Bamberger Reinthal Company* and *International Ladies' Garment Workers Union*, 3 N. L. R. B. 257 (contract providing for recognition as sole bargaining agent); *Matter of National Electric Products Corporation* and *United Electrical and Radio Workers of America, Local No. 609*, 3 N. L. R. B. 475 (closed-shop contract); *Matter of Lenox Shoe Company, Inc.*, and *United Shoe Workers of America, affiliated with the Committee for Industrial Organization*, 4 N. L. R. B. 372 (closed-shop contract); *Matter of Pacific Greyhound Lines* and *Brotherhood of Locomotive Firemen and Enginemen*, 4 N. L. R. B. 520 (contract recognizing the Amalgamated as representative of the Company employees employed in certain capacities) where it was contended by the Amalgamated that, because of the contract, a presumption had arisen that it represented a majority of the employees when the contract was made, which the petitioning union must overcome by a preponderance of the evidence before the Board could direct an election. In answer to this contention the Board said: "Even if we should adopt the contention of the Amalgamated, which we do not, that the agreement of April 21 raises a presumption that the Amalgamated represented a majority of the Company's employees at that time and thus eliminated the question concerning representation, the presumption has been conclusively rebutted by the evidence directly to the contrary, indicating that the designation of the Amalgamated as representative was not the result of a free choice by a majority."

In *Matter of Friedman Blau Farber Company* and *International Ladies' Garment Workers' Union, Local No. 295*, 4 N. L. R. B. 151 (contract providing for recognition as sole bargaining agent) it was contended that even if the employees were coerced into joining the organization which on June 7 entered into a contract with the Company, the contract should nevertheless be a bar to an election, inasmuch as a majority of the employees, of their own free will, signed a resolution declaring that they were not coerced and approving the contract. The Board held: "In light of the Company's activities on June 7, the presentation of the resolution for signature openly, and upon Company property, did not afford to the employees an opportunity to express their desires in the matter freely and without coercion. It is apparent that . . . their choice of representatives has been influenced by factors which should be eliminated in choosing representatives under the provisions of the Act. It seems likely that a definitive expression of the employees' wishes will be obtained only after they are permitted to vote by a secret ballot free from the fear of retribution for expressing themselves adversely to the Company's wishes."

[38] *Matter of Mine B Coal Company* and *Progressive Miners of America, Local No. 54*, 4 N. L. R. B. 316.

America and had favored this union over the Progressive Miners of America. Consequently, the Board directed an election despite the existence of a contract with the United Mine Workers of America providing for a closed-shop and check-off.[39]

Another reason for holding that the existence of a contract does not affect the determination of the issues raised by the question concerning representation has been found in several cases in the fact that the contract was executed after the proceeding for investigation and certification was pending before the Board.[40] The same principle has been applied in cases involving the renewal of a contract after a petition for investigation of representatives had been filed with the Board, as in *Matter of American France Line et al. (Shepard Steamship Company)*,[41] and *Matter of Unit Cast Corporation*.[42] In *Matter of Pacific Lumber Inspection Bureau, Inc.*,[43] a contract recognizing Northwest Lumber Inspectors' Association as the sole bargaining agency provided for automatic renewal if written notice was not given at least 60 days before the expiration date. The Board, in its direction of election issued after said expiration date, found that the petition for investigation had been filed more than 60 days before the expiration date of the contract and that, therefore, the contract presented no barrier to the determination by the Board of representatives for the purposes of collective bargaining.

Where the contract is about to expire, the Board has held that it does not preclude the holding of an election or the certification of representatives. In *Matter of Atlantic Footwear Company, Inc.*,[44] the Board, in its decision and direction of election issued February 12, 1938, held that a contract which would terminate on February 15, 1938, presented no problem with respect to the Board's consideration of the issues in the case. A similar conclusion was reached in *Matter of Shipowners' Association of the Pacific Coast*,[45] in which the contract specified July 31, 1938, as the last day for notice of a desire to

[39] Obviously, no impediment to an investigation and certification of representatives by the Board is created by the existence of a contract with an organization which the Board finds had its inception in the unfair labor practices of the employer and which it orders the employer to disestablish. *Matter of H. E. Fletcher Co.*, and *Granite Cutters' International Association of America*, 5 N. L. R. B. 729; *Matter of Eagle Manufacturing Company* and *Steel Workers Organizing Committee*, 6 N. L. R. B. 492.

[40] *Matter of American-West African Line, Inc.* and *National Marine Engineers' Beneficial Association*, 4 N. L. R. B. 1086, where the union which entered into a closed-shop contract had notice of the filing of the petition on the day before the contract was signed; *Matter of Wilmington Transportation Company* and *Inland Boatmen's Union of the Pacific, San Pedro Division*, 4 N. L. R. B. 750, where the agreement granting exclusive recognition was entered into subsequent to the time that the petition was filed and subsequent to the time when notice of hearing was served upon all parties; *Matter of California Wool Scouring Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 782, in which the Board, after making a series of findings, concluded: "It is therefore clear that at the time the Company and the Amalgamated signed the closed-shop agreement they had knowledge that this proceeding was pending before the Board. Under the circumstances we conclude that the closed-shop agreement does not affect the determination of the issues herein." See also *Matter of Tennessee Electric Power Company* and *International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24, and *Matter of Joseph S. Finch & Co., Inc.* and *United Distillery Workers Union, Local No. 3*, 7 N. L. R. B. 1.

[41] *Matter of American France Line et al. (Shepard Steamship Company)* and *International Seamen's Union of America*, 7 N. L. R. B. 79.

[42] *Matter of Unit Cast Corporation* and *Steel Workers Organizing Committee*, 7 N. L. R. B. 129.

[43] *Matter of Pacific Lumber Inspection Bureau, Inc.* and *Northwest Lumber Inspectors' Union, Local No. 20,877*, 7 N. L. R. B. 529.

[44] *Matter of Atlantic Footwear Company, Inc.*, and *United Shoe Workers of America of the C. I. O.*, 5 N. L. R. B. 252.

[45] *Matter of Shipowners' Association of the Pacific Coast, Waterfront Employers Association of the Pacific Coast, The Waterfront Employers of Seattle, The Waterfront Employers of Portland, The Waterfront Employers Association of San Francisco, The Waterfront Employers Association of Southern California*, and *International Longshoremen's and Warehousemen's Union, District No. 1*, 7 N. L. R. B. 1002.

modify or terminate, and the Board's decision and certification of representatives was issued on June 21, 1938.[46]

The Board has also held that the existence of a contract does not preclude action by the Board where the contract in question has been in effect for a considerable period of time. In *Matter of Metro-Goldwyn-Mayer Studios*,[47] there was pleaded as a bar to the proceedings a written contract entered into between certain of the employers and Screen Playwrights, Inc. In answer to this contention the Board said:

> This agreement * * * is for a term of 5 years. A year has already expired and the evidence raises a substantial question as to whether the employees involved desire the Screen Playwrights to continue to represent them. We do not believe that, under the policies and provisions of the Act, employees should be precluded from having the opportunity to select new representatives for collective bargaining for a period as long as 5 years because of a contract running for that length of time. We therefore do not consider that the agreement * * * bars the certification of representatives at this time.[48]

In *Matter of Seiss Manufacturing Company*,[49] a written contract for a term of 1 year had been entered into on August 1, 1936, and, upon its expiration, had been extended pursuant to an oral agreement. The Board, in its decision and direction of election issued May 26, 1938, held:

> In view of the indefinite term and character of the alleged oral agreement, it cannot in any event preclude an investigation and determination of representatives by the Board.

The Board has also ruled that an existing contract does not operate as a bar to an election or certification by the Board in cases where "the unit described in the contract as appropriate, and on the basis of which the contract designates representatives for the purposes of collective bargaining differs * * * from the unit which the Board has found to be appropriate," as in *Matter of The Kinnear Manufacturing Company*.[50]

In *Matter of American France Line*,[51] the Board held that by filing the petitions for investigation and certification of representatives, the petitioning union had waived its rights to assert the existence of contracts which it had made with various companies included in the case as a bar to elections.[52]

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[46] See also *Matter of Sandusky Metal Products, Inc.* and *American Federation of Labor*, 6 N. L. R. B. 12 (direction of election issued March 16, 1938—contract operative until end of first pay period in April 1938); *Matter of Martin Bros. Box Company* and *Toledo Industrial Union Council*, 7 N. L. R. B. 88 (direction of election issued May 10, 1938—oral agreement expiring June 21, 1938); *Matter of Brown-Saltman Furniture Company* and *United Furniture Workers of America, Local No. 576, C. I. O.*, 7 N. L. R. B. 1174 (certification of representatives issued June 25, 1938—negotiatory period for new contract beginning July 1, 1938); *Matter of Arbuckle Bros.* and *Committee for Industrial Organization on behalf of employees of Arbuckle Bros.*, 7 N. L. R. B. 1247 (direction of election issued June 28, 1938—contract expiring July 18, 1938).

[47] *Matter of Metro-Goldwyn-Mayer Studios, and Motion Picture Producers Assn., et al.*, and *Screen Writers' Guild, Inc.*, 7 N. L. R. B. 662.

[48] See *Matter of Hubinger Company* and *Corn Products Workers Union, No. 19931, and Hubinger Company Employees Representation Plan*, 3 N. L. R. B. 802 and 4 N. L. R. B. 428, in which the contract involved became effective on December 1, 1935, and was to continue in effect until January 1, 1938. After the contract had been in effect for approximately a year and a half, the petitioning union, claiming a membership of a majority of the employees, demanded recognition as sole collective bargaining agent. The Board found that a question had arisen concerning the representation of employees and, on October 5, 1937, issued its direction of election.

[49] *Matter of Seiss Manufacturing Company* and *Committee for Industrial Organization*, 7 N. L. R. B. 481.

[50] *Matter of The Kinnear Manufacturing Company* and *Steel Workers Organizing Committee affiliated with Committee for Industrial Organization*, 4 N. L. R. B. 773.

[51] *Matter of American France Line et al.* and *International Seamen's Union of America*, 3 N. L. R. B. 64.

[52] In the same case, but with reference to the opposing union, National Maritime Union of America, the Board said: "Similarly the filing of petitions by N. M. U. in *Matter of*

Where by the terms of an agreement recognition is granted to the contracting labor organization as the representative of its members only, such a contract has no effect upon the determination of the question concerning representation. This principle was announced in *Matter of Northrop Corporation*,[53] in the following words:

> * * * the Company took the position that the agreement was a binding one, and that it prevented the Union from making any claim other than that of representing its own members * * * As we have decided before, the Act and not the particular agreement furnishes the rule that must guide the Board in its determination. The agreement in this case cannot foreclose the claim of the Union to be certified as the exclusive representative, which right must be decided solely by reference to section 9 (a) of the Act. Nor can the Union be said to be estopped by reason of any such agreement. The agreement therefore has no effect upon the determination of the issues in this proceeding.[54]

In *Matter of Red River Lumber Company*,[55] the existing contract provided that it was to be automatically terminated if and when the Board found the contracting union not to be the designated exclusive bargaining agency. Since the contract contemplated action by the Board, it obviously did not foreclose the question concerning representation. In *Matter of Zellerbach Paper Company*,[56] the employer signed a contract by the terms of which it agreed to negotiate with the union, provided a majority of its employees were members of the contracting union. In *Matter of Consolidated Aircraft Corporation*,[57] the contract, by its own terms, was terminable if a majority of the employees in the unit should elect other representation. In view of the express terms of these contracts, it was clear that the contracts were no bars to elections, and the Board found accordingly.

International Mercantile Marine et al. and *National Maritime Union of America*, 2 N. L. R. B. 971, precludes any assertion of rights under contracts which it has made with any of these companies." See also *Matter of Cote Bros. Inc.* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Bakery Drivers Local No. 686*, 7 N. L. R. B. 70.

[53] *Matter of Northrop Corporation* and *United Automobile Workers, Local No. 229*, 3 N. L. R. B. 228.

[54] The principle has been followed in these cases: *Matter of City Auto Stamping Company* and *International Union, United Automobile Workers of America, Local No. 12*, 3 N. L. R. B. 306; *Matter of Pennsylvania Greyhound Lines et al. (Southeastern Greyhound Lines)* and *The Brotherhood of Railroad Trainmen*, 3 N. L. R. B. 622, 640; *Matter of General Mills, Inc., doing business under the trade name of Washburn Crosby Company* and *Flour, Feed, and Cereal Workers Federal Union No. 19184, and United Grain and Cereal Workers, Local No. 240*, 3 N. L. R. B. 730; *Matter of McKesson & Robbins, Inc., Blumauer Frank Drug Division* and *International Longshoremen & Warehousemens Union, Local 9, District 1, affiliated with the C. I. O.*, 5 N. L. R. B. 70; *Matter of Horton Manufacturing Company* and *United Electrical & Radio Workers of America, Local 904*, 6 N. L. R. B. 2 and 7 N. L. R. B. 557; *Matter of Diamond Iron Works* and *United Electrical Radio Machine Workers of America, Local 1140*, 6 N. L. R. B. 94; *Matter of Unit Cast Corporation* and *Steel Workers Organizing Committee*, 7 N. L. R. B. 129; *Matter of Santa Fe Trails Transportation Company* and *International Association of Machinists, Local Lodge 1308*, 7 N. L. R. B. 358; *Matter of Fisher Body Corporation* and *United Automobile Workers of America, Local 76*, 7 N. L. R. B. 1083; *Matter of Pressed Steel Car Company, Inc.* and *Steel Workers Organizing Committee*, 7 N. L. R. B. 1099. Since an agreement which grants recognition to the contracting union for its members only does not preclude the certification of representatives, it is clear that there is no merit in the contention that the individual contracts under which a majority of screen writers are employed bar the certification of representatives, *Matter of Metro-Goldwyn-Mayer Studios, and Motion Picture Producers Assn., et al.*, and *Screen Writers' Guild, Inc.*, 7 N. L. R. B. 662. Equally clear is the fact that the posting of a notice or statement of policy promulgated as a unilateral act on the part of the employer and without the assent of the union does not bar a certification by the Board, *Matter of Daily Mirror, Inc.* and *The Newspaper Guild of New York*, 5 N. L. R. B. 362; *Matter of Lunkenheimer Company* and *Steel Workers Organizing Committee*, 4 N. L. R. B. 1131.

[55] *Matter of Red River Lumber Company* and *Lumber and Sawmill Workers Union Local No. 53 of International Woodworkers of America*, 5 N. L. R. B. 663.

[56] *Matter of Zellerbach Paper Company* and *International Longshoremen and Warehousemen's Union, Local 1-26*, 4 N. L. R. B. 348.

[57] *Matter of Consolidated Aircraft Corporation* and *International Union, United Automobile Workers of America, Local No. 506, C. I. O.*, 7 N. L. R. B. 1061.

In several cases the problem of the effect of an existing contract was not passed upon by the Board because none of the parties claimed that the contract constituted a bar to the proceedings.[58]

In *Matter of Superior Electrical Products Co.*,[59] the organization which filed the petition for investigation and certification claimed to represent employees in the metal polishing department. The Board found that on August 2, 1937, the company had executed a contract recognizing a rival union as the exclusive bargaining agency for all the production employees; that the contract was to remain in effect for 1 year from the date of its execution; and that a majority of the employees in the metal polishing department favored the execution of the contract and participated in negotiations for it. Under these circumstances the Board concluded that no question concerning representation existed and, in its decision issued March 17, 1938, stated:

* * * we will not proceed with an investigation of representatives until such time as the contract is about to expire and a question then exists as to the proper representative for collective bargaining with respect to the negotiations of a new agreement.

We will, therefore, dismiss the present petitions without prejudice to renewal at a reasonable time before the expiration of the agreement * * *.

(C) THE EFFECT OF PRIOR ELECTIONS

The question concerning representation is not affected by the results of a prior election sponsored by the employer. In *Matter of The Heller Brothers Company of Newcomerstown*,[60] the Board said:

* * * we have invariably followed the policy of disregarding the results of elections conducted by employers. Experience has shown that the presence of supervisory employees at the polls, the conduct of the election on the employer's property, the possibility of hidden identification marks on the ballots, taken together with prior manifestations of preference for a particular labor organization, preclude the casting of a ballot which registers the free and independent choice of the employee. Although in the instant case, the mechanics of the balloting were not impugned, we shall not depart from our usual policy.[61]

On the other hand, a consent election which was conducted under the supervision of a Regional Director and which was found by the Board to have been conducted in a fair and impartial manner and with a proper decorum being maintained at the polls has been found to resolve the question concerning representation. *Matter of The National Sugar Refining Company of New Jersey.*[62] However, the Board is not precluded from determining bargaining representatives by a consent election which included the designation of an organization found to be company-dominated, as in *Matter of S. Blechman & Sons, Inc.*;[63] or by a consent election in which the employer, through

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[58] *Matter of Shell Chemical Company* and *Oil Workers International Union, formerly International Association of Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 259; *Matter of Novelty Slipper Co.* and *Employees of Novelty Slipper Co., Inc., and Boot & Shoe Workers' Union, A. F. of L.*, 5 N. L. R. B. 264; *Matter of Woodville Lime Products Company* and *American Federation of Labor*, 7 N. L. R. B. 396.

[59] *Matter of Superior Electrical Products Co.* and *Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 18*, 6 N. L. R. B. 19.

[60] *Matter of The Heller Brothers Company of Newcomerstown* and *International Brotherhood of Blacksmiths, Drop Forgers, and Helpers*, 7 N. L. R. B. 646.

[61] For a similar holding that an election sponsored by the employer is not decisive of the issues involved in the determination of representatives, see *Matter of Northrop Corporation* and *United Automobile Workers, Local No. 229*, 3 N. L. R. B. 228.

[62] *Matter of The National Sugar Refining Company of New Jersey* and *International Longshoremen's Association, Local 1476, Sugar Refinery Workers*, 4 N. L. R. B. 276.

[63] *Matter of S. Blechman & Sons, Inc.* and *United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization* 4 N. L. R. B. 15.

its agents, engaged in numerous acts of interference, restraint, and coercion, as in *Matter of United Carbon Company, Inc.*;[64] or by a consent election agreement which contained a provision prohibiting formal electioneering on the day of the election and failed to establish machinery for settling a protest based upon an alleged violation of the provision, as in *Matter of Minneapolis-Moline Power Implement Company*.[65]

2. Certification Without an Election

Section 9 (c) empowers the Board to certify representatives with or without an election. If a labor organization can present evidence which the Board considers adequate proof that such organization represents a majority of the employees it may be certified without the necessity of an election.[66] If no such evidence is presented or the evidence presented is considered inadequate the Board will order an election to be held.

3. Directions of Election

(A) DATE ON WHICH ELIGIBILITY OF VOTERS IS DETERMINED

The Board has adopted no fixed rule relative to the date to be used for the determination of the eligibility of employees to vote in an election, but has considered the circumstances existing in each case. Where the parties have agreed that eligibility be determined as of a particular date, the Board has ordinarily directed that such date be used.[67] Similarly, the Board has in several cases where the parties have so agreed, directed that persons whose names appear on either of two specific pay rolls[68] or on a list appended to the direction of election[69] shall be eligible to vote. Where the pay roll for a particular date was submitted in evidence, the Board has in several cases directed that eligibility to vote be determined on the basis of such pay roll in the absence of any testimony indicating that another date was more suitable for the purpose,[70] or in the absence of recommendation by any party as to the date to be used.[71] The Board has, however, adopted an eligibility date differing from that agreed upon

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[64] *Matter of United Carbon Company, Inc.* and *Oil Workers International Union, Local 256*, 7 N. L. R. B. 598.

[65] *Matter of Minneapolis-Moline Power Implement Company* and *International Association of Machinists, Local No. 1037*, 7 N. L. R. B. 840.

[66] What constitutes such adequate proof is considered in sec. F, below.

[67] *Matter of Armour & Co. (West Harlem Market, et al.)* and *The Committee for Industrial Organization*, 4 N. L. R. B. 951; *Matter of Cudahy Brothers Packing Co., a corporation* and *Packinghouse Workers Industrial Union*, 4 N. L. R. B. 1171; *Matter of Valley Mould and Iron Corporation* and *Lodge 1029, Amalgamated Association of Iron, Steel, and Tin Workers of North America*, 5 N. L. R. B. 95; *Matter of Beaumont Manufacturing Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 100; *Matter of New Idea, Inc.* and *The A. F. of L.*, 5 N. L. R. B. 381.

[68] See *Matter of Ira S. Bushey & Sons, Inc.*, and *Industrial Union of Marine & Shipbuilding Workers of America, Local No. 13*, 4 N. L. R. B. 1181; *Matter of Atlantic Basin Iron Works* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13*, 5 N. L. R. B. 402; *Matter of Stephen Ranson, Inc.* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13*, 5 N. L. R. B. 689.

[69] *Matter of Goldstein Hat Manufacturing Company* and *United Hatters, Cap and Millinery Workers International Union, Local 57*, 4 N. L. R. B. 125; *Matter of Roma Wine Company* and *International Longshoremen's & Warehousemen's Union*, 7 N. L. R. B. 135.

[70] *Matter of Eagle Manufacturing Company* and *Steel Workers Organizing Committee*, 6 N. L. R. B. 492; *Matter of California Wool Scouring Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 782.

[71] *Matter of Consolidated Aircraft Corporation* and *International Union, United Automobile Workers of America, Local No. 506, C. I. O.*, 7 N. L. R. B. 1061.

where it finds on the basis of the facts presented that some other standard of eligibility is more suitable.[72]

In many cases the Board's directions of elections have provided that those persons employed during the pay-roll period immediately preceding the date of the direction shall be eligible to vote.[73] In still other cases the Board has provided that eligibility to vote shall be based upon the pay-roll period immediately preceding the date of the filing of the petition[74] or the pay-roll period preceding the date of the hearing.[75] As indicated above, the variance in the eligibility dates has resulted from the different factual situations presented.

In a number of cases involving the existence of a strike, the Board's direction of elections have provided that those employees on the pay roll on the last working day[76] or during the pay-roll period[77] preceding the strike shall be eligible to vote. Similarly, in cases in which the employer has closed down its plant, the Board has frequently based eligibility to vote in the election on the pay roll next preceding the date of closing.[78]

The question of the eligibility date is also important in connection with laid-off employees. In determining the status of employees that have been laid off, the Board has followed the rule of allowing them to participate in the election where they have reason to anticipate returning to work when the operations of the employer are increased.[79] Accordingly, in *Matter of Robbins & Myers, Incorporated*,[80] the Board selected an eligibility date which was a month earlier than the filing of the petition because after the date chosen a substantial number of employees were laid off, under circumstances, however, where

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[72] *Matter of Waggoner Refining Company, Inc., and W. T. Waggoner Estate* and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 6 N. L. R. B. 731.

[73] *Matter of Swift & Company* and *United Automobile Workers of America, Local No. 265*, 7 N. L. R. B. 287; *Matter of United Carbon Company, Inc.* and *Oil Workers International Union, Local 286*, 7 N. L. R. B. 598; *Matter of Semet-Solvay Company* and *Detroit Coke Oven Employees Association and International Union, United Automobile Workers of America, Local 174*, 7 N. L. R. B. 511.

[74] *Matter of Zellerbach Paper Company* and *International Longshoremen and Warehousemen's Union, Local 1-26*, 4 N. L. R. B. 348; *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412; *Matter of Richardson Company* and *Local Union No. 442, U. A. W. A.*, 4 N. L. R. B. 835; *Matter of A. Zerega's Sons, Inc.* and *Committee for Industrial Organization on behalf of The Employees of A. Zerega's Sons, Inc.*, 5 N. L. R. B. 496; *Matter of Simplex Wire and Cable Company* and *Wire & Cable Workers Federal Local Union 21020, affiliated with the A. F. of L.*, 6 N. L. R. B. 251; *Matter of National Candy Company, Inc., Veribrite Factory* and *Local 351 Candy Workers, affiliated with Bakery and Confectionery Workers International Union of America (A. F. of L. Affil.)*, 7 N. L. R. B. 1207.

[75] *Matter of Lidz Brothers, Incorporated* and *United Wholesale Employees, (Local No. 65)*, 5 N. L. R. B. 757; *Matter of Pressed Steel Car Company, Inc.* and *Steel Workers Organizing Committee*, 7 N. L. R. B. 1099.

[76] *Matter of Charles Cushman Shoe Company et al.* and *United Shoe Workers of America*, 2 N. L. R. B. 1015; *Matter of Federal Knitting Mills Company and Bamberger Reinthal Company* and *International Ladies' Garment Workers Union*, 3 N. L. R. B. 257; *Matter of North Star Specialty Co.* and *International Association of Machinists, Local 382*, 5 N. L. R. B. 763; *Matter of Carrollton Metal Products Company* and *Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1571*, 6 N. L. R. B. 569.

[77] *Matter of Solomon Manufacturing Company* and *Independent Cotton Workers' Union*, 3 N. L. R. B. 926; *Matter of Friedman Blau Farber Company* and *International Ladies' Garment Workers' Union, Local No. 295*, 4 N. L. R. B. 151; *Matter of Lenox Shoe Company, Inc.* and *United Shoe Workers of America, affiliated with the Committee for Industrial Organization*, 4 N. L. R. B. 372.

[78] *Matter of Goodyear Tire and Rubber Company of California* and *United Rubber Workers of America, Local 131*, 3 N. L. R. B. 431; *Matter of Seiss Manufacturing Company* and *Committee for Industrial Organization*, 7 N. L. R. B. 481.

[79] See *Matter of City Auto Stamping Company* and *International Union, United Automobile Workers of America, Local No. 12*, 3 N. L. R. B. 306; *Matter of National Electric Products Corporation* and *United Electrical and Radio Workers of America, Local No. 609*, 3 N. L. R. B. 475; *Matter of Danahy Packing Company, Klinck Packing Company, Inc., Jacob Dold Packing Company* and *United Butchers, Meat Cutters and Packers Local 105*, 3 N. L. R. B. 354.

[80] *Matter of Robbins & Myers, Incorporated* and *Joint American Federation Committee for the Robbins & Myers Co. Plant*, 7 N. L. R. B. 1119.

they could reasonably expect to return to the company's employ. Similarly, in *Matter of Unit Cast Corporation*,[81] the Board adopted a pay-roll date which would include the names of a large number of workers subsequently laid off but who were, nevertheless, considered by the company as only temporary lay-offs and were allowed to retain their seniority rights.[82] On the other hand, in *Matter of The International Nickel Company, Inc.*,[83] the eligibility date was selected with reference to the fact that prior thereto 200 employees had been permanently laid off and their names removed from the pay roll.[84]

The selection of an eligibility date has also been affected by seasonal fluctuations in production and in the number of employees. Here, again, the Board has developed the principle of basing the eligibility to vote upon the likelihood of the seasonal employees of one season being employed during the succeeding season. Thus, in *Matter of National Distillers Products Co.*,[85] the peak months of production were found to be October, November, and December. In discussing the factors which influenced its determination of eligibility, the Board said:

> Most of the seasonal employees are women who do not often find other employment during the year. The Company gives preference to them when additional employees are needed. Approximately 80 percent of the seasonal employees of 1 year are employed during the peak period of the succeeding year. It is evident that seasonal employees who have worked for any substantial length of time during a peak season are likely to be reemployed at some future date, and accordingly have an interest in conditions of employment which might be agreed upon during the year even though not employed at the particular time the agreements are made. That interest entitles them to participate in the selection of representatives.
>
> We hold that all employees in the appropriate unit whose names appear on the pay-roll records of the Company during any 4 weeks in the months of October, November, and December 1937, are entitled to participate in the selection of representatives.[86]

In *Matter of New York Handkerchief Company*,[87] the Board adopted the date of the hearing as the eligibility date so as to exclude certain seasonal employees who had, prior to that date, been em-

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[81] *Matter of Unit Cast Corporation* and *Steel Workers Organizing Committee*, 7 N. L. R. B. 129.

[82] See also *Matter of Diamond Iron Works* and *United Electrical Radio Machine Workers of America, Local 1140*, 6 N. L. R. B. 94, where the Board held that 24 men who were laid off after the eligibility date which was selected had acquired a seniority status which would give them preference when the company needed more men and were, therefore, eligible voters.

[83] *Matter of The International Nickel Company, Inc.* and *Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America, through Steel Workers Organizing Committee*, 7 N. L. R. B. 46.

[84] See also *Matter of Union Lumber Company* and *Lumber & Sawmill Workers Union Local 2826*, 7 N. L. R. B. 1094, in which eligibility was based on the pay roll period next preceding the date of the hearing since the Board found that persons who were laid off prior thereto, had no definite expectancy of reemployment. In *Matter of Metro-Goldwyn-Mayer Studios, and Motion Picture Producers Assn., et al.*, and *Screen Writers' Guild, Inc.*, 7 N. L. R. B. 662, the Board held that "there exists no definite expectancy of regularly recurring employment of a screen writer with the employer for whom the screen writer previously performed services. It must be concluded, therefore, that only those screen writers actually employed by the Companies may be considered to be employees of the respective Companies * * *. Inasmuch as screen writers frequently shift their employment from one Company to another, it is desirable to select a date for determining eligibility which will most closely reflect the employment situation at the time of the election. Eligibility to vote in the elections will, therefore, be extended to screen writers within the appropriate unit employed by the Companies on the date of the issuance of the Direction of Elections * * *."

[85] *Matter of National Distillers Products Co.* and *United Distillery Workers of N. A., Local No. 484, affiliated with Committee for Industrial Organization*, 5 N. L. R. B. 862.

[86] See *Matter of Alabama Drydock & Shipbuilding Co.* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 18*, 5 N. L. R. B. 149, where because of the constant fluctuation and rotation of employment, the Board adopted the pay rolls of the company for a given 4 months' period.

[87] *Matter of New York Handkerchief Company* and *International Ladies Garment Workers Union, Local No. 76*, 5 N. L. R. B. 703.

ployed as additional help but who seldom returned to work from season to season.[88]

Where cases have also involved allegations that the employer has engaged in unfair labor practices and the Board has so found, it has frequently directed that the election be postponed until after the effects of the unfair labor practices had been dissipated and, in view of the uncertainty as to the election date, has directed that an election be held among the persons employed during a pay-roll period to be determined in the future. *Matter of Utah Copper Company*,[89] and *Matter of M. Lowenstein & Sons, Inc.*[90]

(B) GENERAL EXCEPTIONS GOVERNING ELIGIBILITY OF VOTERS

As a general rule, the Board has directed that its elections be held among the employees who were employed on the date on which the eligibility of voters is determined, except those who have since quit or been discharged for cause.[91] In *Matter of Marlin-Rockwell Corporation*,[92] where the exception was held not to apply to employees who were laid off because of slack work, the Board stated:

* * * those employees who were laid off because of lack of work retained their employee status and clearly had an interest in the election. They were entitled to vote. The business of the Company is seasonal and is largely dependent upon the automotive trade. In other lay-offs many of the 174 employees above-mentioned have been included. They expect, and reasonably so, to be reemployed upon an improvement in business conditions. The Company maintains a list of all men laid off so that they may be called back as needed. The usual policy of the Company is to reemploy those laid off as business conditions warrant. The words "excluding those who have since quit or been discharged for cause" used in the Direction of Election were not intended and should not be construed to exclude employees who were severed from employment because of slack work under such conditions as exist in the instant case.[93]

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[88] See also *Matter of American Sugar Refining Company* and *Committee for Industrial Organization*, 4 N. L. R. B. 897, in which the Board refused to adopt the date urged by the rival labor organizations for the reason that the number of employees had been substantially reduced since that time, and the employees selected for dismissal after the production peak had passed were those who had been hired to perform the additional work created by increased production, and seniority governed the order of dismissal. The Board based the eligibility to vote upon the pay roll preceding the date of the hearing. For a similar reason the Board rejected the eligibility date urged by one of the parties in *Matter of Simmons Company* and *Steel Workers Organizing Committee*, 6 N. L. R. B. 208, because subsequent to that time the company inaugurated a policy of working its employees overtime during peak periods, of division of work at other times, and of avoiding the use of casual employees. In *Matter of The Texas Company, West Tulsa Works*, and *Oil Workers' International Union, Local No. 217*, 4 N. L. R. B. 182, the Board selected the pay-roll period next preceding the date of the direction of election, since shortly before that time the company had ceased employing "schoolboys" and other workers employed temporarily to replace permanent employees on vacation.

[89] *Matter of Utah Copper Company, a corporation, and Kennecott Copper Corporation, a corporation*, and *International Union of Mine, Mill, and Smelter Workers, Local No. 392*, 7 N. L. R. B. 928.

[90] *Matter of M. Lowenstein & Sons, Inc.* and *Bookkeepers', Stenographers' and Accountants' Union, Local No. 16, United Office and Professional Workers of America, C. I. O.*, 6 N. L. R. B. 216.

[91] See, for example, *Matter of Bishop & Company, Inc.*, and *United Cracker, Bakery, and Confectionery Workers, Local Industrial Union, No. 212*, 4 N. L. R. B. 514; *Matter of Strain Manufacturing Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 320: *Matter of Arbuckle Bros.* and *Committee for Industrial Organization on behalf of employees of Arbuckle Bros.*, 7 N. L. R. B.1247.

[92] *Matter of Marlin-Rockwell Corporation* and *Local No. 338, United Automobile Workers of America*, 7. N. L. R. B. 836.

[93] See *Matter of Paragon Rubber Co.-American Character Doll Company* and *Toy & Novelty Workers Organizing Committee of the C. I. O.*, 6 N. L. R. B. 23, in which the Board said: "The companies seek to exclude from voting a number of persons laid off * * * because of a seasonal slump in business, who have found employment elsewhere. The evidence indicates, however, that the companies anticipate the reemployment of such persons when business again picks up. We feel, therefore, that such persons should be considered as retaining the status of employees who have been laid off but not discharged." See also the cases referring to laid-off employees discussed in connection with the date on which eligibility of voters is determined.

The words "discharged for cause" have also been held not to apply to persons whom an employer has discriminated against within the meaning of section 8 (3) of the act, in the absence of a refusal by such persons of an offer of reinstatement.[94] Where at the time of the election there is pending before the Board the question of whether certain employees have been so discriminated against, such employees have been allowed to cast ballots which have been segregated pending the Board's decision with respect to the unfair labor practices.[95]

Employees who are temporarily absent for various reasons such as illness, injury, and the like, on the eligibility date have been held to be included among the eligible voters.[96]

(C) THE PERIOD WITHIN WHICH THE ELECTION IS DIRECTED TO BE HELD

The direction of election names the person who, as agent of the Board, shall conduct each election, and in cases of industrial plants generally states that the election shall be held within a designated period, thus leaving the exact day to be determined by the agent.[97] The period stated in the direction of election usually varies from 10 to 30 days, depending on the circumstances of the case, an important factor being the number of persons who are to vote.

The Board has often provided that an election be held at such time as the Board would thereafter direct in cases where the employer has been found to have engaged in unfair labor practices and the Board has felt that the election should be delayed until there has been sufficient compliance with the Board's order to dissipate the effects of the unfair labor practices and to permit an election uninfluenced by the employer's conduct.[98] Similarly, where charges have been filed alleging that the employer has engaged in unfair labor practices, the Board has frequently postponed the election indefinitely pending the investigation and determination of the charges.[99] However, in some cases the Board has been of the opinion that the election should be held as ordered, where it has had an opportunity to complete its investigation

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[94] *Matter of Williams Manufacturing Company, Portsmouth, Ohio* and *United Shoe Workers of America, Portsmouth, Ohio*, 6 N. L. R. B. 135.

[95] *Matter of Fleischer Studios, Inc.* and *Commercial Artists & Designers Union—American Federation of Labor*, 3 N. L. R. B. 207; *Matter of Carrollton Metal Products Company* and *Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1571*, 4 N. L. R. B. 142; *Matter of Clyde-Mallory Lines* and *Commercial Telegraphers Union, Marine Division—A. F. of L.*, 5 N. L. R. B. 503.

[96] *Matter of Huth & James Shoe Mfg. Company* and *United Shoe Workers of America*, 3 N. L. R. B. 220; *Matter of Great Lakes Engineering Works* and *Detroit Metal Trades Council*, 3 N. L. R. B. 825; *Matter of R. C. Mahon Company* and *Local 1279, Steel Workers Organizing Committee*, 5 N. L. R. B. 257; *Matter of Armco Finishing Corporation, Inc.* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 370.

[97] However, see *Matter of The Globe Machine and Stamping Co.* and *Metal Polishers Union, Local No. 3; International Association of Machinists, District No. 54; Federal Labor Union 18788; and United Automobile Workers of America*, 3 N. L. R. B. 294, in which, after a postponement, the holding of the election was directed for a specific day.

[98] *Matter of Lenox Shoe Company, Inc.* and *United Shoe Workers of America, affiliated with the Committee for Industrial Organization*, 4 N. L. R. B. 372; *Matter of Semet-Solvay Company* and *Detroit Coke Oven Employees Association and International Union, United Automobile Workers of America, Local 114*, 7 N. L. R. B. 511; *Matter of M. Lowenstein & Sons, Inc.* and *Bookkeepers', Stenographers' and Accountants' Union, Local No. 16, United Office and Professional Workers of America, C. I. O.*, 6 N. L. R. B. 216; *Matter of Industrial Rayon Corporation, a Delaware Corporation*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 877.

[99] *Matter of United States Coal & Coke Company* and *Union of Lynch Employees and United Mine Workers of America*, 3 N. L. R. B. 398; *Matter of Pacific Lumber Inspection Bureau, Inc.* and *Northwest Lumber Inspectors' Union, Local No. 20877*, 7 N. L. R. B. 529. See also *Matter of Paragon Rubber Co.-American Character Doll Company* and *Toy & Novelty Workers Organizing Committee of the C. I. O.*, 7 N. L. R. B. 965, in which no formal charges were filed, but a request for postponement alleged that the effects of intimidation and coercion exercised by the companies in a prior election which the Board had declared to be null and void would not disappear for at least a period of 3 weeks.

of the charges, as in *Matter of The American Brass Company*,[1] or where the charges have been withdrawn, as in *Matter of Atolia Mining Co.*[2]

(D) THE BALLOT

The names of all parties participating in the hearing and claiming to represent employees within the unit which the Board has found appropriate are normally placed upon the ballot.[3] The Board has, however, made no provision for the designation upon the ballot of a labor organization which it has found to have been dominated and interfered with by the employer.[4] It has refused a place upon the ballot to a labor organization which, although duly served with notice of the hearing, refrained from becoming a party to the proceeding or participating therein.[5] It has permitted a labor organization in several cases to withdraw its name from the ballot subsequent to the issuance of the direction of election.[6] In *Matter of Atolia Mining Co.*,[7] it was not clear from the record whether a particular labor organization desired to have its name appear upon the ballot in view of the Board's denial of a request that the holding of the election be delayed. The Board accordingly provided for the participation in the election by such labor organization, but stated that it would amend the direction of election if the labor organization requested within a specified period that its name should not appear upon the ballot.

Where only one labor organization[8] claims the right to represent the employees, the Board's direction of election provides that an election shall be conducted to determine whether or not the employees desire that labor organization to represent them. In such cases, the ballot gives the employees the opportunity to vote for or against

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[1] *Matter of The American Brass Company* and *The Waterbury Brass Workers' Union*, 6 N. L. R. B. 723 and 7 N. L. R. B. 85.

[2] *Matter of Atolia Mining Co.* and *Federal Labor Union, Local 21,464, A. F. of L.*, 7 N. L. R. B. 980.

[3] In *Matter of American Furniture Company* and *Textile Workers Organizing Committee*, 4 N. L. R. B. 710, the Board pointed out: "The Act does not limit the employees' choice of representatives to labor organizations in which they participate as members or otherwise. Section 2 (4) of the Act defines 'representatives' to include *any* individual or labor organization." See also *Matter of Pennsylvania Greyhound Lines, et al. (Southeastern Greyhound Lines)* and *The Brotherhood of Railroad Trainmen*, 3 N. L. R. B. 622, 640; *Matter of Fisher Body Corporation* and *United Automobile Workers of America, Local 76*, 7 N. L. R. B. 1083. In *Matter of Rossie Velvet Company* and *Charles B. Rayhall and Textile Workers Organizing Committee of the Committee for Industrial Organization*, 3 N. L. R. B. 804, a petition for investigation and certification was filed by an individual employee. The Board found that it was not necessary to consider the inclusion of his name on any ballot used in the election which it directed for the reason that "he was not authorized by any employees to represent them" in the proceeding.

[4] *Matter of S. Blechman & Sons, Inc.* and *United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15; *Matter of New Idea Inc.* and *The A. F. of L.*, 5 N. L. R. B. 381; *Matter of The Falk Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528*, 6 N. L. R. B. 654; *Matter of Swift & Company* and *United Automobile Workers of America, Local No. 265*, 7 N. L. R. B. 287; *Matter of Semet-Solvay Company* and *Detroit Coke Oven Employees Association* and *International Union, United Automobile Workers of America, Local 174*, 7 N. L. R. B. 511.

[5] *Matter of Ira S. Bushey & Sons, Inc.*, and *Industrial Union of Marine & Shipbuilding Workers of America, Local No. 13*, 5 N. L. R. B. 904; *Matter of American France Line et al.* and *International Seamen's Union of America*, 3 N. L. R. B. 64, 75.

[6] *Matter of Pacific Gas and Electric Company* and *United Electrical & Radio Workers of America*, 4 N. L. R. B. 180; *Matter of Schick Dry Shaver Company* and *Lodge No. 1557, International Association of Machinists*, 4 N. L. R. B. 246; *Matter of National Distillers Products Co.* and *United Distillery Workers of N. A., Local No. 484, affiliated with Committee for Industrial Organization*, 6 N. L. R. B. 89.

[7] *Matter of Atolia Mining Co.* and *Federal Labor Union, Local 21, 464, A. F. of L.*, 7 N. L. R. B. 980.

[8] The term "labor organization" as used in this paragraph does not include a labor organization which the Board has found to have been dominated or interfered with by the employer.

the named organization. Where two or more labor organizations claim the right to represent the employees, the direction of election provides that an election shall be conducted to determine whether the employees desire to be represented by any one of the labor organizations or by none of them. In such cases, a place upon the ballot is given each organization and a space is provided where the employees may indicate that they do not desire to be represented by any of the labor organizations. In *Matter of Interlake Iron Corporation*,[9] the Board discussed in some detail its policy of providing for a space on the ballot, in cases in which more than one labor organization is involved, where employees can indicate that they do not want any of the labor organizations named to represent them.[10] The Board stated:

> It is obvious that with ballots of the type prescribed by the Board a small number of employees voting "neither" may in some cases prevent either of the designated unions from securing a majority. Counsel for Steel Workers Organizing Committee argued that a minority favoring neither union might, therefore, thwart the desires of a vastly greater number of employees and that the Board's policy was placing too much emphasis upon the rights of a minority.
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> The Act, however, does not require an unwilling majority of employees to bargain through representatives. It merely guarantees and protects that right of a majority if it chooses to exercise it. Yet if the opportunity of voting against the organizations named on the ballot were denied, a majority might be forced against its will to accept representation by one or other of the nominees. The policy adopted by the Board is designed merely to make sure that the votes recorded for a particular representative express a free choice rather than a choice in default of the possibility of expressing disapproval of both or all proposed representatives. * * *.
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> It was contended by counsel for Steel Workers Organizing Committee that the privilege of an employee to indicate that he does not desire either of the named unions to represent him, if it must be preserved, could also be expressed by refraining from voting or by casting a blank ballot. In line with other authorities both before and after (*Virginian Railway Company* v. *System Federation No. 40*, 300 U. S. 515, 57 S. Ct. 592) our decision, however, we indicated in *Matter of R. C. A. Manufacturing Company, Inc.*, (*supra*) that those not voting would be presumed to acquiesce in the choice of the majority who do vote, and thus the employee who does not desire to be represented by either designated union would not express this preference by refraining from voting. As to the solution of casting a blank ballot, the practice of the Board, again in line with other authorities, (*The Association of Clerical Employees of the A. T. & S. F. Railway System et al.* v. *Brotherhood of Railway and Steamship Clerks et al.*, 85 F. (2d) 152 (C. C. A. 7th, 1936)) has been to hold that a blank ballot is to be regarded as a failure to vote by one qualified to do so. We see no advantage in forcing employees who disapprove of the nominees to adopt the rather ambiguous method of expression involved in casting a blank ballot, when their choice can be clearly indicated by providing a space therefor.
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> For the reasons which we have outlined, it is the conclusion of the Board that a free expression of the desires of the majority of the employees in the unit found appropriate in the present case demands that the ballot provide for a space in which employees may indicate that they do not desire to be represented by either of the named organizations. The motion to amend the Direction of Election by striking therefrom the words "or by neither" is hereby denied.[11]

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[9] *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 4 N. L. R. B. 55.

[10] This provision appears in many directions issued subsequent to July 1, 1937. See *Matter of American France Line et al.* and *International Seamen's Union of America*, 3 N. L. R. B. 64, 75.

[11] In a dissenting opinion, Mr. Edwin S. Smith stated:

"I fully appreciate the force of the argument that a majority, not desiring representation by any labor organization named on a ballot, should not be forced to be represented in collective bargaining by an agency which is merely the majority choice of an actual minority of employees participating in the election. This problem can be met, however, without raising the other difficulties presented by the solution approved by the majority of the Board.

"I would permit the 'or by neither' place to continue to appear on the ballot. I would provide, however, that unless the ballots marked in this space constitute a majority of the

(E) CONDUCT OF THE ELECTION

The direction of elections issued by the Board leave the details of the election procedure to be determined by the person who is named as the Board's representative to conduct the election.[12] Ordinarily each voter must personally cast his ballot in the presence of, and at a place designated by, the representative of the Board. In some instances, however, the Board has permitted voting by mail. Thus, in *Matter of Pacific Gas and Electric Company* [13] and in *Matter of Pacific Greyhound Lines*,[14] the Board said:

> We expressly authorize the use of the United States mail for such purposes and the use of agents, if feasible, to journey through the Company's various territorial divisions to conduct elections at appropriate places, collecting the votes in sealed envelopes for delivery to the Regional Director.

In *Matter of United Press Associations*,[15] the terms and conditions of the election were agreed upon in stipulations entered into by the parties, and the secret ballot was conducted through the mails and by cablegrams. To be acceptable, all returned ballots had to show a postmark of not later than midnight of a given date.[16]

In *Matter of Charles Cushman Shoe Company*,[17] the Board's direction provided for elections to be conducted among those persons in the appropriate unit employed as of March 24, 1937. In regard to an objection to the elections which had been conducted the Board said:

> Persons were permitted to vote in an election by signing affidavits to the effect that they were employed by the particular company involved in such election on March 24, 1937. The objection is made that voting lists against which to check the voters should have been provided by the Board and that the carrying out of the elections by means of affidavits violated the Direction for Elections issued by the Board and was injurious to the parties involved. The Direction for Elections authorized the Regional Director to conduct elections by secret ballot in accordance with Article III, Section 9, of National Labor Rela-

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ballots cast they should be disregarded in tabulating the effective vote. Under such an arrangement these ballots would merely have filled the role of indicating to the Board that less than a majority of those voting do not desire to be represented by either labor organization. The wishes of this minority should then properly be held ineffective to prevent a choice of representative by the majority of the employees who desire representation by one of the contending agencies.

"If a majority of those casting ballots should mark their ballots in the 'or by neither' space, no representatives should be certified. Otherwise, the choice of a majority of employees voting in favor of representation by one of the rival organizations should be declared to be the representative of all.

"The purpose of an election under the Act is to allay an existing controversy over representation. The heart of that controversy in the case before us is the wishes of the active partisans for either of the candidates. It has already happened in the Board's experience with the use of the 'or by neither' place on the ballot that a minority of a very few ballots so marked can destroy the bargaining choice of a large majority of the employees who have voted for either one or the other contending labor organization. To permit the continuance of a device which can produce such illogical results seems to me entirely gratuitous, particularly when it does not appear to be required either by the purposes or the wording of the Act."

[12] See *Matter of Woodside Cotton Mills Company* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 960, in which the Board stated: "The parties also agreed that the election should be held on a day when the mill is in operation (at the present time, the mill operates only on Monday and Tuesday and is closed the balance of the week), at the Woodside Grade School, which is in the vicinity of the mill, and that voting should take place from 11 a. m. to 8 p. m. This is a matter within the discretion of the Regional Director in his conduct of the election, but we see no objection to the holding of the election at the time and place agreed upon by the parties."

[13] *Matter of Pacific Gas and Electric Company* and *United Electrical & Radio Workers of America*, 3 N. L. R. B. 835.

[14] *Matter of Pacific Greyhound Lines* and *Brotherhood of Locomotive Firemen and Enginemen*, 4 N. L. R. B. 520.

[15] *Matter of United Press Associations* and *American Newspaper Guild*, 3 N. L. R. B. 344.

[16] The Board has also been faced with serious difficulties in conducting elections involving maritime workers. For a discussion of the practices followed in these cases, see Second Annual Report, pp. 111–113.

[17] *Matter of Charles Cushman Shoe Company, et al.* and *United Shoe Workers of America*, 2 N. L. R. B. 1015.

tions Board Rules and Regulations—Series 1, as amended. There is nothing in either the Direction or the Rules and Regulations which would prevent him from conducting such elections by means of affidavits. Furthermore, the elections were conducted by this method only after the Companies had refused to furnish the Regional Director with copies of their pay rolls of March 24, 1937. In view of this refusal, it is with little grace that the Companies complain against the use of affidavits.

The contention that the Association and the Independent Union were injured by the use of affidavits is without merit. All parties to this proceeding were given an equal opportunity to have watchers at the polls for the purpose of preventing persons not eligible to vote from voting. Such watchers had the privilege of challenging any person making out a false affidavit.

4. Objections Pertaining to Elections

It has been the purpose of the Board to conduct elections under circumstances which would reflect the free and independent choice of the employees involved. Thus where objections have been filed to the conduct of the balloting and it has been found that the election took place under circumstances which precluded a free choice of representatives by the employees, the Board has set aside the election.

In *Matter of Carrollton Metal Products Company*,[18] the Board found that supervisory employees had engaged in threats and other acts of intimidation during the week prior to the election. The Board concluded that the employees "were not afforded an opportunity to choose representatives, free from intimidation and coercion on the part of the respondent, and that, therefore, the election * * * is null, void, and of no effect." Similarly, the Board declared void the election in *Matter of Industrial Rayon Corporation*,[19] where it was shown that the employer was implicated in electioneering activities carried on by officers of an organization which was found to be company-dominated and which was excluded from the ballot and that the employer had paid these officers for a considerable amount of time spent in waging a campaign against the union named on the ballot.[20]

The objection that no representative of the company was permitted to observe the balloting was raised in *Matter of American France Line*.[21] In dismissing the petition to set aside the ballot, the Board said:

> The Board has consistently held that in the absence of consent by the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives. The choice of representatives by employees should be made free from any interference or coercion by employers. The presence of an employer's representative at an election may prevent such a free choice, although no interference or coercion is intended by the employer.[22]

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[18] *Matter of Carrollton Metal Products Company* and *Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1571*, 4 N. L. R. B. 142 and 6 N. L. R. B. 569.

[19] *Matter of Industrial Rayon Corporation, a Delaware Corporation*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 877.

[20] A contrary result was reached in *Matter of Simplex Wire and Cable Company* and *Wire & Cable Workers Federal Local Union 21020, Affiliated with the A. F. of L.*, 6 N. L. R. B. 251 and 7 N. L. R. B. 568, in which attempts to influence the votes of the eligible employees were made by an organization which the Board had ordered disestablished, but there was no allegation in the objections to the election, however, of participation by any supervisory officials of the employer in these activities.

[21] *Matter of American France Line et al. (Southern Steamship Company)* and *International Seamen's Union of America*, 4 N. L. R. B. 1140.

[22] See *Matter of Marlin-Rockwell Corporation* and *Local No. 338, United Automobile Workers of America*, 7 N. L. R. B. 836, in which the Board held that "under the circumstances presented, the refusal to permit the Company to have a representative at the balloting was not an abuse of discretion on the part of the representatives of the Board"; and also *Matter of Fedders Manufacturing Company, Inc.* and *Amalgamated Association of Iron, Steel & Tin Workers of N. A., Lodge 1753*, 7 N. L. R. B. 817, in which the Board said: "The

Thus, in *Matter of Paragon Rubber Co.-American Character Doll Company*[23] the Board declared null and void an election in which the factory manager of the employers was allowed to act as a teller despite the objections of the union. The Board held that—

> the presence as a teller at the election of a high supervisory official * * * is inconsistent with a free choice of representatives and * * * was prejudicial to the rights of the union and the employees.

In *Matter of Pennsylvania Greyhound Lines*,[24] and in *Matter of Walker Vehicle Company*,[25] the objections involved the printing and distribution of the ballots and notices of election. In the first case the Board held that the secrecy of the balloting was not maintained because it was found that—

> prior to the election conducted at Tulsa, Oklahoma, the agent for the Board distributed blank ballots to representatives of the Brotherhood of Railroad Trainmen to be used as sample ballots; that said ballots were not designated as sample ballots; that at least one such ballot, previously marked for the Brotherhood of Railroad Trainmen, was attempted to be cast in place and instead of the ballot furnished to the voter by the Board's agent in charge of the balloting.

In the second case, where the notice of election issued by the Regional Director improperly designated the petitioning union as Walker's Automatic Independent Labor Association, it was contended that this incorrect designation stigmatized the organization as a company-dominated union. The Board stated:

> Although the incorrect designation was no more than an inadvertent typographical error, it may have placed an unintended stigma upon the Association in the minds of some voters. Under this circumstance, we believe that a new election is warranted in order that there may be no doubt as to the choice of the employees concerned * * *.

The objection to the election offered in *Matter of Schwartz-Bernard Cigar Company*,[26] on the ground that "a streetcar strike in Detroit on the morning of the day of the election prevented 33 employees eligible to vote from reporting for work on that day and from voting," was held to constitute an insufficient reason for setting aside the election. Likewise, in *Matter of International Freighting Corp.*,[27] a protest concerning the conduct of the election on the ground that the seal of one ballot box had been broken by a slit about one and three-fourths inches long was found to be without merit for the reason that the total number checked as having voted agreed exactly with the total number of ballots found in all the ballot boxes at the time they were opened and it was apparent that no additional ballots could have been put into the ballot box in question.[28]

Regional Director may, when he thinks it consonant with the rights of the employees, permit nonsupervisory employees representing the employer to participate in the election, but this matter is one for the discretion of the Regional Director."

[23] *Matter of Paragon Rubber Co.-American Character Doll Company* and *Toy & Novelty Workers Organizing Committee of the C. I. O.*, 7 N. L. R. B. 965.

[24] *Matter of Pennsylvania Greyhound Lines et al.* (*Southwestern Greyhound Lines and Its Subsidiary*) and *The Brotherhood of Railroad Trainmen*, 4 N. L. R. B. 271.

[25] *Matter of Walker Vehicle Company and the Automatic Transportation Company, Divisions of the Yale & Towne Manufacturing Company* and *Walker-Automatic Independent Labor Association*, 7 N. L. R. B. 827.

[26] *Matter of Schwartz-Bernard Cigar Company* and *United Cigar Workers of America, Local No. 1*, 7 N. L. R. B. 503.

[27] *Matter of International Freighting Corp. et al.* (*Malston Company, Inc.*) and *International Seamen's Union of America*, 6 N. L. R. B. 271.

[28] A further objection made in the same case alleged that none of the ballot boxes were properly sealed. Investigation revealed that no protests were made at the time of counting the ballots, except as to the condition of the one box mentioned above. In disallowing this general protest, the Board said: "* * * good faith on the part of persons protesting

In *Matter of Interlake Iron Corporation*,[29] the objections to the election referred to the unseemly conduct of an attorney for one of the rival unions, who repeatedly entered the neutral area which was restricted to eligible voters and election officials and whose demeanor on several occasions during the course of the election was objectionable. However, since there was no evidence that he engaged in any electioneering, the Board held:

> We have not found conduct of this sort by an agent for a labor organization occurring in other cases, and we believe the situation here to be unique. It is our opinion that such conduct will not occur again, and we do not feel that the election results should be upset.

5. Certification Following an Election

In cases decided under section 9 (c) where certification has been made on the basis of proof introduced at the hearing and no election has been held, the Board has ruled, as it has in cases arising under section 8 (5), that a majority of those in the appropriate unit must designate the organization to be certified. In cases where an election has been held, the Board has certified an organization as exclusive representative if it has received a majority of the votes cast by eligible employees voting in the election.[30] The basis for the Board's practice in this regard was discussed in detail in *Matter of R. C. A. Manufacturing Company, Inc.*[31] It was there pointed out that properly interpreted the words "by a majority of the employees" used in section 9 (a) of the act refer to a majority of the eligible employees voting in the election.

The Board has held that blank, spoiled, or void ballots should not be counted as cast. *Matter of Interlake Iron Corporation*[32] and *Matter of Calumet Steel Division of Borg-Warner Corporation.*[33]

Where none of the preferences obtain a majority of the votes cast in an election involving two or more rival organizations, the Board has, upon request from the organization receiving the greater number of votes, directed a run-off election allowing the employees the opportunity to vote for or against such organization.[34] In the event

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elections requires that protests be made promptly at the time irregularities are disclosed." Another type of objection with respect to an election was raised in *Matter of Fedders Manufacturing Company, Inc.* and *Amalgamated Association of Iron, Steel & Tin Workers of N. A., Lodge 1753*, 7 N. L. R. B. 817, and was answered by the Board as follows: "We do not consider that the choice of a place to hold the election, which was 1 mile distant from the plant, was in any way an arbitrary or an unreasonable choice, as the respondent claims. We believe that no right of the respondent was in any way affected thereby."

[29] *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 6 N. L. R. B. 780.

[30] See, for example, *Matter of Cudahy Packing Company* and *Packing House Workers Union, Local No. 5, Amalgamated Meat Cutters and Butcher Workmen of North America*, 4 N. L. R. B. 39; *Matter of Schwartz-Bernard Cigar Company* and *United Cigar Workers of America, Local No. 1*, 7 N. L. R. B. 503; *Matter of New York Handkerchief Company* and *International Ladies Garment Workers Union, Local No. 76*, 7 N. L. R. B. 624.

[31] *Matter of R. C. A. Manufacturing Company, Inc.*, and *United Electrical & Radio Workers of America*, 2 N. L. R. B. 159. See also Second Annual Report, pp. 114–117.

[32] *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 4 N. L. R. B. 55.

[33] *Matter of Calumet Steel Division of Borg-Warner Corporation* and *Steel Workers Organizing Committee*, 7 N. L. R. B. 340.

[34] In *Matter of Fedders Manufacturing Company, Inc.* and *Amalgamated Association of Iron, Steel & Tin Workers of N. A. Lodge 1753*, 7 N. L. R. B. 817, the Board rejected the contention of the employer that because it had received no notice of the request for a run-off election and because there was no hearing prior to the run-off election, the Board had no authority to direct such an election, and stated:

"The run-off election was as much the result of the hearing as was the original election. All the issues had been formulated and decided; no new issues had to be determined. The respondent, therefore, having participated in the hearing, has no basis for complaint in the fact that no new hearing was held or in the fact that it did not receive notice of the request by the Amalgamated for a run-off election. The Board had indicated that it would not continue its investigation without a request for a run-off election by the labor organiza-

the organization obtains a majority of the votes cast by eligible employees in such run-off election, it is certified as exclusive bargaining representative.[35]

F. ADEQUATE PROOF OF MAJORITY REPRESENTATION WHERE NO ELECTION IS HELD

Section 9 (c) of the act empowers the Board to certify representatives with or without an election. If a labor organization can present evidence which the Board considers adequate proof that such organization represents a majority of the employees in an appropriate unit, it may be certified without the necessity of an election. Under section 8 (5) and 9 (a) of the act, it is an unfair labor practice for an employer to refuse to bargain collectively and exclusively with representatives selected by the majority of the employees in an appropriate unit. The proof which the Board requires as to majority representation for certification without an election or for a finding of an unfair labor practice under sections 8 (5) and 9 (a) of the act is essentially the same and hence the two types of cases can appropriately be discussed together.

Testimony at the hearing by a majority of the employees appearing in person to the effect that they desired a particular labor organization to represent them has been held to constitute proof of a majority. Such evidence was relied upon by the Board in *Matter of Suburban Lumber Company*,[36] a proceeding under section 8 (5), as well as in *Matter of Wilmington Transportation Company*,[37] a proceeding under section 9 (c).

Evidence that the employer has admitted that a particular labor organization is the choice of a majority of his employees has also been relied upon by the Board. Such an admission may take the form of a stipulation entered into at the hearing whereby the parties agree upon the number of members in the union,[38] or of a declaration

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tion which had received the greater number of votes. As we have indicated in previous proceedings, we will not require an organization to take part in an election against its will. The procedure followed here was designed simply to ascertain that the organization affected was not opposed to the inclusion of its name on the run-off ballot. No purpose would have been served by having copies of the Amalgamated's request served upon any of the other parties * * *."

"As to the assertion that the first election closed the proceedings, there is nothing in the Act to support such a contention. The Board's procedure is fully within the authorization of Section 9 of the Act to 'take a secret ballot of employees, or utilize any other suitable method to ascertain such representation.'"

[35] *Matter of Fedders Manufacturing Company* and *Lodge No. 1753, Amalgamated Association of Iron, Steel and Tin Workers of North America, through the Steel Workers Organizing Committee*, 3 N. L. R. B. 818, 4 N. L. R. B. 770, and 5 N. L. R. B. 269; *Matter of Zellerbach Paper Company* and *International Longshoremen and Warehousemen's Union, Local 1-26*, 4 N. L. R. B. 348 and 5 N. L. R. B. 308. For a case in which a form of run-off election did not result in a majority choice, see *Matter of J. J. Little & Ives Company* and *Bindery Women's Union, Local No. 43*, 6 N. L. R. B. 411 and 7 N. L. R. B. 12, where a consent election held pursuant to an agreement between the parties rather than to an order of the Board was inconclusive because neither organization received a majority of the votes cast. Since the consent election was conducted by the Board's agents, in the same manner and under the same rules as elections ordered by the Board, and since the unit used in that election was found to be appropriate, the Board held that there was no necessity for another election offering the employees the same choice. A run-off election was ordered to determine whether or not the employees within the appropriate unit desired to be represented by the organization which received the most votes in the consent election. The results of this run-off election showed that no bargaining representative had been selected by a majority of the employees, and consequently the Board dismissed the petition for investigation and certification.

[36] *Matter of Suburban Lumber Company* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 676*, 3 N. L. R. B. 194.

[37] *Matter of Wilmington Transportation Company* and *Inland Boatmen's Union of the Pacific, San Pedro Division*, 4 N. L. R. B. 750.

[38] *Matter of Hat Corporation of America* and *United Hatters, Cap and Millinery Workers International Union*, 3 N. L. R. B. 931; *Matter of International Harvester Company* and *Die Sinkers Local No. 527, Affiliated With the American Federation of Labor*, 6 N. L. R. B.

in the record that the organization represented a majority.[39] In several cases the agreement which the parties have entered into has taken the form of a stipulation that an agent of the Board should check the union's membership documents against pay-roll data of the company and that the results of this comparison should be deemed a part of the record.[40]

Cards, petitions, or statements signed by a majority of the employees authorizing a labor organization to represent them, or union membership cards, membership applications, or affidavits of membership signed by the majority of the employees, have been considered adequate proof of majority where their authenticity has been established [41] or where this evidence has been uncontested by the parties to the proceeding.[42]

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545. A stipulation of this kind was relied upon by the Board in *Matter of Boorum and Pease Company* and *United Paper Workers Local Industrial Union #292, Affiliated With the Committee for Industrial Organization*, 7 N. L. R. B. 486, where the employer later requested the Board not to certify the union but to conduct an election on the basis of a pay roll different from that used in arriving at the stipulation. In denying this request, the Board pointed out that the new pay roll was not introduced into evidence and that the employer made no claim that the union had ceased to represent a majority of the employees in the appropriate unit on the date which it now requested.

[39] *Matter of McNeely & Price Company* and *National Leather Workers Association Local No. 30, of the C. I. O.*, 6 N. L. R. B. 800, in which an official of the respondent admitted in his testimony that the union had a majority, and in its brief filed with the Board the respondent declared that "There is no quarrel with the finding that a majority of the workers belonged to Local 30 * * *."

[40] *Matter of Sunlight Electric Company* and *United Electrical & Radio Workers of America*, 6 N. L. R. B. 243; *Matter of Cleveland Equipment Works* and *United Electrical, Radio and Machine Workers of America, Local 707*, 6 N. L. R. B. 773. In *Matter of Atlas Mills, Inc.* and *Textile House Workers Union, No. 2269, United Textile Workers of America*, 3 N. L. R. B. 10, the results of the comparison were not stipulated by the parties, but a representative of the union, a representative of the respondent, and the Regional Director met and compared the membership records of the union with a pay roll submitted by the respondent. As a result the Regional Director advised the respondent in writing that the union represented a majority of its employees, and the Board accepted this evidence as sufficient proof.

[41] For cases in which the Board has found that the union represented a majority of the employees in an appropriate bargaining unit on the basis of signed authorizations or membership documents concerning which there has been testimony as to the genuineness of the signatures, see *Matter of Wadsworth Watch Case Company* and *Metal Polishers, Buffers, Platers and Helpers International Union*, 4 N. L. R. B. 487, in which the cost accountant of the company testified that he compared the signatures on cards designating the union as representative for collective bargaining with the signatures of employees in the company's compensation book; *Matter of Biles-Coleman Lumber Company* and *Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679, in which the signatures on a petition designating the union as bargaining agency were identified by the union officials who secured the signatures and personally witnessed the signers affix their signatures; *Matter of Shipowners' Association of the Pacific Coast, et al.* and *International Longshoremen's and Warehousemen's Union, District No. 1*, 7 N. L. R. B. 1002, in which cards designating the union as bargaining representative were introduced in evidence after officers of the union who had witnessed the signing of the cards testified that they either knew all the signers personally, checked the signatures on the cards with signatures on the union membership books, or called in mutual friends when they were not sure of the identity of the signer. See also *Matter of The Jacobs Bros. Co., Inc.* and *United Electrical and Radio Workers of America, Local No. 1226*, 5 N. L. R. B. 620, in which cards authorizing the union to represent the signers for the purposes of collective bargaining were introduced into evidence over objection of the respondent. Comparison of the signatures on the cards and on a petition signed subsequently by persons employed by the respondent disclosed no discrepancies. In finding the signatures to be authentic, the Board said: "The respondent contented itself merely with alleging the lack of identification of the signatures on the exhibit. It introduced no definite proof that the signatures were not those of the persons they purport to be. The respondent had in its possession and under its control all the data necessary to substantiate its objection to the exhibit, but made no effort to do so."

[42] For cases in which no question has been raised as to the authenticity of such signed documents and the Board has, accordingly, accepted this evidence as sufficient proof of a majority, see *Matter of Petroleum Iron Works Company* and *Steel Workers Organizing Committee*, 3 N. L. R. B. 774 (membership application cards); *Matter of Armour & Company* and *Local No. 527, United Packing House Workers' Industrial Union, affiliated with the Committee for Industrial Organization*, 3 N. L. R. B. 895 (membership cards); *Matter of Shell Chemical Company* and *Oil Workers International Union*, 4 N. L. R. B. 259 (petitions designating representative); *Matter of Allis-Chalmers Manufacturing Company* and *United Electrical, Radio and Machine Workers of America, Local No. 613*, 4 N. L. R. B. 824 (membership cards); *Matter of News Syndicate Co., Inc.* and *Newspaper Guild of New York*, 4 N. L. R. B. 1071 (applications); *Matter of National Refining Company* and *Oil Workers International Union, Local No. 420*, 5 N. L. R. B. 794 (membership application cards); *Matter of Des Moines Steel Company* and *Lodge 2071, Amalgamated Association of Iron, Steel & Tin Workers of North America, through Steel Workers Organizing Committee, affiliated with C. I. O.*, 6 N. L. R. B. 532 (membership application cards); *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners*

In cases where signed application cards are not introduced into evidence but are produced at the hearing for examination, the submission in evidence of record books or of a list of members of the union compiled from these signed cards has been held sufficient proof of a majority.[43] Where no objection has been raised by any of the parties, the Board has accepted as satisfactory evidence either the union record book or a list of union members.[44] However, where an objection is interposed, as in *Matter of Sweet Candy Company*,[45] the Board will not accept a list of members copied from the official ledger of the union as adequate proof of a majority, because in the absence of signatures there may be some doubt as to the authenticity of names submitted on the membership list.

In many cases questions have been raised as to whether or not cards designating a bargaining representative, union membership cards, or union applications have sufficiently indicated the desire of the signers to have the organization in question act as their bargaining representative. In *Matter of Armour and Company*,[46] the company objected to the introduction of signed authorization cards on the ground that they did not name Local No. 566, the petitioning union, but merely designated United Packing House Workers Industrial Union and the Committee for Industrial Organization as bargaining representatives for those signing the cards. The Board held:

> Since Local No. 566 is a local of the United Packing House Workers International Union, an affiliate of the Committee for Industrial Organization, we find the contention of the Company to be without merit.

A similar objection was raised in *Matter of Farmco Package Corporation*,[47] in which some membership application cards did not have the name of the union stamped on them, but only the words "stamp name of union here," and then in larger type below this the words

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of America, 7 N. L. R. B. 304 (joint membership application); *Matter of Woodville Lime Products Company* and *American Federation of Labor*, 7 N. L. R. B. 396 (affidavits); *Matter of Diamond Crystal Salt Division, General Foods Corporation* and *Salt Workers Union No. 19567*, 7 N. L. R. B. 563 (statement that signers were members in good standing); *Matter of Paramount Pictures, Inc.* and *Newspaper Guild of New York*, 7 N. L. R. B. 1106 (membership application cards and signed petition).

[43] *Matter of Vicksburg Garment Company* and *United Garment Workers of America*, 5 N. L. R. B. 301; *Matter of Somerset Shoe Company* and *United Shoe Workers of America*, 5 N. L. R. B. 486; *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171; *Matter of The Heller Brothers Company of Newcomerstown* and *International Brotherhood of Blacksmiths, Drop Forgers, and Helpers*, 7 N. L. R. B. 646; *Matter of James McWilliams Blue Line, Inc.* and *Inland Boatmen's Union of the Atlantic and Gulf*, 7 N. L. R. B. 923.

[44] *Matter of Central Truck Lines, Inc.* and *Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America*, 3 N. L. R. B. 317; *Matter of Campbell Machine Company, David C. Campbell and George E. Campbell, co-partners, trading as Campbell Machine Company* and *International Association of Machinists, Local No. 389; Shipwrights, Boatbuilders & Caulkers; and International Brotherhood of Electrical Workers, Local No. 569*, 3 N. L. R. B. 793; *Matter of National Sewing Machine Company* and *International Association of Machinists, International Molders Union, and Metal Polishers International Union*, 5 N. L. R. B. 372; *Matter of Ostler Candy Company, a Corporation* and *Candy Workers' Local No. 573*, 5 N. L. R. B. 554. But see *Matter of J. G. McDonald Chocolate Company, a corporation* and *Candy Workers' Local No. 573*, 5 N. L. R. B. 547, in which there was introduced at the hearing a list certified by a notary public as having been copied from the official ledger of the union and purporting to be a list of the company's employees who were members of the union. At the hearing, no check was made of the pay-roll list deemed to be suitable against the list of union members. In such a check made by the Board, it was found that some of the persons on the union membership list were not employed on the date in question or were not included in the appropriate unit, and that, in addition, there were differences in spelling and initials of names. Upon deducting these names from the union membership list, the Board found that there was no majority.

[45] *Matter of Sweet Candy Company, a corporation* and *Candy Workers' Local No. 573*, 5 N. L. R. B. 541.

[46] *Matter of Armour and Company* and *United Meat Packing Workers, Local No. 117*, 6 N. L. R. B. 613.

[47] *Matter of Farmco Package Corporation* and *United Veneer Box and Barrel Workers Union, C. I. O.*, 6 N. L. R. B. 601.

"Affiliated with C. I. O." The Board found that it was clear from the evidence that those signing the cards knew that they were joining the union and, therefore, the Board accepted the cards as adequate indication of the choice of representatives.[48]

An objection has frequently been made with reference to union membership cards which seeks to distinguish between membership in a labor organization and the designation of such an organization as bargaining agent, and to argue that membership in itself does not signify the desire to be represented by the organization. In *Matter of Campbell Machine Company*,[49] the Board, in reply to this argument, stated:

> Since the primary and well known function of labor organizations, including the unions in the present case, is collective bargaining, the Board believes no such distinction can be drawn. By voluntarily joining a labor organization an employee in effect designates that labor organization as his representative for the purposes of collective bargaining.[50]

Applications for membership in a labor organization have been objected to on the grounds that the applicants had not been actually admitted to membership;[51] that membership cards were never issued to the applicants;[52] or that none of the applicants were formally initiated as members.[53] The Board has uniformly held, in accordance with its statement in *Matter of Hood Rubber Company, Inc.*,[54] that——

> The applicants, merely by requesting membership in the U. A. W. A., sufficiently indicated their desire to have that organization act as their representative for the purposes of collective bargaining and thereby selected it for that purpose.

In *Matter of Sunshine Mining Company*,[55] the respondent contended that some employees, although they signed union application cards and paid initiation fees, did so for the sole purpose of voting against a strike, and that still other employees were unaware of the effect of signing application cards, and that none of these employees intended to designate the union as their representative for

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[48] See also *Matter of Fisher Body Corporation* and *United Automobile Workers of America, Local 76*, 7 N. L. R. B. 1083, where it was argued that membership cards of the United Automobile Workers were obtained by misrepresentation because the charter granted to this union stated that it was affiliated with the American Federation of Labor, whereas, when the cards were signed, it was in fact affiliated with the Committee for Industrial Organization. The Board found that this contention was unsupported by the record because the cards made no reference to the American Federation of Labor and no evidence was offered to show that anyone signing a card was misled. Cf. *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409.

[49] *Matter of Campbell Machine Company, David C. Campbell and George E. Campbell, co-partners, trading as Campbell Machine Company* and *International Association of Machinists, Local No. 389; Shipwrights, Boatbuilders & Caulkers; and International Brotherhood of Electrical Workers, Local No. 569*, 3 N. L. R. B. 793.

[50] For other cases following this principle see *Matter of Star & Crescent Oil Co., a California corporation, doing business as San Diego Marine Construction Company*, and *International Association of Machinists, Local No. 389; Shipwrights, Boatbuilders and Caulkers; and International Brotherhood of Electrical Workers, Local No. 569*, 3 N. L. R. B. 882; *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 844.

[51] *Matter of Richfield Oil Corporation* and *Marine Engineers Beneficial Association No. 79*, 7 N. L. R. B. 639.

[52] *Matter of Trenton-Philadelphia Coach Company* and *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*, 6 N. L. R. B. 112.

[53] *Matter of National Motor Bearing Company* and *International Union, Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 422*, 5 N. L. R. B. 509.

[54] *Matter of Hood Rubber Company, Inc. (Arrow Battery Products Division)* and *International Union, United Automobile Workers of America*, 5 N. L. R. B. 165.

[55] *Matter of Sunshine Mining Company* and *International Union of Mine, Mill an Smelter Workers*, 7 N. L. R. B. 1252.

collective bargaining. In finding this argument to be without merit, the Board said:

> * * * it is not our province to go into the mental processes of these employees who signed application cards. It is uncontradicted that these employees knew that they were applying for membership in the Union. By signing applications for membership they designated the Union as their collective bargaining representative.

Another question concerning the adequacy of signed application cards was presented in *Matter of Richfield Oil Corporation*,[56] in which the employer directed attention to the fact that many of the applications were executed long prior to the date of the filing of the petition. The Board, however, concluded that the dates borne by the application cards offered no obstacle to a certification, in view of the considerations that the union involved was a long-established labor organization, that it was to be expected that its members continued their membership over a period of years, and that there was testimony that the employees whose names appeared on the application cards were members in good standing.

Still other types of evidence have also been accepted by the Board as proof that a majority of the employees have designated and selected a representative for the purposes of collective bargaining. In *Matter of United States Stamping Company*,[57] a certification was issued by the Board on February 11, 1936, based upon the results of an election which it had conducted on January 20, 1936. In finding that the respondent company had after February 11, 1936, and on September 28, October 6, and October 9, 1936, refused to bargain collectively with the union which had been certified, the Board held that—

> In the absence of proof to the contrary, there is the presumption that the majority secured by the union in the election of January 20, 1936, continued.

The results of an election were also relied upon in *Matter of Scandore Paper Box Co., Inc.*,[58] where a consent election held under the supervision of the Board's regional office resulted in the union's selection as the bargaining representative by a large majority.[59]

Although other forms of evidence establishing majority representation were present in each case, in *Matter of Combustion Engineering Company, Inc.*,[60] and in *Matter of Century Mills, Inc.*,[61] the Board pointed to the participation by a majority of the employees in a strike called by the labor organization in question as an additional

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[56] *Matter of Richfield Oil Corporation* and *Marine Engineers Beneficial Association No. 79*, 7 N. L. R. B. 639.

[57] *Matter of United States Stamping Company* and *Enamel Workers Union, No. 18630*, 5 N. L. R. B. 172.

[58] *Matter of Scandore Paper Box Co., Inc. and Continental Container Corporation* and *Paper Box Makers Union, Local 18289*, 4 N. L. R. B. 910.

[59] In *Matter of Armour & Company* and *International Association of Machinists, Local 92*, 5 N. L. R. B. 535, the Board accepted the results of a prior consent election since it was stipulated that the record should include the ballots cast by the employees in question in the consent election and which had been segregated and placed in a sealed envelope. However, in *Matter of Marlin-Rockwell Corporation* and *Local No. 338, United Automobile Workers of America*, 5 N. L. R. B. 206, the Board refused to certify representatives on the basis of the results of a consent election because a large number of employees failed to vote on account of delay in the opening of the polls and because the employees eligible to vote in the consent election differed somewhat from the employees in the unit which the Board found to be appropriate.

[60] *Matter of Combustion Engineering Company, Inc.* and *Steel Workers Organizing Committee, for and in behalf of Amalgamated Association of Iron, Steel and Tin Workers of North America*, 5 N. L. R. B. 344.

[61] *Matter of Century Mills, Inc.* and *South Jersey Joint Board, of the International Ladies Garment Workers Union*, 5 N. L. R. B. 807.

factor tending to indicate that a majority of the employees had designated that union as their bargaining representative.[62]

Under certain circumstances the Board has held to be insufficient evidence which would normally justify the finding that a majority of the employees had selected a representative for the purposes of collective bargaining. Thus, in *Matter of American-West African Line, Inc.*,[63] the Board, in concluding that dues receipts and membership application cards were in view of the conflicting membership claims present in this case inadequate evidence of the designation of a representative, stated:

> Although the cessation of payment of dues by a person to a labor organization does not necessarily signify that such a person no longer desires to be represented by that labor organization, it is a factor to be considered.[64]

In *Matter of Fisher Body Corporation*,[65] it was argued that some of the membership cards introduced by the labor organization and indicating a clear majority were signed as a result of coercion. At the hearing, the Trial Examiner ruled that any person signing a card would be permitted to testify that he was coerced into signing, but that testimony relative to coercion by persons not signing cards would not be allowed. In its decision the Board held:

> We are of the opinion that the ruling of the Trial Examiner was incorrect. The testimony of persons not signing cards might be of such nature as to show that persons who signed cards were coerced. We feel that such evidence is proper with regard to the issue as to whether an election should be held. After the hearing, Local 1360 filed several affidavits with the Board, alleging that committeemen and other members of the United had procured members by the use of violence. Under these circumstances, we will not certify the United but we will order an election by secret ballot * * *

Proof which would normally warrant the conclusion that a labor organization represents a majority of the employees within the appropriate unit has been held inadequate in a number of cases in which a rival organization has presented evidence showing a conflicting claim concerning the representation of employees.[66] Thus, in *Matter*

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[62] For an example of the negative application of this principle, see *Matter of French Maid Dress Company, Inc.*, and *International Ladies Garment Workers Union, Local No. 166*, 5 N. L. R. B. 325, in which it was testified that the signer of one of the union's authorization cards had continued to work during the strike called by the union. The Board held that "such testimony may indicate that this employee has impliedly repudiated her prior authorization to the Union to represent her for the purpose of collective bargaining. Accordingly, we shall exclude her card in this proceeding in making a determination of the representative."

However, see *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252, in which the Board ordered the employer to bargain collectively with a labor organization notwithstanding the fact that a number of its members had walked through its picket line, where the strike and the defections in the union's majority status were the results of the employers' unfair labor practices.

[63] *Matter of American-West African Line, Inc.* and *National Marine Engineers' Beneficial Association*, 4 N. L. R. B. 1086.

[64] But see *Matter of Century Mills, Inc.* and *South Jersey Joint Board, of the International Ladies Garment Workers Union*, 5 N. L. R. B. 807, where the Board found under the circumstances that the fact that a number of persons signing membership cards had not paid initiation fees or dues was not material.

However, in *Matter of Eagle-Picher Mining and Smelting Company* and *International Union of Mine, Mill and Smelter Workers, Local 429*, 8 N. L. R. B., No. 124, where the employer objected to the consideration of membership and authorization cards on the ground that the union did not represent members delinquent in payment of dues because the constitution of the union provided for the automatic dropping of such delinquent members, the Board held that doubt as to the employees' designation of a bargaining representative should be resolved by the holding of an election by secret ballot.

[65] *Matter of Fisher Body Corporation* and *United Automobile Workers of America, Local 76*, 7 N. L. R. B. 1083.

[66] See *Matter of Pennsylvania Greyhound Lines et al. (Atlantic Greyhound Lines)* and *The Brotherhood of Railroad Trainmen*, 3 N. L. R. B. 622, 626; *Matter of Zellerbach Paper Company* and *International Longshoremen and Warehousemen's Union, Local 1-26*, 4 N. L. R. B. 348; *Matter of Calumet Steel Division of Borg-Warner Corporation* and

of A. Zerega's Sons, Inc.,[67] where each of the rival organizations submitted membership cards signed by a majority of the employees and an examination of the cards disclosed that a great majority of them were duplications, the Board found that there was not sufficient evidence to certify either organization. In *Matter of Minneapolis-Moline Power Implement Company*,[68] two prior consent elections had produced contrary results and had ended in protests being filed by the losing organization. In view of the unsettled conditions arising out of these protested elections, the Board issued a direction of election and held that petitions signed by a majority of the employees after the second consent election reaffirming their desire to be represented by one of the rival organizations could not be accepted as sufficient proof of a majority.

Evidence offered for the purpose of proving that a majority of the employees have designated a bargaining representative may also be unsatisfactory because the record does not indicate the exact number of employees who constitute the appropriate unit, as in *Matter of H. E. Fletcher Co.*,[69] *Matter of Lidz Brothers, Incorporated*,[70] and *Matter of Loose-Wiles Biscuit Co., Inc.*[71] In *Matter of Tennessee-Schuylkill Corporation*,[72] the Board held that no adequate showing of a majority had been made because no pay roll of the employer was introduced into evidence [73] and the record disclosed no comparison at any time of the membership application cards submitted in evidence and any pay roll of the employer.

G. THE UNIT APPROPRIATE FOR THE PURPOSES OF COLLECTIVE BARGAINING

Section 9 (b) of the act provides that—

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

Such a determination is required in two types of cases: (1) Cases involving petitions for certification of representatives, pursuant to section 9 (c) of the act, and (2) cases involving complaints charging that an employer has refused to bargain collectively with the repre-

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Steel Workers Organizing Committee, 7 N. L. R. B. 340; *Matter of Armour & Company* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 413*, 5 N. L. R. B. 975; *Matter of Holland Reiger Division of Apex Electric Co.* and *United Electrical, Radio & Machine Workers of America*, 6 N. L. R. B. 156; *Matter of Pier Machine Works, Inc.* and *Industrial Union of Marine and Ship Building Workers of America, Local No. 13*, 7 N. L. R. B. 401.

[67] *Matter of A. Zerega's Sons, Inc.* and *Committee for Industrial Organization on behalf of The Employees of A. Zerega's Sons, Inc.*, 5 N. L. R. B. 496.

[68] *Matter of Minneapolis-Moline Power Implement Company* and *International Association of Machinists, Local No. 1087*, 7 N. L. R. B. 840.

[69] *Matter of H. E. Fletcher Co.*, and *Granite Cutters' International Association of America*, 5 N. L. R. B. 729.

[70] *Matter of Lidz Brothers, Incorporated* and *United Wholesale Employees, (Local No. 65)*, 5 N. L. R. B. 757.

[71] *Matter of Loose-Wiles Biscuit Co., Inc.* and *United Bakery and Confectionery Workers*, 5 N. L. R. B. 59.

[72] *Matter of Tennessee-Schuylkill Corporation* and *International Union of Mine, Mill and Smelter Workers, Local No. 384*, 5 N. L. R. B. 65.

[73] But an employer cannot, merely by refusing to produce a pay roll, prevent the determination of the question of whether a majority of the employees have designated and selected a bargaining representative. See, for instance, *Matter of Blackstone Manufacturing Company* and *International Association of Machinists, Lodge 1240, affiliated with the American Federation of Labor*, 7 N. L. R. B. 1169.

sentatives of his employees, in violation of section 8 (5) of the act.[74] In each instance, a finding as to the appropriate unit is indispensable to the ultimate decision. A certification of representatives would be meaningless in the absence of a finding defining the unit to be represented. Similarly, a complaint alleging that an employer has refused to bargain collectively with the representatives of his employees may be sustained only if such representatives were designated by employees in a unit appropriate for the purposes of collective bargaining.[75]

Self-organization among employees is generally grounded in a community of interest in their occupations, and more particularly in their qualifications, experience, duties, wages, hours, and other working conditions. This community of interest may lead to organization along craft lines, along industrial lines, or in any of a number of other forms representing adaptations to special circumstances. The complexity of modern industry, transportation, and communication, and the numerous and diverse forms which self-organization among employees can take and has taken, preclude the application of rigid rules to the determination of the unit appropriate for the purposes of collective bargaining.

In attempting to ascertain the groups among which there is that mutual interest in the objects of collective bargaining which must exist in an appropriate unit, the Board takes into consideration the facts and circumstances existing in each case. The nature of the work done by the employees involved, their training and the extent of their responsibilities, and the organization of the employer's business are all entitled to weight. In evaluating these factors, the Board must also consider the history of collective bargaining, whether successful or otherwise, among the employees involved as well as among other employees in the same industry or in similar industries. Finally the Board must evaluate various other factors which tend to show the presence or absence of a mutual interest in collective bargaining between various groups of employees.

The precise weight to be given to any of the relevant factors cannot be mathematically stated. Generally several considerations enter into each decision. The following resume of the Board's decisions is designated to show the manner in which it has gone about determining the unit which will serve best to further collective bargaining and self-organization among employees.

1. Method of Determination

In *Matter of Bendix Products Corporation*,[76] the Board stated:

> The designation of a unit appropriate for the purposes of collective bargaining must be confined to the evidence and circumstances peculiar to the individual case.

The inclusion of various categories of employees in a plant-wide unit was there involved.

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[74] For a discussion of cases in which the Board would ordinarily have determined the unit appropriate for the purposes of collective bargaining, except for jurisdictional disputes within labor organizations, see sec. E 1 (A).

[75] Sec. 8 (5) of the act is expressly subject to sec. 9 (a), which reads, in part, as follows: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *."

[76] *Matter of Bendix Products Corporation* and *International Union, United Automobile Workers of America, Bendix Local No. 9*, 3 N. L. R. B. 682.

The Board has recognized that changes in the facts and circumstances which are of importance in determining the appropriate unit may work a corresponding change in the unit which has been found appropriate for the employees of a particular company. A situation in which this recognition is an important factor is that in which a labor organization has organized only part of the employees who might otherwise constitute an appropriate unit.

In *Gulf Oil Corporation*,[77] the Board said:

> Wherever possible, it is obviously desirable that, in the determination of the appropriate unit, we render collective bargaining of the company's employees an immediate possibility. In the instant proceeding the record clearly indicates that a majority of the boilermaking employees at Port Arthur refinery have authorized the boilermakers to act as their bargaining agent and that that labor organization has for the past four or five years been recognized by the company as the representative of its members. On the other hand, there is no evidence that the majority of the other employees at the refinery belong to any union whatsoever; nor has any labor organization petitioned the Board for certification as representative of the refinery employees on a plant-wide basis. Consequently, even if the boilermaking employees do not constitute the most effective bargaining unit, as the oil workers contend, nevertheless, in the existing circumstances, unless they are recognized as a separate unit, there will be no collective bargaining agent whatsoever for these workers, who for years have actually engaged in collective bargaining with the company.[78]

It should be noted that the fact that a union has organized only part of the employees who would otherwise constitute an appropriate unit does not have the same effect as in the cases above discussed, where another union has organized on the basis of the larger unit.[79]

The Board has also recognized that it may be called on to find a change in the unit which it finds appropriate in a particular proceeding. In *Matter of Great Lakes Engineering Works*,[80] where one group of unions contended that the employees in three craft groups constituted a single unit, and another union contended that an industrial unit was proper, the Board found that the craft employees constituted three separate units. It stated, however:

> If the association wins the election, we will certify it as the representative of all of the employees in the unit, but this certification is not to preclude the expansion of this unit to include other crafts in which the associaion may have majority membership, since it is set up as an industrial union.
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> The certifications to be made herein will not prevent the council from being designated by the individual craft unions as their joint representative to deal with the company for the purposes of collective bargaining.[81]

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[77] *Matter of Gulf Oil Corporation* and *International Brotherhood of Boilermakers, Iron Shipbuilders, Welders & Helpers of America*, 4 N. L. R. B. 133.

[78] See also: *Matter of Associated Press* and *The American Newspaper Guild*, 5 N. L. R. B. 43 (offices in three cities covered by the company's service); *Matter of United Shipyards, Inc.* and *Locals No. 12, No. 13, No. 15 of the Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 742 (three of the company's four plants); and *Matter of Postal Telegraph-Cable Company of Massachusetts* and *American Radio Telegraphists Association*, 7 N. L. R. B. 444 (the Boston area of the company's nationwide telegraph system). Compare *Matter of Mackay Radio Corporation of Delaware, Inc. and Mackay Radio & Telegraph Company, a Corporation* and *American Radio Telegraphists' Association*, 5 N. L. R. B. 657, which distinguishes these cases where the union has organized the company's entire system; and *Matter of Daily Mirror, Inc.* and *The Newspaper Guild of New York*, 5 N. L. R. B. 362, where the fact that the union involved had previously bargained for editorial employees alone, and was presently bargaining for such employees, only, at other companies, did not prevent it from claiming a larger appropriate unit when it had succeeded in organizing on the larger basis. The rule applicable in cases of this type was originally formulated in *Matter of R. C. A. Communications, Inc.* and *American Radio Telegraphists' Association*, 2 N. L. R. B. 1109.

[79] *Matter of Columbia Broadcasting System, Inc.* and *American Radio Telegraphists Association*, 6 N. L. R. B. 166.

[80] *Matter of Great Lakes Engineering Works* and *Detroit Metal Trades Council*, 3 N. L. R. B. 825.

[81] See also: *Matter of Associated Oil Company* and *Sailors Union of the Pacific*, 5 N. L. R. B. 893; and *Matter of The American Brass Company* and *The Waterbury Brass Workers' Union*, 6 N. L. R. B. 723.

In *Matter of Allis-Chalmers Manufacturing Company*[82] doubt arose after the issuance of the original Decision and Direction of Elections as to the propriety of including certain employees in the plant unit. The election showed that the votes of these employees could not affect the majority secured by one of the unions involved. The Board stated:

> In order to facilitate collective bargaining and to extend to the employees as quickly as possible the benefits of the collective bargaining that has already taken place, the Board will issue a certification applicable to the employees other than those in these five categories. When the Board has made a final determination as to the status of assistant foremen, inspectors, graduate students, indentured apprentices and cooperative students, it will, if it finds that any of these groups are to be included within the appropriate unit, issue another certification embodying that finding.[83]

The fact that all of the parties to a proceeding are agreed as to the extent of the unit has usually been treated by the Board as decisive. This agreement may appear in a stipulation entered into between the parties,[84] or in the testimony or statements of representatives of the parties at the hearing before a trial examiner.[85] In cases involving an alleged violation of section 8 (5) of the act by refusal to bargain collectively, the agreement of the respondent may appear from its failure to question the appropriate unit alleged in the Board's complaint.[86] However, the mere absence of contention does not require the Board to accept the unit assumed by the parties to be appropriate. It may of its own motion exclude from the unit employees which it believes should not be included.[87]

In a limited number of situations, the Board has found that it can formulate rules which apply in the absence of factors tending to make them inapplicable. An example of this manner of treatment may be seen in *Matter of Tennessee Copper Company.*[88] There the chief point at issue with regard to the appropriate unit was whether or not the company's employees should be divided into three units on a

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[82] *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159.

[83] Supplemental Decision and Certification of Representatives, 5 N. L. R. B. 158.

[84] *Matter of Goldstein Hat Manufacturing Company* and *United Hatters, Cap and Millinery Workers International Union, Local 57*, 4 N. L. R. B. 125 (employees listed); *Matter of Southgate-Nelson Corporation* and *American Radio Telegraphists' Association*, 4 N. L. R. B. 307; *Matter of John Morrell & Co.* and *United Packing House Workers, Local Industrial Union No. 52*, 4 N. L. R. B. 436 (employees listed); *Matter of Loose-Wiles Biscuit Co., Inc.* and *United Bakery and Confectionery Workers*, 5 N. L. R. B. 59; *Matter of International Harvester Company* and *Die Sinkers Local No. 527, Affiliated With the American Federation of Labor*, 6 N. L. R. B. 545; *Matter of Horton Manufacturing Company* and *United Electrical & Radio Workers of America, Local 904*, 7 N. L. R. B. 5; and *Matter of Richardson Company* and *Employees Union*, 7 N. L. R. B. 1113. In the latter case the Board stated that since the stipulated unit was "the same unit which was found to be appropriate by us in the previous case involving the company, we see no reason for changing the unit * * *." In this and the following two footnotes we mention only a few illustrative cases.

[85] *Matter of Eagle-Phenix Mills* and *Textile Workers Organizing Committee*, 4 N. L. R. B. 966; *Matter of Ingram Manufacturing Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 908; and *Matter of Brown-Saltman Furniture Company* and *United Furniture Workers of America, Local No. 576, C. I. O.*, 7 N. L. R. B. 1174.

[86] *Matter of Omaha Hat Corporation* and *United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 and 8*, 4 N. L. R. B. 878; and *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304.

[87] *Matter of American France Line et al.* and *International Seamen's Union of America*, 3 N. L. R. B. 64; and *Matter of Star & Crescent Oil Co., a California corporation, doing business as San Diego Marine Construction Company*, and *International Association of Machinists, Local No. 389; Shipwrights, Boatbuilders and Caulkers;* and *International Brotherhood of Electrical Workers, Local No. 569*, 3 N. L. R. B. 882.

[88] *Matter of Tennessee Copper Company* and *A. F. of L. Federal Union No. 21164*, 5 N. L. R. B. 768.

geographical basis. After finding that they should not be so divided, the Board said:

> With respect to the classes of employees to be excluded from the unit here considered, the record discloses little more than the preferences of the rival unions. As above stated, both unions agree on the exclusion of supervisory employees. The International also claims that clerical workers, chemists, and technical engineers should be excluded. No reason appears why these persons should be included in the unit under consideration. We have heretofore held that because of their special interests, clerical employees, engineers, and chemists are prima facie unsuitable for inclusion in a unit with production employees. We shall accordingly exclude clerical workers, chemists, and technical engineers, as well as supervisory employees.

The Board has held in two cases that it would not entertain a petition to change the appropriate unit found by the Board in a decision, where the petition represents a change of position on the part of the labor organization filing it, after losing an election conducted on the basis of the former position. In *Matter of Combustion Engineering Company, Inc.*,[89] the Board directed the holding of an election among employees of a particular craft. After the election, the labor organization claiming to represent that craft filed a petition, contending that the employees in question should have been voted in three separate groups. The Board stated:

> The determination of the appropriate unit herein unquestionably followed the desires of the Brotherhood as indicated in the record of this proceeding. The Brotherhood's petition protesting this determination represents a change of position clearly without merit.[90]

2. The History and Present Form of Self-Organization as Factors in Determining the Appropriate Unit

The form which self-organization has taken among the employers involved in a proceeding, or among workers similarly situated, is one of the most significant factors in determining the appropriate unit. Self-organization which has resulted in successful collective bargaining in the past can be relied on as a guide for future collective bargaining. Similarly, the form of self-organization presently existing, and the rules governing eligibility to membership in the labor organizations which have engaged in organization in the field, aid in determining the most effective method of collective bargaining. In taking these factors into consideration, the Board utilizes the experienced judgment of the workers themselves as to the existence of the mutual interest in working conditions which must exist among the members of an appropriate unit.

(A) History of Labor Relations in the Industry, and Between the Employer and His Employees

The recognition through an established course of dealing between an employer and his employees that a certain group of employees should be treated together for the purposes of collective bargaining is an important consideration in the determination of the appropriate unit. Collective bargaining is facilitated by adhering to the

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[89] *Matter of Combustion Engineering Company, Inc.* and *Steel Workers Organizing Committee, for and in behalf of Amalgamated Association of Iron, Steel and Tin Workers of North America*, 5 N. L. R. B. 344. Order dismissing petitions, 7 N. L. R. B. 123.

[90] See also: *Matter of Atlantic Basin Iron Works* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13*, 5 N. L. R. B. 402. Certification of Representatives, 6 N. L. R. B. 441.

methods of the past, in the absence of any indication that a change in these methods has become necessary. Similarly, the fact that collective bargaining has followed certain forms elsewhere in the industry involved tends to indicate that such forms will be successful with regard to the employer and the employees involved in the particular case.

In *Matter of Biles-Coleman Lumber Company*[91] a question arose as to whether logging camp employees should be included in one appropriate unit with men at the respondent's saw mill and factory at Omak, Washington. In holding that they should not, the Board stated:

> A most important consideration in determining an appropriate unit in this case is the history of collective bargaining among the respondent's employees. The only employees of the respondent who have at any time organized for the purpose of collective bargaining are the employees at the Omak plant * * * It is also significant that the respondent did not object to the unit claimed by the union during its negotiations with the union, but has for the first time raised the question in this proceeding.

In *Matter of Standard Oil Company of California*,[92] in holding that a unit confined to one of the company's refineries was not appropriate, the Board said:

> Much substantial evidence was adduced in support of the contentions of the S. E. A. and the Company for a State-wide unit, comprising the employees in all three refineries. Since 1933 the S. E. A. has held several general conferences with the management of the company at the latter's principal office in San Francisco, California, concerning rates of pay, wages, hours of employment, classifications, and other conditions of employment of employees in all three refineries. From time to time agreements have been arrived at covering these employees.

The practice which has been followed in labor relations with an employer is aptly shown by the existence of a contract between it and

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[91] *Matter of Biles-Coleman Lumber Company* and *Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679.

[92] *Matter of Standard Oil Company of California* and *Oil Workers International Union, Local 299*, 5 N. L. R. B. 750. See also: *Matter of Huth & James Shoe Mfg. Company* and *United Shoe Workers of America*, 3 N. L. R. B. 220; *Matter of Great Lakes Engineering Works* and *Detroit Metal Trades Council*, 3 N. L. R. B. 825; *Matters of Jones Lumber Company, West Oregon Lumber Company, Clark & Wilson Lumber Company, B. F. Johnson Lumber Company, Portland Lumber Mill, Inman-Poulsen Lumber Company, and Eastern & Western Lumber Company* and *Columbia River District Council of Lumber and Sawmill Workers' Union No. 5, etc., et al.*, 3 N. L. R. B. 855; *Matter of Chase Brass and Copper Company, Inc.* and *Waterbury Brass Workers Union*, 4 N. L. R. B. 47; *Matter of Waterbury Clock Company* and *International Association of Machinists*, 4 N. L. R. B. 120; *Matter of Gulf Oil Corporation* and *International Brotherhood of Boilermakers, Iron Shipbuilders, Welders & Helpers of America*, 4 N. L. R. B. 133; *Matter of The Texas Company, West Tulsa Works*, and *Oil Workers' International Union, Local No. 217*, 4 N. L. R. B. 182; *Matter of Curtis Bay Towing Company* and *Maine Engineers' Beneficial Association No. 5*, 4 N. L. R. B. 360; *Matter of Wilmington Transportation Company* and *Inland Boatmen's Union of the Pacific, San Pedro Division*, 4 N. L. R. B. 750; *Matter of Canadian Fur Trappers Corporation, Canadian Fur Trappers of New Jersey, Inc., Jordan's Inc., Morris Dornfeld doing business as Werth's Wearing Apparel*, and *Department and Variety Stores Employees Union, Local 1115-A*, 4 N. L. R. B. 904; *Matter of Todd Shipyards Corporation, Robins Dry Dock and Repair Co., and Tietjen and Lang Dry Dock Co.* and *Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 20; *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443; *Matter of H. E. Fletcher Co.*, and *Granite Cutters' International Association of America*, 5 N. L. R. B. 729; *Matter of Tennessee Copper Company* and *A. F. of L. Federal Union No. 21164*, 5 N. L. R. B. 768; *Matter of American Steel & Wire Company* and *Steel and Wire Workers Protective Association*, 5 N. L. R. B. 871; *Matter of The Griswold Manufacturing Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1197*, 6 N. L. R. B. 298; *Matter of Waggoner Refining Company, Inc., and W. T. Waggoner Estate* and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 6 N. L. R. B. 731; and *Matter of Industrial Rayon Corporation, a Delaware Corporation*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 877.

a labor organization.[93] Similarly, the fact that certain employees are covered by a separate collective bargaining contract tends to show that they should not be included in a larger unit.[94] Thus, in *Matter of Pittsburgh Plate Glass Company*,[95] the fact that the company's truck drivers and its highly skilled glaziers had for many years been covered by closed shop contracts between the company and two labor organizations, was a reason for their exclusion from an appropriate unit for production workers generally.

In *Matter of S. Blechman & Sons, Inc.*,[96] the Board excluded certain supervisory and confidential employees from the appropriate unit for the respondent's employees generally, giving, as one reason, the fact that an agreement between the respondent and the union for the holding of a consent election had provided that such employees should not participate.

In *Matter of American Oil Company*,[97] where it was held that the company's employees at two of its plants constituted one rather than four appropriate units, the Board noted that the company had bargained with the union on the basis of a single unit at certain of its other plants.

Finally, the Board has considered the methods of collective bargaining which have been successful in the industry involved as a whole. In *Matter of American Steel & Wire Company*,[98] the question at issue was whether the unit should be limited to a single plant, as contended by one union, or whether a broader unit was appropriate, as contended by another. The Board, in holding that a single plant unit was not appropriate, said:

> In determining an appropriate unit we look not only to the history of collective bargaining with the particular employer, but also to the methods which have been used elsewhere in the same industry. We take judicial notice, therefore, that at the time the Company signed with the Steel Workers' Organizing Committee a number of other subsidiaries of United States Steel Corporation

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[93] *Matter of Great Lakes Engineering Works* and *Welders International Association*, 5 N. L. R. B. 788; *Matter of Wisconsin Power and Light Company* and *United Electrical, Radio and Machine Workers of America, Local No. 1154*, 6 N. L. R. B. 320; *Matter of Des Moines Steel Company* and *Lodge 2071, Amalgamated Association of Iron, Steel & Tin Workers of North America, through Steel Workers Organizing Committee, affiliated with C. I. O.*, 6 N. L. R. B. 532; *Matter of Rex Manufacturing Co., Inc.* and *A. F. of L. Federal Local Union No. 20893*, 7 N. L. R. B. 95; *Matter of Alaska Packers Association* and *Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization*, 7 N. L. R. B. 141; *Matter of Fisher Body Corporation* and *United Automobile Workers of America, Local 76*, 7 N. L. R. B. 1083; and *Matter of Jacob A. Hunkele, Trading as Tri-State Towel Service of the Independent Towel Supply Company* and *Local No. 40 United Laundry Workers Union*, 7 N. L. R. B. 1276.

[94] *Matter of International Freighing Corp. et al.* and *International Seamen's Union of America*, 3 N. L. R. B. 692; *Matter of General Mills, Inc., doing business under the trade name of Washburn Crosby Company* and *Flour, Feed, and Cereal Workers Federal Union No. 19184*, and *United Grain and Cereal Workers, Local No. 240*, 3 N. L. R. B. 730; *Matter of The H. Neuer Glass Company* and *Federation of Flat Glass Workers of America*, 4 N. L. R. B. 65; *Matter of Pittsburgh Plate Glass Company* and *Federation of Flat Glass Workers of America*, 4 N. L. R. B. 193; *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509; *Matter of J. J. Little & Ives Company* and *Bindery Women's Union Local No. 43*, 6 N. L. R. B. 411; and *Matter of The International Nickel Company, Inc.* and *Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America, through Steel Workers Organizing Committee*, 7 N. L. R. B. 46.

[95] *Matter of Pittsburgh Plate Glass Company* and *Federation of Flat Glass Workers of America*, 4 N. L. R. B. 193.

[96] *Matter of S. Blechman & Sons, Inc.* and *United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15.

[97] *Matter of American Oil Company* and *Oil Workers' International Union*, 7 N. L. R. B. 210.

[98] *Matter of American Steel & Wire Company* and *Steel and Wire Workers Protective Association*, 5 N. L. R. B. 871.

made substantially identical contracts with the same labor organization. These agreements were also on an employer basis.[99]

(B) FORM OF PRESENT SELF-ORGANIZATION

Although section 9 (b) of the act vests in the Board discretion to decide in each case whether the unit shall be the employer unit, craft unit, plant unit, or a subdivision thereof, that discretion must be exercised in a manner calculated "to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the act." Accordingly, in determining the unit, the Board has given great weight to the desires of the employees themselves, especially as manifested by efforts at self-organization. In *Matter of Marcus Loew Booking Agency*[1] the Board stated:

> In determining the appropriate unit we also take into consideration the fact that the company's radio broadcast engineers have organized along the lines proposed by the American Radio Telegraphists' Association, and have shown a desire for self-organization by becoming members of the American Radio Telegraphists' Association.

Again, in *Matter of Boorum and Pease Company*,[2] the Board said:

> It does not appear that any labor organization other than the United claims to represent employees of the company. By their method of self-organization, the employees have indicated their free choice as to the appropriate unit and no cogent reason has been advanced for selecting a different unit.

Finally, in *Matter of Daily Mirror, Inc.*,[3] the petitioning union contended for a bargaining unit which excluded compositors and other groups who were covered by existing contracts with other labor organizations, but which claimed unit included composing room boys. The Board said:

> Functionally the composing room boys are much closer to the compositors than to any other class of employees. Composing room boys are ineligible to join the typographical organization, however, unless they become apprentices and undergo a long training. Very few composing room boys have become apprentices in the history of the Company. * * * Nearly all the composing room boys are members of the petitioning Union. If the typographical craft organizations desired to bargain for them we should be disposed to exclude them from a unit composed largely of white-collar workers, but we are impelled by the consideration that no one will bargain for these workers if the Union does not. We therefore include composing room boys within the bargaining unit.[4]

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[99] See also: *Matter of Sheba Ann Frocks, Inc.* and *International Ladies' Garment Workers' Union of America, Locals 121 and 204*, 3 N. L. R. B. 97; *Matter of Mergenthaler Linotype Company* and *United Electrical & Radio Workers of America, Linotype Local No. 122*, 3 N. L. R. B. 131; *Matter of Huth & James Shoe Mfg. Company* and *United Shoe Workers of America*, 3 N. L. R. B. 220; *Matter of Marcus Loew Booking Agency* and *American Radio Telegraphists' Association*, 3 N. L. R. B. 380; *Matter of McKell Coal & Coke Company* and *United Mine Workers of America, District 17*, 4 N. L. R. B. 508; *Matter of M. H. Birge and Sons Company* and *United Wall Paper Craftsmen and Workers of North America*, 5 N. L. R. B. 314; *Matter of Standard Oil Company of California* and *Oil Workers International Union, Local 299*, 5 N. L. R. B. 750; *Matter of H. E. Fletcher Co.*, and *Granite Cutters' International Association of America*, 5 N. L. R. B. 729; *Matter of J. J. Little & Ives Company* and *Bindery Women's Union Local No. 43*, 6 N. L. R. B. 411; *Matter of American Oil Company* and *Oil Workers' International Union*, 7 N. L. R. B. 210; *Matter of Utah Copper Company, a corporation, and Kennecott Copper Corporation, a corporation*, and *International Union of Mine, Mill, and Smelter Workers, Local No. 392*, 7 N. L. R. B. 928; and *Matter of Fried, Ostermann Co.* and *Local 80, International Glove Workers of America, A. F. L.*, 7 N. L. R. B. 1075.

[1] *Matter of Marcus Loew Booking Agency* and *American Radio Telegraphists' Association*, 3 N. L. R. B. 380.

[2] *Matter of Boorum and Pease Company* and *United Paper Workers Local Industrial Union #292, affiliated with the Committee for Industrial Organization*, 7 N. L. R. B. 486.

[3] *Matter of Daily Mirror, Inc.* and *The Newspaper Guild of New York*, 5 N. L. R. B. 362.

[4] See also *Matter of Ohio Foundry Company* and *International Molders' Union of North America, Local No. 218, and Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1596*, 3 N. L. R. B. 701; *Matter of Los Angeles Broadcasting*

In giving weight to the forms of self-organization the Board has considered the fact that certain groups of employees have been excluded by a union in its organization as tending to indicate the propriety of their exclusion from a unit,[5] and it has considered the fact that such groups have been included by a union, and have shown their desire to be organized by joining the union, as tending to support their inclusion in an appropriate unit.[6]

In *Matter of Chase Brass and Copper Company, Inc.*,[7] where the petitioning union contended that employees in one of the company's plants constituted an appropriate unit, and the company contended that employees in two plants constituted such a unit, the fact that employees in the second plant were eligible to membership in a different organization was one of the reasons given by the Board for finding that a unit limited to the first plant was appropriate.

The fact that certain employees have indicated their desire not to be included with other employees in a single unit has been given weight by the Board. Thus the fact that a particular group of employees

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Company, Inc. and *American Radio Telegraphers Association, Broadcast Local No. 15*, 4 N. L. R. B. 443; *Matter of Associated Press* and *The American Newspaper Guild*, 5 N. L. R. B. 43; *Matter of American Woolen Company, Nat'l. and Providence Mills* and *Independent Textile Union of Olneyville*, 5 N. L. R. B. 144; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; *Matter of Red River Lumber Company* and *Lumber and Sawmill Workers Union Local No. 53 of International Woodworkers of America*, 5 N. L. R. B. 663; *Matter of United Shipyards, Inc.* and *Locals No. 12, No. 13, No. 15 of the Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 742; *Matter of Lidz Brothers, Incorporated* and *United Wholesale Employees, (Local No. 65)*, 5 N. L. R. B. 757; *Matter of General Petroleum Corp. of Calif.* and *Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Assn.*, 5 N. L. R. B. 982; *Matter of The Warfield Company, a corporation formerly known as The Thomson & Taylor Company* and *International Union of Operating Engineers, Local No. 399, and International Brotherhood of Firemen and Oilers, Local No. 7*, 6 N. L. R. B. 58; *Matter of C. A. Lund Company* and *Novelty Workers Union, Local 1866 (A. F. of L.) successor*, 6 N. L. R. B. 423; *Matter of Phelps Dodge Corporation United Verde Branch* and *International Association of Machinists, Local No. 223; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers, Local No. 406; International Brotherhood of Electrical Workers, Local No. B 657; and International Brotherhood of Carpenters and Joiners, Local No. 1061*, 6 N. L. R. B. 624; and *Matter of The International Nickel Company, Inc.* and *Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America, through Steel Workers Organizing Committee*, 7 N. L. R. B. 46.

[5] *Matter of Hoffman Beverage Company* and *Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America*, 3 N. L. R. B. 584; *Matter of General Mills, Inc., doing business under the trade name of Washburn Crosby Company* and *Flour, Feed, and Cereal Workers Federal Union No. 19184, and United Grain and Cereal Workers, Local No. 240*, 3 N. L. R. B. 730; *Matter of U. S. Testing Co., Inc.* and *Federation of Architects, Engineers, Chemists & Technicians, C. I. O.*, 5 N. L. R. B. 696; *Matter of L. A. Nut House* and *United Cracker, Bakery & Confectionery Workers of America*, 5 N. L. R. B. 799; *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171; *Matter of Tennessee Electric Power Company* and *International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24; and *Matter of Utah Copper Company, a corporation, and Kennecott Copper Corporation, a corporation*, and *International Union of Mine, Mill, and Smelter Workers, Local No. 392*, 7 N. L. R. B. 928.

[6] *Matter of Goodyear Tire and Rubber Company of California* and *United Rubber Workers of America, Local 131*, 3 N. L. R. B. 431; *Matter of Friedman Blau Farber Company* and *International Ladies' Garment Workers' Union, Local No. 295*, 4 N. L. R. B. 151; *Matter of McKesson & Robbins, Inc., Blumauer Frank Drug Division* and *International Longshoremen & Warehousemens Union, Local 9, District 1, affiliated with the C. I. O.*, 5 N. L. R. B. 70; *Matter of Daily Mirror, Inc.* and *The Newspaper Guild of New York*, 5 N. L. R. B. 362; *Matter of Fansteel Metallurgical Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 66*, 5 N. L. R. B. 930; *Matter of Mergenthaler Linotype Co.* and *Federation of Architects, Engineers, Chemists and Technicians*, 6 N. L. R. B. 671; *Matter of American Oil Company* and *Oil Workers' International Union*, 7 N. L. R. B. 210; *Matter of Paramount Pictures, Inc.* and *Newspaper Guild of New York*, 7 N. L. R. B. 1106. See also: *Matter of Des Moines Steel Company* and *Lodge 2071, Amalgamated Association of Iron, Steel & Tin Workers of North America, through Steel Workers Organizing Committee, affiliated with C. I. O.*, 6 N. L. R. B. 532, where the two truck drivers, whose inclusion in a plant unit was in issue, had both joined one industrial union, and then another. Thereafter one of them joined a union for truck drivers only. The Board held that since a majority had not evinced a desire for separate representation, it would include the truck drivers in the plant unit.

[7] *Matter of Chase Brass and Copper Company, Inc.* and *Waterbury Brass Workers Union*, 4 N. L. R. B. 47.

has shown that it does not want organization of any character,[8] or that it wishes separate organization on plant lines,[9] or on craft lines,[10] has militated in favor of separating that group from other employees.[11] However, where other factors tend strongly to show that the separation demanded by a particular group is impractical, their wishes are not decisive.[12]

The form of self-organization is emphasized in situations where strikes have occurred. In *Matter of Ohio Foundry Company*,[13] the company operated three plants. One was an enameling plant, and the other two, foundries. In holding that the enameling plant constituted one appropriate unit and the two foundries together, another, the Board pointed out that during a strike at the enameling plant, employees in the foundries failed to join, and, on the other hand, that a strike which commenced at one of the foundries spread rapidly to the other.[14]

The Board has also given consideration to the forms which labor organizations existing generally in the industry have taken. The exclusion of a particular group of employees from an appropriate unit may be justified by the fact that there are unions which these employees are eligible to join. In *Matter of American Sugar Refining Company*,[15] one of two unions claimed that longshoremen should be excluded from a unit for production employees, and the other contended that they should be included. In holding in favor of exclusion the Board pointed out that none of the longshoremen had joined the second union, and that about one-half had joined a third union, to which all were eligible.[16] However, the Board has also

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[8] *Matter of The American Brass Company* and *The Waterbury Brass Workers' Union*, 6 N. L. R. B. 723; and *Matter of Minnesota Broadcasting Company Operating WTCN* and *Newspaper Guild of the Twin Cities, Minneapolis and St. Paul, Local No. 2 of the American Newspaper Guild*, 7 N. L. R. B. 867.

[9] *Matter of Ohio Foundry Company* and *International Molders' Union of North America, Local No. 218, and Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1596*, 3 N. L. R. B. 701.

[10] *Matter of Great Lakes Engineering Works* and *Detroit Metal Trades Council*, 3 N. L. R. B. 825; *Matter of The H. Neuer Glass Company* and *Federation of Flat Glass Workers of America*, 4 N. L. R. B. 65; *Matter of Pittsburgh Plate Glass Company* and *Federation of Flat Glass Workers of America*, 4 N. L. R. B. 193; and *Matter of Cutler-Hammer, Incorporated* and *Local No. 278, International Union, U. A. W. A., affiliated with the C. I. O.*, 7 N. L. R. B. 471.

[11] The expression of a desire to be separated from other employees must be free and untrammeled. Where it appears that the employer has participated too extensively in discovering the will for separation, the Board will not give it great weight. *Matter of Fleischer Studios, Inc.* and *Commercial Artists & Designers Union—American Federation of Labor*, 3 N. L. R. B. 207; and *Matters of Rossie Velvet Company* and *Charles B. Rayhall* and *Textile Workers Organizing Committee of the Committee for Industrial Organization*, 3 N. L. R. B. 804.

[12] *Matter of News Syndicate Co., Inc.* and *Newspaper Guild of New York*, 4 N. L. R. B. 1071; *Matter of Columbia Broadcasting System, Inc.* and *American Radio Telegraphists Association*, 6 N. L. R. B. 166; and *Matter of Tennessee Electric Power Company* and *International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24.

[13] *Matter of Ohio Foundry Company* and *International Molders' Union of North America, Local No. 218, and Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1596*, 3 N. L. R. B. 701.

[14] See also *Matters of Rossie Velvet Company Charles B. Rayhall* and *Textile Workers Organizing Committee of the Committee for Industrial Organization*, 3 N. L. R. B. 804; *Matter of Combustion Engineering Company, Inc.* and *Steel Workers Organizing Committee, etc.*, 5 N. L. R. B. 344; and *Matter of Fairbanks, Morse & Company* and *Pattern Makers Association of Beloit*, 7 N. L. R. B. 229.

[15] *Matter of America Sugar Refining Company* and *Committee for Industrial Organization*, 4 N. L. R. B. 897.

[16] See also: *Matter of American France Line et al.* and *International Seamen's Union of America*, 3 N. L. R. B. 64; *Matter of General Mills, Inc., doing business under the trade name of Washburn Crosby Company* and *Flour, Feed, and Cereal Workers Federal Union No. 19184, etc.*, 3 N. L. R. B. 730; *Matter of Marlin-Rockwell Corporation* and *Local No. 338, United Automobile Workers of America*, 5 N. L. R. B. 206; *Matter of Paragon Rubber Co.-American Character Doll Company* and *Toy & Novelty Workers Organizing Committee of the C. I. O.*, 6 N. L. R. B. 23; and *Matter of Keystone Manufacturing Company* and *United Toy and Novelty Workers Local Industrial Union No. 538 of the C. I. O.*, 7 N. L. R. B. 172

held that where no union but the one which desires to include the employees in question has attempted to organize them, the mere fact that they are eligible to join other unions does not warrant their being left without representation. In *Matter of Paramount Pictures, Inc.*,[17] one union desired to include in a single unit with the company's News Division employees, certain clerical employees. Another union contended that the latter should be excluded because it was organizing all of the company's clerical employees in a single organization. The Board held that the clerical employees should be included, saying:

> The Federation admittedly has made no attempt to organize the employees of the News Division and it offered no proof of either a majority or a substantial membership among the office and clerical employees in the other two divisions of the Company in which it has organized. The mere fact that the Federation intends at some future time to organize the employees of the News Division does not justify their exclusion from the bargaining unit claimed to be appropriate by the Guild. Furthermore, the Federation introduced no evidence showing that the employees of the News Division eligible to the Federation had expressed any desire to become members of or to be represented by the Federation. On the other hand, all those employees who are included within the unit which the Guild claims to be appropriate are ineligible to any union existing and having membership in the News Division at the time of the hearing. In addition, the Guild introduced evidence showing that a substantial majority of such employees are members of the Guild and have expressed a desire that it represent them. Under these circumstances, we see no reason for deviating from the unit claimed to be appropriate by the Guild.[18]

It should be noted that although the form of organization chosen by employees is entitled to weight in determining the appropriate unit, no such weight is ordinarily given to the forms adopted by labor organizations which are company dominated. In *Matter of Phelps Dodge Corporation United Verde Branch*,[19] four unions were organized on craft lines at both the mine and smelter operated by the company. Two Employees' Committees were also in existence, one of which admitted all employees at the mine, and the other, all employees at the smelter. The Board found that the Employees' Committees were company-dominated and in determining the appropriate unit, it stated:

> As a consequence of our decision that the Employees Committees are not entitled to represent employees for purposes of collective bargaining, the units requested by the Craft Unions were not opposed by any bona fide labor organization. In the absence in this case of any effective claim by a rival employee organization for a bargaining unit on a broader scale, we conclude that the craft units are appropriate.[20]

(c) ELIGIBILITY TO MEMBERSHIP IN LABOR ORGANIZATIONS

The rules of eligibility to membership in the unions which the employees form or join constitute one of the clearest manifestations of the manner in which they desire collective bargaining to take place.

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[17] *Matter of Paramount Pictures, Inc.* and *Newspaper Guild of New York*, 7 N. L. R. B. 1106.

[18] See also *Matter of The Texas Company, West Tulsa Works*, and *Oil Workers' International Union, Local No. 217*, 4 N. L. R. B. 182; *Matter of General Leather Products, Inc.* and *Suitcase, Bag & Portfolio Makers Union*, 5 N. L. R. B. 573; and *Matter of Waggoner Refining Company, Inc., and W. T. Waggoner Estate* and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 6 N. L. R. B. 731.

[19] *Matter of Phelps Dodge Corporation United Verde Branch* and *International Association of Machinists, Local No. 223, etc.*, 6 N. L. R. B. 624.

[20] See also: *Matter of Eagle Manufacturing Company* and *Steel Workers Organizing Committee*, 6 N. L. R. B. 492.

If such organizations are formed of the employees' free will, the qualifications for membership therein reflect the judgment of the employees as to the appropriate unit for collective bargaining. In *Matter of Marlin-Rockwell Corporation*,[21] the union involved contended for exclusion of set-up men from an industrial unit. The Board, in holding that they should not be excluded, said:

> The record indicates, however, that notwithstanding certain differences between the set-up men and other production employees, the interests of the set-up men are closely associated with those of the other employees. That the Union has recognized such a community of interests is shown by the fact that the set-up men are eligible to membership in the Union and some of them have become members thereof.[22]

However, it is clear that the Board cannot be bound in determining the appropriate unit by the rules established by the labor organizations in the field. Those rules constitute only one of the factors which the Board considers in making its decision.[23]

D. DESIRES OF EMPLOYEES AS TO INCLUSION IN APPROPRIATE UNIT

As noted above in section G 2 (B), the Board has given great weight to the desires of employees as expressed by their forms of self-organization; and it has also considered whether certain groups of employees have expressed a will to be included or excluded from a particular unit, in determining the bounds of that unit. This factor has been given cardinal significance in cases where rival organizations have advanced different contentions as to the form of organization which should govern among a particular company's employees, and the circumstances of the case have been such that if either contention had been unopposed it would have been adopted. This situation has involved most commonly a dispute between one or more unions advocating organization along plant-wide lines, and one or more unions advocating organization along craft lines. In such situations, the Board has established the practice of considering the wishes of a majority of the employees in the craft group as to their inclusion in a plant-wide unit.

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[21] *Matter of Marlin Rockwell Corporation* and *Local No. 338, United Automobile Workers of America*, 5 N. L. R. B. 206.

[22] See also: *Matter of Suburban Lumber Company* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 676*, 3 N. L. R. B. 194; *Matter of Huth & James Shoe Mfg. Company* and *United Shoe Workers of America*, 3 N. L. R. B. 220; *Matter of The B. F. Goodrich Company* and *United Rubber Workers of America, Local No. 43*, 3 N. L. R. B. 420; *Matter of Pennsylvania Greyhound Lines et al.* and *The Brotherhood of Railroad Trainmen*, 3 N. L. R. B. 622; *Matter of Southern Chemical Cotton Company* and *Textile Workers Organizing Committee*, 3 N. L. R. B. 869; *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412; *Matter of U. S. Testing Co., Inc.* and *Federation of Architects, Engineers, Chemists & Technicians, C. I. O.*, 5 N. L. R. B. 696; *Matter of United Shipyards, Inc.* and *Locals No. 12, No. 13, No. 15 of the Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 742; *Matter of Great Lakes Engineering Works* and *Welders International Association*, 5 N. L. R. B. 788; *Matter of Armour & Company* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 418*, 5 N. L. R. B. 975; *Matter of Holland Reiger Division of Apex Electric Co.* and *United Electrical, Radio & Machine Workers of America*, 6 N. L. R. B. 156; *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171; *Matter of John Minder and Son, Inc.* and *Butchers Union, Local No. 174*, 6 N. L. R. B. 764; *Matter of National Candy Company, Inc., Veribrite Factory,* and *Local 351 Candy Workers, affiliated with Bakery and Confectionery Workers International Union of America (A. F. of L. Affil.)*, 7 N. L. R. B. 1207; and *Matter of Eagle Manufacturing Company* and *Steel Workers Organizing Committee*, 6 N. L. R. B. 492, where the Board said:

"Inasmuch as we are ordering the disestablishment of the Alliance, the eligibility to membership in the Lodge, since it is fixed by standards that appear to be reasonable, should be controlling."

[23] *Matter of Pennsylvania Salt Manufacturing Company* and *Local Union No. 12055 of District No. 50, United Mine Workers of America*, 3 N. L. R. B. 741; and *Matter of Woodside Cotton Mills Company* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 960.

In *Matter of The Globe Machine and Stamping Co.*,[24] three unions advocated the division of the employees in a company's plant into three units, with one unit each for polishers, certain machine operators, and the balance of the employees. A fourth contended that a single unit for all employees was appropriate. The Board, after reviewing the considerations in favor of each contention, said:

> In view of the facts described above, it appears that the company's production workers can be considered either as a single unit appropriate for the purposes of collective bargaining, as claimed by the U. A. W. A., or as three such units, as claimed by the petitioning unions. The history of successful separate negotiations at the company's plant, and also the essential separateness of polishing and punch press work at that plant, and the existence of a requirement of a certain amount of skill for that work are proof of the feasibility of the latter approach. The successful negotiation of a plant-wide agreement on May 20, 1937, as well as the interrelation and interdependence of the various departments at the company's plant, are proof of the feasibility of the former.
>
> In such a case where the considerations are so evenly balanced, the determining factor is the desire of the men themselves. On this point, the record affords no help. There has been a swing toward the U. A. W. A. and then away from it. The only documentary proof is completely contradictory. We will therefore order elections to be held separately for the men engaged in polishing and those engaged in punch press work. We will also order an election for the employees of the company engaged in production and maintenance, exclusive of the polishers and punch press workers and of clerical and supervisory employees.
>
> On the results of these elections will depend the determination of the appropriate unit for the purposes of collective bargaining. Such of the groups as do not choose the U. A. W. A. will constitute separate and distinct appropriate units, and such as do choose the U. A. W. A. will together constitute a single appropriate unit.

In *Matter of Commonwealth Division of General Steel Castings Corporation*,[25] where three craft units were advocated as against a single industrial unit, the Board stated:

> The Amalgamated contends that the entire Commonwealth plant should be treated as a single unit appropriate for the purposes of collective bargaining: and in view of the evidence of the essential interrelation of the various departments of the plant, there can be little doubt that the Board could find that the unit claimed is a logical one. The Federation unions, however, have shown that there exist in the plant separate groups which, in the absence of conflicting claims by other unions, could be found by the Board to constitute separate units appropriate for the purposes of collective bargaining. They have, in addition, shown that they have a substantial number of members in each of these groups. The Board has held, in a somewhat similar situation, (citing the *Globe* case) that in such a case, the men in the smaller groups claimed should be given an opportunity to determine for themselves whether they desire to be represented separately or together with the balance of the plant.

In accordance with the above cases, the Board has found it proper in numerous cases to hold elections among craft employees, on the basis of which elections the appropriate unit has been decided.[26]

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[24] *Matter of The Globe Machine and Stamping Co.* and *Metal Polishers Union, Local No. 8, etc.*, 3 N. L. R. B. 294.

[25] *Matter of Commonwealth Division of General Steel Castings Corporation* and *International Brotherhood of Boiler Makers, Iron Ship Builders, Welders and Helpers of America; International Association of Machinists, District No. 9; Pattern Makers Association of St. Louis and Vicinity, and Amalgamated Association of Iron, Steel and Tin Workers of America, Local Lodge No. 1022*, 3 N. L. R. B. 779.

[26] *Matter of City Auto Stamping Company* and *International Union, United Automobile Workers of America, Local No. 12*, 3 N. L. R. B. 306; *Matter of Pennsylvania Greyhound Lines et al.* and *The Brotherhood of Railroad Trainmen*, 3 N. L. R. B. 622; *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159; *Matter of Shell Chemical Company* and *Oil Workers International Union, formerly International Association of Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 259; *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412; *Matter of Pacific Greyhound Lines* and *Brotherhood of Locomotive Firemen and Enginemen*, 4 N. L. R. B. 520; *Matter of Combustion Engineering Company, Inc.* and *Steel Workers*

Since the holding of elections in cases of this kind has the purpose only of determining the wishes of the employees as to the form of organization and as to their representatives, where the wishes with regard to both of these matters have been clearly demonstrated, the Board has found it unnecessary to hold an election. Thus, in *Matter of Worthington Pump and Machinery Corp.*,[27] where the issue was whether or not wood pattern makers should be treated as a separate unit, the Board said:

> We find no great preponderance of evidence in this record in favor of one contention over the other. The industrial form of organization has apparently been successfully applied to this plant, or at least has made an auspicious beginning as indicated by the contract recently entered into. On the other hand, the association has been in the plant for many years, representing employees of a well-defined craft * * *.
>
> The Board has held that the desire of the employees in the disputed group is to be given considerable weight. In this case it is conceded by the S. W. O. C. that the wood pattern makers prefer separate representation. Furthermore, the S. W. O. C. admittedly has no membership among them. In the light of all the circumstances of this case, we believe that the separate representation desired by the wood pattern makers should be permitted.[28]

In *Matter of Pennsylvania Greyhound Lines et al.*,[29] questions concerning representation were involved as to the employees of each of several companies. Rival contentions were made as to whether the bus drivers of each of the companies, and the maintenance employees of some, constituted separate units. The Board held that here again the desires of the men themselves should control. As to some of the companies, the Board found that elections were necessary to ascertain the preferences of the men, but as to others, it found that a preference for a separate unit had been sufficiently demonstrated, so that elections were unnecessary.

Conversely to the cases last discussed, the Board has held that in order to warrant separate elections, there must be a sufficient showing of a desire for separate representation among the employees to indicate a doubt as to the majority preference. In *Matter of Allis-Chalmers Manufacturing Company*,[30] a plant-wide unit on one hand and at least six separate craft units on the other were advocated. After considering the factors tending to support the rival arguments the Board said:

> It is evident that if a union were to petition for an investigation of representatives and its petition indicated that its numerical strength was no greater than that shown here by the Pattern League, the I. M. U., the I. A. M., and the I. B. E. W. with respect to the electrical production workers, the Board would consider it unnecessary to order the investigation. And similarly, an election among the electrical production workers, among those claimed by the machinists'

Organizing Committee, etc., 5 N. L. R. B. 344; *Matter of The Falk Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528*, 6 N. L. R. B. 654; *Matter of Joseph S. Finch & Co., Inc.* and *United Distillery Workers Union, Local No. 3*, 7 N. L. R. B. 1; and *Matter of Shell Oil Company* and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 7 N. L. R. B. 417.

[27] *Matter of Worthington Pump and Machinery Corp.* and *Pattern Makers Association of New York and Vicinity, Pattern Makers League*, 4 N. L. R. B. 448.

[28] See also: *Matter of Waterbury Clock Company* and *International Association of Machinists*, 4 N. L. R. B. 120; *Matter of Gulf Oil Corporation* and *International Brotherhood of Boilermakers, Iron Shipbuilders, Welders & Helpers of America*, 4 N. L. R. B. 133; *Matter of Waterbury Manufacturing Company* and *International Association of Machinists, Local 1335*, 5 N. L. R. B. 288; *Matter of Armour & Company* and *International Association of Machinists, Local 92*, 5 N. L. R. B. 535; and *Matter of Fairbanks, Morse & Company* and *Pattern Makers Association of Beloit*, 7 N. L. R. B. 229.

[29] *Matter of Pennsylvania Greyhound Lines et al.* and *The Brotherhood of Railroad Trainmen*, 3 N. L. R. B. 622.

[30] *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159.

union, among the pattern makers, and among the employees in the foundries, to determine the desires of these men as to unit is unnecessary and would cause unwarranted confusion. Upon the showing made at the hearing, the result of such elections would be a foregone conclusion.

As to two crafts, however, the Board found that a substantial number of employees had evinced a desire for separate representation, and consequently it directed the holding of separate elections for these groups.[31]

Separate elections may also be denied where the circumstances do not present sufficient reasons for finding that the group in which such an election is requested could be aptly considered a separate unit. In *Matter of American Hardware Corporation*,[32] where the Board directed the holding of separate elections as to one group of employees, it stated with regard to another group of employees:

The I. A. M. also contended that the header department at the Corbin Screw plant constituted a separate unit. This department is composed of specialist machinists engaged in making the heads for screws. The Corbin Screw plant is the only one of the four plants in New Britain that has such a department. There are, however, specialist machinists of many other types eligible to membership in the I. A. M. employed both at the Corbin Screw plant and at the other plants of the Company. The machinists in the header department are no more highly skilled than the other specialist machinists, and the I. A. M. made no contention that all specialist machinists constitute an appropriate unit. Further there is no history of collective bargaining by the header department as a separate unit, and no reason appears for separating those employees from the other specialist machinists who are to be included in the industrial unit. We therefore find that the header department does not constitute a separate unit for the purposes of collective bargaining and that the employees of that department are part of the industrial unit.[33]

The Board has also held that where it is contended that certain skilled groups should be set aside from other workers in a plant because of the nature of their work, it will not permit a single election for all of the skilled employees on a semi-industrial basis. Thus, in *Matter of Schick Dry Shaver Company*,[34] one union was organized on an industrial basis, and another union, which admitted as its members employees within a particular craft, had also been designated as bargaining representative by employees in two other crafts. The Board directed separate elections for each of the crafts, although the names of the same unions were placed on all of the ballots. The Board said:

The fact that the carpenters and electricians in the maintenance department are also the most highly skilled in their respective trade classification does not,

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[31] A similar result was reached in *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412; and *Matter of Shell Oil Company* and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 7 N. L. R. B. 417. In the first of these, the Board found that four plants constituted a single appropriate unit. Consequently, while a separate election was proper where a craft union had organized employees in all of the plants, such an election would would not be held where a craft union had not succeeded in more than one plant, and consequently represented only a negligible minority of the employees who were eligible to join it. In the second, four separate elections were directed, as agreed on by the parties. It was also claimed that the company's plumbers constituted a separate appropriate unit. There was doubt as to whether a unit for plumbers would number 341 employees or 645, as claimed by the industrial union involved. The Board stated that it was not necessary to decide this question since even if the smaller number was chosen, the craft union had shown that it had at most 40 members.

[32] *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412.

[33] See also *Matter of Standard Oil Company of California* and *Oil Workers International Union, Local 299*, 5 N. L. R. B. 750; and *Matter of Consolidated Aircraft Corporation* and *International Union, United Automobile Workers of America, Local No. 506, C. I. O.*, 7 N. L. R. B. 1061.

[34] *Matter of Schick Dry Shaver Company* and *Lodge No. 1557, International Association of Machinists*, 4 N. L. R. B. 246.

in itself, warrant their being placed, for purposes of collective bargaining, in a single unit with the tool makers and machinists. Even if each of the smaller groups were to choose Lodge No. 1557 to represent them, they are to be considered as distinct units, and not as a semi-industrial unit as claimed by Lodge No. 1557.

The selection of Lodge No. 1557 as the common representative would not, of course, indicate a desire to abandon the craft form of organization. On the other hand, the selection of the Schick Local, which is organizing on an industrial basis, would indicate a choice to become a part of a plant-wide unit. As indicated below, therefore, the determination of the unit will depend on the outcome of the ballot.[35]

In the same case, the question arose as to whether or not the only painter employed by the company should be included within the plant unit. The Board said:

The Board has held that the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain, and that the act does not empower the Board to certify where only one employee is involved.[36] The painter, therefore, cannot be considered as a bargaining unit. Nevertheless, he shall be given an opportunity to indicate whether he desires to be part of the industrial unit, and if he so chooses, he shall be permitted to vote in the election held among the production employees.

The practice of determining the appropriate unit or units upon the basis of separate elections, established in the *Globe* case, has not been limited to situations involving disputes between unions organized on craft and industrial lines. In *Matter of Pacific Gas and Electric Company*,[37] the question arose as to whether employees engaged in the operation of the street car and bus system of a gas and electric utility company should be included in the same unit with the company's outside or physical workers. The Board found that a separate election was warranted for the street car and bus employees, since they had bargained separately in the past and were engaged in a distinct line of work. In *Matter of Wilmington Transportation Company*,[38] the question was whether the unlicensed personnel on the company's tugs and barges should be included in one unit with the unlicensed deck personnel on its passenger and freight ships. The Board found that the factors which supported each contention were sufficient to justify a finding either way. The fact that a majority of the men on the tugs and barges preferred the union which was organized on a more limited basis was therefore considered decisive in favor of the smaller unit.

As may be seen from the discussion above, the Board makes no final decision as to the scope of the appropriate unit or units in situations where it considers that the doctrine of the *Globe* case is applicable, until it ascertains the preference of a majority of the employees whose inclusion in a unit is at issue. Where the record sufficiently shows the preference of the employees so that a separate election is unnecessary, a final determination can be made at once. In other cases the Board directs the holding of elections without a prior finding

[35] See also the discussion of *Matter of Great Lakes Engineering Works* and *Detroit Metal Trades Council*, 3 N. L. R. B. 825, in section G 3 (C) below, and cases cited in footnote 76.

[36] Citing *Matter of Luckenbach Steamship Company, Inc., et al.* and *Gatemen, Watchmen and Miscellaneous Waterfront Workers Union, Local 38-124; International Longshoremen's Association*, 2 N. L. R. B. 181.

[37] *Matter of Pacific Gas and Electric Company* and *United Electrical & Radio Workers of America*, 3 N. L. R. B. 835.

[38] *Matter of Wilmington Transportation Company* and *Inland Boatmen's Union of the Pacific, San Pedro Division*, 4 N. L. R. B. 750.

as to the appropriate unit or units. It is considered that by according either union a majority, the employees indicate their preference for the form of organization adopted by that union. It is on the basis of the election thus directed that the Board makes its finding, as may be seen in the language of the *Globe* case quoted at the beginning of this section. In this connection *Matter of Pacific Gas and Electric Company* [39] is of particular interest. In that case, three rival unions contended that bus and street railway employees should be included in one unit without outside or physical workers, while a fourth favored a separate unit for the former. The Board directed the holding of a separate election for these employees, with the names of all four unions on the ballot, and stated:

> On the result of these elections will depend the appropriate unit for the purposes of collective bargaining. If a majority of the employees in the railway group and in the outside or physical group elect to be represented by the same union, both groups together will constitute a single unit. If a majority of the employees in the railway group elects to be represented by the Amalgamated, then the railway group will constitute a single separate unit. If a majority of the employees in the railway group elects to be represented by any one of the three unions other than the Amalgamated, it will become part of a single unit with the outside or physical group, such a choice by them placing the employees of the railway group in the larger unit. The question would remain, however, as to which union represents the larger unit. If the union elected by the railway group is different from the union elected by a majority of the employees in the outside or physical group, it will be necessary to determine whether either of the two unions has received a majority of the votes cast by both the railway workers and the physical or outside workers, treating both groups as a single unit. If neither has received a majority, it will then be necessary to conduct another election among the railway workers and the outside or physical workers, as a single unit, to determine which of the unions, which in these proceedings contend for the larger unit, shall represent the employees in the unit. If none of the unions receives a majority of the votes cast by the employees of the railway group in the election directed in the instant Direction of Elections, but the number of votes cast for the unions claiming the larger appropriate unit constitutes a majority, the railway group will be treated as a part of a single unit together with the outside or physical group.

It should also be noted that the holding of separate elections in the manner above discussed does not necessarily result in a final determination of the appropriate unit. In *Matter of Pacific Greyhound Lines*,[40] a petition was filed by a union which alleged that a question concerning representation had arisen among the bus drivers employed by the company. Another union claimed that the bus drivers were part of a larger unit. The Board considered that either contention could be sustained and stated:

> * * * we shall direct an election to be held among the bus drivers employed by the Company to determine whether they wish to be represented by the Brotherhood, the Amalgamated, or neither. Upon the results of this election will depend in part the determination of the unit appropriate for the purposes of collective bargaining. If the bus drivers choose the Brotherhood, bus drivers alone will constitute an appropriate unit; if they choose the Amalgamated, they will have expressed their preference for a single larger unit consisting of all the employees. In the absence, however, of any evidence which would warrant our finding that a question concerning representation has arisen among the employees other than bus drivers, and in the absence of a petition requesting a certification of representatives of all the employees in the larger unit, it will not be necessary at this time to determine the appropriateness of such unit or whether the Amalgamated has been designated by a majority of the employees in that unit.

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[39] *Matter of Pacific Gas and Electric Company* and *United Electrical & Radio Workers of America*, 3 N. L. R. B. 835.

[40] *Matter of Pacific Greyhound Lines* and *Brotherhood of Locomotive Firemen and Enginemen*, 4 N. L. R. B. 520.

The practice of giving controlling weight to the desires of a majority of the employees in a craft, where there is a dispute between proponents of craft and industrial forms of organization, has met with the disapproval of one member of the Board. In several cases in which the doctrine of the *Globe* case has been applied, Mr. Edwin S. Smith has dissented from the conclusion reached by the majority of the Board, and in other cases, he has concurred only in the result. In *Matter of Allis-Chalmers Manufacturing Company*,[41] Mr. Smith said, in a dissenting opinion:

> I cannot concur in this decision, because, under all the circumstances, I feel the Board is here abandoning its necessary judicial function under the act of making a reasonable determination of the appropriate bargaining unit in accordance with the facts of the particular case.
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> The decision vests in the hands of a small group of employees the choice of determining whether in this mass-production plant, employing nearly 10,000 workers, a complete industrial unit, or one from which one or more crafts have been severed, is most appropriate to promote collective bargaining. * * * Permitting minorities to set themselves off, as all the indications are they would do in this instance, succeeds in providing full self-determination for the minority but only at the expense of entirely disregarding the interests of the majority.
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> The statute states that the Board shall decide in each case the appropriate bargaining unit "in order to insure to employees the full benefit of their right to self-organization and to collective bargaining and to otherwise effectuate the policies of this act." Among other things, the policies of the act are clearly aimed at establishing that form of collective bargaining which will be most likely to lead to industrial stability and peace. Having in mind the broad purposes of the act, the appropriate unit in this, as in other cases, must be decided on the particular facts presented.
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> Aside from separate bargaining by organized craft groups for a short time many years ago, the whole recent and significant history of sentiment regarding collective bargaining in the Allis-Chalmers plant points to the emergence of the industrial type union as the choice of the overwhelming mass of the employees. * * *
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> * * * If the oilers and firemen and the skilled maintenance electricians bargain separately, by so much is the united economic strength of the employees as a whole weakened. Anything which weakens the bargaining power of the employees will tend to lessen reliance upon peaceful collective bargaining as the means for achieving the workers' economic ends. Such a tendency is plainly contrary to the purposes of the act.[42]

Mr. Smith has concurred in the result of other decisions of the Board which applied the doctrine of the *Globe* case, where no union claimed a majority in an industrial unit,[43] or where there had been a course of separate collective bargaining on behalf of the craft employees in question.[44] In *Matter of American Hardware Corporation*,[45] Mr. Smith concurred in a separate opinion, as follows:

> Although other facts on which this decision is based would seem to indicate that the industrial unit is here the one most appropriate to achieve the pur-

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[41] *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159. The facts of this case are described above in this section.

[42] Mr. Smith also dissented in the following cases: *Matter of Schick Dry Shaver Company* and *Lodge No. 1557, International Association of Machinists*, 4 N. L. R. B. 246; *Matter of Worthington Pump and Machinery Corp.* and *Pattern Makers Association of New York and Vicinity, Pattern Makers League*, 4 N. L. R. B. 448; *Matter of Combustion Engineering Company, Inc.* and *Steel Workers Organizing Committee, etc.*, 5 N. L. R. B. 344; *Matter of Armour & Company* and *International Association of Machinists, Local 92*, 5 N. L. R. B. 535; *Matter of Joseph S. Finch & Co., Inc.* and *United Distillery Workers Union, Local No. 3*, 7 N. L. R. B. 1; and *Matter of Fairbanks, Morse & Company* and *Pattern Makers Association of Beloit*, 7 N. L. R. B. 229.

[43] *Matter of Waterbury Manufacturing Company* and *International Association of Machinists, Local 1335*, 5 N. L. R. B. 288.

[44] *Matter of Shell Chemical Company* and *Oil Workers International Union, etc.* 4 N. L. R. B. 259; *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412.

[45] *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412.

poses of collective bargaining in the plants of the respondent, I am ready to concur in the decision because of what the record discloses of the history of the machinists' attempts to organize on a craft basis.

The I. A. M. began organization approximately a year before the advent of the industrial union and the other craft unions. Its members engaged in a 5 weeks' strike in the fall of 1936, thereby demonstrating the solidarity of their craft convictions. There have also been several attempts at bargaining by the machinists with favorable results to the workers. These results can probably be fairly attributed to the stand taken by the machinists' representatives. The efforts zealously and effectively made to build up this craft as a bargaining entity should not, I think, be wiped out, in deference to the interests of the majority of the employees, without permitting a vote of the sort here provided for.

3. Mutual Interest

Under the terms of the act, the Board, in determining the appropriate unit, attempts to insure to employees the full benefit of the right to self-organization and to collective bargaining. The chief object of the Board, therefore, is to join in a single unit only such employees, and all such employees, as have a mutual interest in the objects of collective bargaining. The appropriate unit selected must operate for the mutual benefit of all the employees included therein. To express it another way, the Board must consider whether there is that community of interest among the employees which is likely to further harmonious organization and facilitate collective bargaining.

In *Matter of Goodyear Tire and Rubber Company of California*,[46] the inclusion of certain employees known as "squadron men" in a unit for production and maintenance employees was considered. The "squadron men" were employees who received special training under the supervision of the company's management, and who were used by the company to deal with emergencies and to fill in wherever needed. The Board held that they should be excluded from the unit, saying:

> There can be little doubt that the squadron men are a select group. While it is true that there is nothing essentially supervisory about their position, they are under the special guidance and care of, and have an intimate relation with, the management, and cannot be considered as having the same problems as the non-squadron, production workers. It is clear that they do not belong in the same unit with the latter for the purposes of collective bargaining.

The fact that an employer operates different departments or plants as a single business enterprise has been considered by the Board as a factor indicating that the employees in such departments or plants constituted a single unit.[47] Conversely, the fact that two geographically separated units of a company's operations have been conducted as separate enterprises tends to indicate that the employees in such units do not constitute one appropriate unit.[48] Similarly, the Board has found that the maintenance of a single employment office for different groups of employees indicates the existence of a mutual

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[46] *Matter of Goodyear Tire and Rubber Company of California* and *United Rubber Workers of America, Local 131*, 3 N. L. R. B. 431.

[47] *Matter of Todd Shipyards Corporation, et al.* and *Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 20; *Matter of Standard Oil Company of California* and *Oil Workers International Union, Local 299*, 5 N. L. R. B. 750; and *Matter of Fried, Ostermann Co.* and *Local 80, International Glove Workers of America, A. F. L.*, 7 N. L. R. B. 1075.

[48] *Matter of Jacob A. Hunkele, Trading as Tri-State Towel Service of the Independent Towel Supply Company* and *Local No. 40 United Laundry Workers Union*, 7 N. L. R. B. 1276.

interest in collective bargaining among such employees.[49] Also of importance is the fact that the labor policy affecting different groups of employees is centrally determined.[50]

Another factor which has been considered by the Board as indicating a community of interest is the fact that the employees whose inclusion in a single unit is in issue utilize the same recreational, medical, or parking facilities.[51] The factor of a common community life was given weight in *Matter of Tennessee Copper Company*,[52] where the issue was whether or not the company's employees in three towns should be divided into three units. The Board, in holding that they should not, pointed out that:

> The three communities in the basin are likewise closely related. Copperhill, an incorporated town, has a population of 6,000, including those just outside the corporate limits. The other two settlements are unincorporated. Ducktown has 1,500 inhabitants and Isabella 600. The entire basin constitutes a single judicial district of Polk County, with a courthouse at Ducktown. There is a community center at Ducktown, which is used by residents of both Ducktown and Isabella. A high school near Ducktown serves both Ducktown and Isabella. All the land between the three communities is owned or leased by the Company.

The Board has held that the mere fact that a proposed unit includes only a small number of employees does not render such a unit necessarily inappropriate. In *Matter of The Warfield Company* [53] it said:

> Employees having special skills have long been organized into unions upon the basis of those skills. Such unions are among the oldest and among those having the most continuous experience of collective bargaining with employers. Very often, too, because of the highly specialized character of the skill there are but a few of them in any one plant. The respondent does not consider it impractical to bargain with every single employee separately; it is surely no more impractical to bargain collectively with a group of 13 as a unit * * *.[54]

(A) NATURE OF WORK

Generally, it will be seen that men who do the same type of work will have the same problems with regard to hours, wages, and other conditions of employment. The reasons for enabling them to bargain collectively as a single unit are, therefore, obvious.[55] Conversely, the

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[49] *Matter of Aluminum Company of America and Its Wholly Owned Subsidiaries, The Aluminum Cooking Utensil Company and The Aluminum Seal Company* and *International Union Aluminum Workers of America*, 6 N. L. R. B. 444; and *Matter of The American Brass Company* and *The Waterbury Brass Workers' Union*, 6 N. L. R. B. 723.

[50] *Matter of Tennessee Electric Power Company* and *International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24; and *Matter of Fisher Body Corporation* and *United Automobile Workers of America, Local 76*, 7 N. L. R. B. 1083. This factor was also given weight by the Board in several of the cases cited below in section G 3 (H), which deals with geographically separated groups of employees, and in section G 3 (I), which deals with the employees of separate companies.

[51] *Matter of The American Brass Company* and *The Waterbury Brass Workers' Union*, 6 N. L. R. B. 723; and *Matter of Fisher Body Corporation* and *United Automobile Workers of America, Local 76*, 7 N. L. R. B. 1083.

[52] *Matter of Tennessee Copper Company* and *A. F. of L. Federal Union No. 21164*, 5 N. L. R. B. 768.

[53] *Matter of The Warfield Company, a corporation formerly known as The Thomson & Taylor Company* and *International Union of Operating Engineers, Local No. 399, et al.*, 6 N. L. R. B. 58.

[54] See also: *Matter of Hopwood Retinning Company, Inc. and Monarch Retinning Company, Inc.*, and *Metal Polishers, Buffers, Platers and Helpers International Union Local No. 8, and Teamsters Union, Local No. 584*, 4 N. L. R. B. 922.

[55] *Matter of Huth & James Shoe Mfg. Company* and *United Shoe Workers of America*, 3 N. L. R. B. 220; *Matter of International Mercantile Marine Company and United States Lines Company* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 22*, 3 N. L. R. B. 751; *Matters of Rossie Velvet Company* and *Charles B. Rayhall* and *Textile Workers Organizing Committee, etc.*, 3 N. L. R. B. 804; *Matter of Todd Shipyards Corporation et al.* and *Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 20; *Matter of International Harvester Company Tractor Works* and *Farm Equipment Workers Association Division of A. A. I. S. & T. W. N. A. Lodge No. 1220, C. I. O.*, 5 N. L. R. B. 192; *Matter of Standard Oil Company of California* and *Oil Workers International Union, Local 299*, 5 N. L. R. B. 750; *Matter of American Steel & Wire Com-*

fact that the type of work done by two groups of employees is dissimilar militates against their inclusion in one unit.[56] However, a difference in the nature of the work done by employees does not necessarily preclude a single appropriate unit.[57]

In some cases, the Board has limited the appropriate unit to those employees who are engaged in the central operations of a company, thereby excluding employees in collateral and adjunct departments. Most commonly, this takes the form of limiting the appropriate unit to the company's production employees, but it may also take other forms. In *Matter of John Minder & Son, Inc.*,[58] the union involved argued for a unit limited to employees engaged in the manufacture of meat products, thereby excluding shippers, truck drivers, and clerical employees. The Board supported this contention, saying:

> The record is clear that the employees in the unit advocated by the Union, being primarily engaged in the manufacture of meat products, are differentiated in skill and experience from the balance of the respondent's employees who are primarily engaged in tasks unrelated to the manufacturing process, and who are, therefore, not eligible for membership in the Union.[59]

Mutual interest among various groups of employees appears readily where there is a substantial amount of interchangeability among the members of those groups. In *Matter of Todd Shipyards Corporation, et al*,[60] the Board, in holding that employees in the respondent's three ship repair yards constituted a single unit, said:

> * * * The record discloses that many of the employees engaged in the ship repairing industry in and about the port of New York shift constantly from one yard to another. This holds true for workmen employed by the respondents. The Industrial Union's membership cards show that many former Robins' employees are now employed in the Tietjen yard and vice versa. The men do not work steadily in either of the plants where the "shape up" is in practice. The "shape up" is a method by which employees of the respondents are hired on a day-to-day basis. They must assemble in the "shape up" line at the yard gate every day and are selected by one or more representatives of the respondents, called "shapers," to work on that particular day.[61]

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pany and *Steel and Wire Workers Protective Association*, 5 N. L. R. B. 871; and *Matter of C. A. Lund Company* and *Novelty Workers Union, Local 1866 (A. F. of L.) successor*, 6 N. L. R. B. 423.

[56] *Matter of Hoffman Beverage Company* and *Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America*, 3 N. L. R. B. 584; *Matter of Ohio Foundry Company* and *International Molders' Union of North America, Local No. 218, et al.*, 3 N. L. R. B. 701; *Matter of Biles-Coleman Lumber Company* and *Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679; *Matter of Hopwood Retinning Company, Inc., et al.*, and *Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 8, et al.*, 4 N. L. R. B. 922; *Matter of Pennsylvania Greyhound Lines, Inc.*, and *Transport Workers Union of America, Local No 155*, 6 N. L. R. B. 314; *Matter of Waggoner Refining Company, Inc., et al.*, and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 6 N. L. R. B. 731; *Matter of Boorum and Pease Company* and *United Paper Workers Local Industrial Union #292 Affiliated with the Committee for Industrial Organization*, 7 N. L. R. B. 486; and *Matter of Utah Copper Company, a corporation, et al.*, and *International Union of Mine, Mill, and Smelter Workers, Local No. 892*, 7 N. L. R. B. 928.

[57] *Matter of Goodyear Tire and Rubber Company of California* and *United Rubber Workers of America, Local 131*, 3 N. L. R. B. 431.

[58] *Matter of John Minder & Son, Inc.* and *Butchers Union, Local No. 174*, 6 N. L. R. B. 764.

[59] See also: *Matter of Hoffman Beverage Company* and *Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America*, 3 N. L. R. B. 584; *Matter of J. G. McDonald Chocolate Company, a corporation* and *Candy Workers' Local No. 873*, 5 N. L. R. B. 547; and *Matter of Tennessee Electric Power Company* and *International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24.

[60] *Matter of Todd Shipyards Corporation, et al.*, and *Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 20.

[61] See also: *Matter of Ohio Foundry Company* and *International Molders' Union of North America, Local No. 218, et al.*, 3 N. L. R. B. 701; *Matters of Rossie Velvet Company* and *Charles B. Rayhall* and *Textile Workers Organizing Committee of the Committee for Industrial Organization*, 3 N. L. R. B. 804; *Matters of Jones Lumber Company, et al.*, and *Columbia River District Council of Lumber and Sawmill Workers' Union No. 5, etc., et al.*, 3 N. L. R. B. 855; *Matter of Swift and Company* and *Packing House Workers Union, Local No. 563*, 4 N. L. R. B. 779; *Matter of Standard Oil Company of California* and *Oil Workers International Union, Local 299*, 5 N. L. R. B. 750; *Matter of Tennessee Copper Company* and

It is also true that the absence of interchange between groups tends to indicate the inadvisibility of including such groups in one unit.[62]

The maintenance of a single seniority roster for different groups of employees has been considered by the Board to indicate the propriety of including such employees in one unit. In *Matter of Fisher Body Corporation*,[63] the Board held that four divisions of one company constituted one unit. It pointed out that there had been transfers of employees between two of the divisions without loss of seniority, and, with regard to one of these divisions and the other two, that:

* * * From time to time employees are transferred between these divisions without loss of seniority. Employees at Chevrolet 69th Avenue have greater seniority than employees at Chevrolet 107th Avenue. At times of lay-off, Chevrolet 69th Avenue employees, because of their greater seniority, take the places of Chevrolet 107th Avenue employees. Similarly, Chevrolet 107th Avenue employees supplant Parts Division employees.[64]

The classification of certain types of workers has come so often before the Board that they can be considered separately. The manner in which the Board has dealt with watchmen, clerical employees, technical employees, and similar groups is discussed below in section G 3 (E).

(B) WAGES AND OTHER WORKING CONDITIONS

The fact that various employees are paid at the same rate, and that their working conditions are much the same tends to indicate that they constitute a single unit.[65] Conversely, a substantial differ-

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A. F. of L. Federal Union No. 21164, 5 N. L. R. B. 768; *Matter of Columbia Broadcasting System, Inc.* and *American Radio Telegraphists Association*, 6 N. L. R. B. 166; *Matter of C. A. Lund Company* and *Novelty Workers Union, Local 1866 (A. F. of L.) successor*, 6 N. L. R. B. 423; *Matter of Aluminum Company of America and Its Wholly Owned Subsidiaries, etc.*, and *International Union Aluminum Workers of America*, 6 N. L. R. B. 444; *Matter of Phelps Dodge Corporation United Verde Branch* and *International Association of Machinists, Local 223, et al.*, 6 N. L. R. B. 624; *Matter of Tennessee Electric Power Company* and *International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24; *Matter of Art Crayon Company, Inc., and its affiliated company, American Artists Color Works, Inc.*, and *United Artists Supply Workers*, 7 N. L. R. B. 102; and *Matter of Fisher Body Corporation* and *United Automobile Workers of America, Local 76*, 7 N. L. R. B. 1083.

[62] *Matter of Suburban Lumber Company* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 676*, 3 N. L. R. B. 194; *Matter of Great Lakes Engineering Works* and *Detroit Metal Trades Council*, 3 N. L. R. B. 825; *Matter of S. Blechman & Sons, Inc.*, and *United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15; *Matter of Waterbury Clock Company* and *International Association of Machinists*, 4 N. L. R. B. 120; *Matter of Pittsburgh Plate Glass Company* and *Federation of Flat Glass Workers of America*, 4 N. L. R. B. 193; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; and *Matter of Armour & Company* and *International Association of Machinists, Local 92*, 5 N. L. R. B. 535.

[63] *Matter of Fisher Body Corporation* and *United Automobile Workers of America, Local 76*, 7 N. L. R. B. 1083.

[64] See also: *Matter of Tennessee Copper Company* and *A. F. of L. Federal Union No. 21164*, 5 N. L. R. B. 768.

[65] *Matter of Huth & James Shoe Mfg. Company* and *United Shoe Workers of America*, 3 N. L. R. B. 220; *Matter of Bendix Products Corporation* and *International Union, United Automobile Workers of America, Bendix Local No. 9*, 3 N. L. R. B. 682; *Matter of Standard Oil Company of California* and *Oil Workers International Union, Local 299*, 5 N. L. R. B. 750; *Matter of The American Brass Company* and *The Waterbury Brass Workers' Union*, 6 N. L. R. B. 723; *Matter of Martin Bros. Box Company* and *Toledo Industrial Union Council*, 7 N. L. R. B. 88; *Matter of Proximity Print Works* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 803; and *Matter of Minnesota Broadcasting Company Operating WTCN* and *Newspaper Guild of the Twin Cities, Minneapolis and St. Paul, Local No. 2 of the American Newspaper Guild*, 7 N. L. R. B. 867. In *Matter of American Steel & Wire Company* and *Steel and Wire Workers Protective Association*, 5 N. L. R. B. 871, the Board said:

Another fact which points to the desirability of the employer unit is the similarity in hours, wages and working conditions in all the plants.

ence in wage rates,[66] or in working conditions generally,[67] militates against a single unit.

The manner in which wages are paid may serve to identify a class of employees uniformly affected by wages, hours, and working conditions, and hence interested in bargaining as a unit. This factor may do no more than point the difference otherwise existing between two groups of employees of the same employer. In *Matter of Alabama Drydock & Shipbuilding Co.*,[68] it was claimed by one labor organization that certain employees known as "leader men" should be excluded because their duties were of a supervisory nature. The Board found that those "leader men" who were paid on a salary basis should be excluded from the unit, but that those who were paid on an hourly basis should not be.[69] In the same case, however, the Board held that it would not make a general distinction between all salaried and non-salaried employees without a showing that there was a real difference in interest between the two groups. It said:

> The Industrial Union, in its petition, claims that all employees paid on a salary basis should be excluded from the appropriate unit. No evidence was offered to show what, if any, employees would be thereby excluded. Nor was any testimony introduced to show that the basis of payment alone constituted a sufficient ground for exclusion of employees from the bargaining unit. We find, therefore, that, in describing the appropriate unit, words excluding all employees paid on a salary basis should not be used.[70]

(C) SKILL[71]

Organization of skilled employees along craft lines is an outgrowth of the identity of problems confronting those engaged in a common pursuit. Generally the wages, hours, and working conditions of skilled craftsmen are different from those of other employees of the same

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[66] *Matter of The H. Neuer Glass Company* and *Federation of Flat Glass Workers of America*, 4 N. L. R. B. 65; *Matter of Armour & Co. (West Harlem Market)* and *The Committee for Industrial Organization*, 4 N. L. R. B. 951; *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee*, C. I. O., 5 N. L. R. B. 443; *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509; and *Matter of Industrial Rayon Corporation, a Delaware Corporation*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 877.

[67] *Matter of S. Blechman & Sons, Inc.* and *United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15; *Matter of Bartlett & Snow Company* and *The Bartlett & Snow Employees' Association, Inc.*, and *United Automobile Workers of America*, 4 N. L. R. B. 113.

[68] *Matter of Alabama Drydock & Shipbuilding Co.* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 18.* 5 N. L. R. B. 149.

[69] See quotation from this case in section G 3 (D) below. Other cases in which the Board made a distinction between salaried and non-salaried employees are: *Matter of International Harvester Company Tractor Works* and *Farm Equipment Workers Association Division of A. A. I. S. & T. W. N. A. Lodge No. 1320, C. I. O.*, 5 N. L. R. B. 192; *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 6 N. L. R. B. 780; *Matter of Burnside Steel Foundry Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1719*, 7 N. L. R. B. 714; and *Matter of The International Nickel Company, Inc.* and *Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America through Steel Workers Organizing Committee*, 7 N. L. R. B. 46, in which the Board said:

> Although the method of wage payment should not be decisive in considering the status of such employees, it would appear from their transfer to the pay roll of salaried employees, that the company itself considers their duties as bringing them within the same general classification as the supervisory staff.

In *Matter of Minnesota Broadcasting Company Operating WTCN* and *Newspaper Guild of the Twin Cities, Minneapolis and St. Paul, Local No. 2 of the American Newspaper Guild*, 7 N. L. R. B. 867, the Board gave as one reason for excluding salesmen from a unit of employees of a broadcasting station, the fact that they were paid on a straight commission basis.

[70] See also *Matter of American Radiator Company (Bond Plant and Terminal Plant)* and *Amalgamated Association of Iron, Steel & Tin Workers, Lodges 1199 and 1629*, 7 N. L. R. B. 452.

[71] Many cases dealing with the question of separate units for skilled craftsmen are discussed above in section G 2 (D).

employer, thus tending toward special treatment in collective bargaining. Hence, in several decisions of the Board, separate appropriate units have been established for specially skilled workers, and in others they have been excluded from the unit found to be appropriate for the balance of the company's employees.

In *Matter of Marcus Loew Booking Agency*,[72] the Board held that the company's radio broadcasting engineers constituted a unit apart from the other employees who worked at the company's broadcasting station. It said:

> The radio broadcast engineers are technical employees engaged in work of a highly skilled nature, have qualifications and duties different from those of the other employees, and are required to hold Federal licenses. It requires years of study in a school for radio engineering, technical training of a distinctive type, and some experience before one can procure such a license. Their salaries average about $50.00 per week. They work 8 hours a day and 6 days a week. Their interests are mutual and alike, and they have very little in common with the other groups of employees. They constitute a distinct unit.[73]

As between two or more skilled groups, substantial difference in the nature of their respective training ordinarily indicates the propriety of a separate unit for each.[74] In *Matter of Great Lakes Engineering Works* [75] it was claimed by one labor organization that

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[72] *Matter of Marcus Loew Booking Agency* and *American Radio Telegraphists' Association*, 3 N. L. R. B. 380.

[73] See also: cases establishing separate unit for skilled employees: *Matter of Suburban Lumber Company* and *International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 676*, 3 N. L. R. B. 194 (truck drivers); *Matter of Wadsworth Watch Case Company* and *Metal Polishers, Buffers, Platers and Helpers International Union*, 4 N. L. R. B. 487 (polishers); *Matter of International Harvester Company Tractor Works* and *Farm Equipment Workers Association Division of A. A. I. S. & T. W. N. A. Lodge No. 1320, C. I. O.*, 5 N. L. R. B. 192 (die sinkers and trimmers); *Matter of Waterbury Manufacturing Company* and *International Association of Machinists, Local 1335*, 5 N. L. R. B. 288 (mechanics); *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443; *Matter of U. S. Testing Co., Inc.* and *Federation of Architects, Engineers, Chemists & Technicians, C. I. O.*, 5 N. L. R. B. 696 (special trained laboratory employees); *Matter of Great Lakes Engineering Works* and *Welders International Association*, 5 N. L. R. B. 788 (welders and burners); *Matter of The Warfield Company, a corporation formerly known as The Thomson & Taylor Company* and *International Union of Operating Engineers, Local No. 399, and International Brotherhood of Firemen and Oilers, Local No. 7*, 6 N. L. R. B. 58 (firemen and engineers in power house); and *Matter of Phelps Dodge Corporation United Verde Branch* and *International Association of Machinists, Local No. 223; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers, Local No. 406; International Brotherhood of Electrical Workers, Local No. B 657; and International Brotherhood of Carpenters and Joiners, Local No. 1061*, 6 N. L. R. B. 624 (four craft units).

Cases in which skilled employees were excluded from a unit held appropriate for unskilled employees: *Matter of The H. Neuer Glass Company* and *Federation of Flat Glass Workers of America*, 4 N. L. R. B. 65 (glaziers and truck drivers); *Matter of Pittsburgh Plate Glass Company* and *Federation of Flat Glass Workers of America*, 4 N. L. R. B. 193 (glaziers); *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409 (tool and die men); *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509 (polishers); and *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. No. 171 (machine shop).

Compare *Matter of Fleischer Studios, Inc.* and *Commercial Artists & Designers Union—American Federation of Labor*, 3 N. L. R. B. 207, where the Board held that the mere fact that employees known as "animators" were the most highly skilled of the company's employees did not require their separation from a unit for the other employees, since the latter were also skilled to some extent, and in many cases were promoted to the grade of animator. For further discussion of rules applicable to particular skilled groups, see sec. G 3 (E) below.

[74] *Matter of Campbell Machine Company, David C. Campbell and George E. Campbell, co-partners, trading as Campbell Machine Company* and *International Association of Machinists, Local No. 389; Shipwrights, Bootbuilders & Caulkers; and International Brotherhood of Electrical Workers, Local No. 569*, 3 N. L. R. B. 793; *Matter of Curtis Bay Towing Company* and *Marine Engineers' Beneficial Association No. 5*, 4 N. L. R. B. 360; *Matter of National Sewing Machine Company* and *International Association of Machinists, International Molders Union, and Metal Polishers International Union*, 5 N. L. R. B. 372; and *Matter of The Warfield Company, a corporation formerly known as The Thomson & Taylor Company* and *International Union of Operating Engineers, Local No. 399, and International Brotherhood of Firemen and Oilers, Local No. 7*, 6 N. L. R. B. 58.

[75] *Matter of Great Lakes Engineering Works* and *Detroit Metal Trades Council*, 3 N. L. R. B. 825.

all of the company's production employees, including its craft workers, constituted a single unit. Another labor organization, to which three craft unions were affiliated, claimed that the employees in the three crafts covered by those unions constituted one unit. The Board said:

> * * * The three crafts, however, have no more in common with each other than with five or six other crafts in the Company's plant. The only bond between these three crafts which is not common to all of the more highly skilled crafts in the Company's plant is the membership of their unions in the Council. In the Company's River Rouge plant there are 18 or 20 different crafts, of which at least five or six are as highly skilled as those organized in unions affiliated with the Council and have the same basic minimum wage. Other crafts could be organized in craft unions eligible to membership in the Council. Its membership is not confined to the craft unions petitioning here.
>
> The function of trade councils, such as the Council here, in collective bargaining has always been to act as the representatives of their member craft unions, and not as representatives of the individual members of those craft unions. They have never sought to take the place of the unions.
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> In the light of the above facts, it is clear that the unit requested by the Council is not the proper unit.

The Board then rejected the contention that all of the production employees constituted a single unit, and found that since the craft workers in question were highly skilled, they constituted three separate units.[76]

Where the Board finds that a craft unit is appropriate, it is sometimes called on to determine the exact limits of the craft. In *Matter of Great Lakes Engineering Works*,[77] a separate unit was requested for the company's welders. The Board held first that although welders and burners ordinarily do not constitute a craft, since their work is done in connection with various other skilled operations, in this case they did constitute a separate unit, because of the unusual amount of welding and burning done in the shipbuilding and repair industry, and the fact that the company's welders and burners had been segregated in a separate department for 20 years. It held, second, that the union's contention for the exclusion of burners from the unit was not warranted, in view of the similarity of the work, and the lack of a sharp dividing line between welders and burners.[78]

(D) FOREMEN AND OTHER SUPERVISORY EMPLOYEES

The exclusion of supervisory employees from bargaining units composed of ordinary employees is based on their connection with the management, with which collective bargaining is to take place. The dividing line between supervisory and nonsupervisory employees, however, is not always clearly defined. Generally, the Board has held

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[76] See also: *Matter of Schick Dry Shaver Company* and *Lodge No. 1557, International Association of Machinists*, 4 N. L. R. B. 246, and *Matter of M. H. Birge and Sons Company* and *United Wall Paper Craftsmen and Workers of North America*, 5 N. L. R. B. 314.

[77] *Matter of Great Lakes Engineering Works* and *Welders International Association*, 5 N. L. R. B. 788.

[78] See also: *Matter of The Novelty Steam Boiler Works* and *Local 101, Welders, Burners, Apprentices, A. F. of L.*, 7 N. L. R. B. 969, where welders were held not to constitute a separate unit because of the absence of factors present in the *Great Lakes* case; *Matter of Waterbury Manufacturing Company* and *International Association of Machinists, Local 1335*, 5 N. L. R. B. 288, where the Board excluded from the appropriate unit for machinists certain tool setters which the craft union did not wish to include, and certain unskilled laborers, which it did want included; and *Matter of Fairbanks, Morse & Company* and *Pattern Makers Association of Beloit*, 7 N. L. R. B. 229, where certain unskilled employees were excluded from a unit limited to pattern makers.

that employees who have the power to hire and discharge,[79] or the power to recommend hiring, discharging, or the granting of wage increases,[80] or those whose duties include apportioning work, enforcing discipline, or maintaining productivity [81] have interests which differentiate them from ordinary production employees, even though they may engage in a substantial amount of productive work themselves. Where it appears, however, that the employees who are alleged to have duties of a supervisory nature, in fact have interests which relate them most closely to other production employees, the Board may refuse to exclude them from the unit.[82]

In *Matter of Alabama Drydock & Shipbuilding Co.*,[83] one of the unions contended that employees known as "leader men" should be excluded from the bargaining unit. The Board said:

> The position of a leaderman is in the nature of a gang boss or leader of a gang of men. No leaderman is continually at the head of the same gang of workmen, both because gangs are formed and broken up according to the nature and extent of the work in the yards from time to time and because most leadermen act in that capacity only part of the time. No leaderman has the power to hire or discharge. In fact, discharges apparently result only when a series of complaints against an employee have been made to the foremen by various leadermen with whom he has worked. From the testimony it appears that there are two types of leadermen, those paid on an hourly basis and those paid on a salary basis. Hourly paid leadermen spend part of their time working as ordinary employees. They work as leadermen only when the number of gangs in the yards increases to such an extent that some gangs are without leadermen. When working as ordinary employees, so-called leadermen have no unusual rights and privileges other than possible preference with regard to employment. Hourly paid leadermen may be temporarily laid off during slack periods along with ordinary employees. Salaried leadermen, however, have a more permanent status. They never work as ordinary employees, they are the only employees working steadily as leadermen, and they are not subject to temporary lay-offs because of fluctuation in work. While there is often no substantial difference between salaried and hourly paid employees with respect to collective bargaining, it appears in the instant case that the status of the salaried leadermen is such as to give them interests differing from those shared by hourly paid leadermen and all other employees and which relate them more closely to the management. We feel, therefore, that salaried leadermen should

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[79] *Matter of Southern Chemical Cotton Company* and *Textile Workers Organizing Committee*, 3 N. L. R. B. 869; and *Matter of Minnesota Broadcasting Company Operating WTCN* and *Newspaper Guild of the Twin Cities, Minneapolis and St. Paul, Local No. 2 of the American Newspaper Guild*, 7 N. L. R. B. 867.

[80] *Matter of United Press Associations* and *American Newspaper Guild*, 3 N. L. R. B. 344; *Matter of Zellerbach Paper Company* and *International Longshoremen and Warehousemen's Union, Local 1–26*, 4 N. L. R. B. 348; *Matter of The Kinnear Manufacturing Company* and *Steel Workers Organizing Committee affiliated with Committee for Industrial Organization*, 4 N. L. R. B. 773; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; and *Matter of The Triplett Electrical Instrument Company, The Diller Manufacturing Company, doing business under the firm name and style of Readrite Meter Works* and *United Electrical and Radio Workers of America, Local No. 71½*, 5 N. L. R. B. 835.

[81] *Matter of Fleischer Studios, Inc.* and *Commercial Artists & Designers Union—American Federation of Labor*, 3 N. L. R. B. 207; *Matter of Armour & Co. (West Harlem Market)* and *The Committee for Industrial Organization*, 4 N. L. R. B., 951; *Matter of Cating Rope Works, Inc.* and *Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; *Matter of The Tripplet Electrical Instrument Company. The Diller Manufacturing Company, doing business under the firm name and style of Readrite Meter Works* and *United Electrical and Radio Workers of America, Local No. 71½*, 5 N. L. R. B. 835; and *Matter of Sandusky Metal Products, Inc.* and *American Federation of Labor*, 6 N. L. R. B. 12.

[82] *Matter of Southern Chemical Cotton Company* and *Textile Workers Organizing Committee*, 3 N. L. R. B. 869; *Matter of Marlin-Rockwell Corporation* and *Local No. 338, United Automobile Workers of America*, 5 N. L. R. B. 206; *Matter of Lidz Brothers, Incorporated* and *United Wholesale Employees, (Local No. 65)*, 5 N. L. R. B. 757; *Matter of North Star Specialty Co.* and *International Association of Machinists, Local 382*, 5 N. L. R. B. 763; and *Matter of Century Mills, Inc.* and *South Jersey Joint Board, of the International Ladies Garment Workers Union*, 5 N. L. R. B. 807.

[83] *Matter of Alabama Drydock & Shipbuilding Co.* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 18*, 5 N. L. R. B. 149.

be excluded from the bargaining unit, but that the hourly paid leadermen should be included therein.

Where it appears that certain employees do have a supervisory status, it has been the practice of the Board to exclude them from bargaining units, unless some reason is shown for their inclusion. In *Matter of Keystone Manufacturing Company*,[84] the Board said:

* * * The record indicates that in addition to foremen there are certain assistant foremen who, although they do not have authority to hire and discharge, direct the work of employees under them and exercise other supervisory powers. While the record does not clearly reveal the full extent of their duties, we must assume, in the absence of any evidence to the contrary, that they are more closely associated with the management than with the employees who work under their direction. Accordingly, both foremen and assistant foremen will be excluded from the appropriate unit.

Again in *Matter of Pacific Manifolding Book Company, Inc.*,[85] it was said:

The only disagreement as to unit arises from the desire of Local No. 382 to include working foremen (i. e. foremen who actually do work with their hands in the process of production), of whom there are about nine, with the production employees. The plan excludes them. There has not been sufficient evidence presented by Local No. 382 that the interests of the working foremen are so allied with those of the regular production employees as to warrant their inclusion in one unit.[86]

The Board has excluded employees of minor supervisory status either where the only union or unions involved desired such exclusion, and it was opposed only by the employer,[87] or where one rival union desired such exclusion and it was opposed by another.[88] *Matter of Rex Manufacturing Co., Inc.*,[89] was a case of the latter sort, where

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[84] *Matter of Keystone Manufacturing Company* and *United Toy and Novelty Workers Local Industrial Union No. 538 of the C. I. O.*, 7 N. L. R. B. 172.

[85] *Matter of Pacific Manifolding Book Company, Inc.* and *International Printing Pressmen and Assistants' Union of North America*, 3 N. L. R. B. 551.

[86] See also: *Matter of General Mills, Inc., doing business under the trade name of Washburn Crosby Company* and *Flour, Feed, and Cereal Workers Federal Union No. 19184, and United Grain and Cereal Workers, Local No. 240*, 3 N. L. R. B. 730; *Matter of Pennsylvania Salt Manufacturing Company* and *Local Union No. 12055 of District No. 50, United Mine Workers of America*, 3 N. L. R. B. 741; *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443; *Matter of General Leather Products, Inc.* and *Suitcase, Bag & Portfolio Makers Union*, 5 N. L. R. B. 573; and *Matter of Marks Brothers Company* and *United Toy and Novelty Workers Local Industrial Union No. 538, affiliated with the C. I. O.*, 7 N. L. R. B. 156.

[87] *Matter of Fleischer Studios, Inc.* and *Commercial Artists & Designers Union—American Federation of Labor*, 3 N. L. R. B. 207; *Matter of Cating Rope Works, Inc.* and *Textile Workers Organizing Committee, C. I. O.*, 4 N. L. R. B. 1100; *Matter of The Triplett Electrical Instrument Company, The Diller Manufacturing Company, doing business under the firm name and style of Readrite Meter Workers* and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835; and *Matter of Burnide Steel Foundry Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1719*, 7 N. L. R. B. 714.

[88] *Matter of Pacific Manifolding Book Company, Inc.* and *International Printing Pressmen and Assistants' Union of North America*, 3 N. L. R. B. 551; *Matter of Friedman Blau Farber Company* and *International Ladies' Garment Workers' Union, Local No. 295*, 4 N. L. R. B. 151; *Matter of Zellerbach Paper Company* and *International Longshoremen and Warehousemen's Union, Local 1-26*, 4 N. L. R. B. 348; *Matter of Westinghouse Airbrake Company* and *United Electric and Radio Workers of America, Railway Equipment Workers Local No. 610*, 4 N. L. R. B. 403; *Matter of The Kinnear Manufacturing Company* and *Steel Workers Organizing Committee affiliated with Committee for Industrial Organization*, 4 N. L. R. B. 773; *Matter of International Harvester Company Tractor Works* and *Farm Equipment Workers Association Division of A. A. I. S. & T. W. N. A. Lodge No. 1320, C. I. O.*, 5 N. L. R. B. 192; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; *Matter of Simmons Company* and *Steel Workers Organizing Committee*, 6 N. L. R. B. 208; *Matter of Charles R. McCormick Lumber Co.* and *International Woodworkers of America, Local 112*, 7 N. L. R. B. 38; *Matter of Rex Manufacturing Co., Inc.* and *A. F. of L. Federal Local Union No. 20893*, 7 N. L. R. B. 95, and *Matter of Pressed Steel Car Company, Inc.* and *Steel Workers Organizing Committee*, 7 N. L. R. B. 1099.

[89] *Matter of Rex Manufacturing Co., Inc.* and *A. F. of L. Federal Local Union, No. 20893*, 7 N. L. R. B. 95.

the subforemen and group leaders in question did manual work, but had the power to recommend hiring and discharging. The Board said:

> The subforemen and group leaders belong to a class of minor supervisory employees whose inclusion in or exclusion from a unit made up of production workers must depend largely upon the particular facts in each case. Where, as here, there is a history of rivalry among labor organizations claiming to represent employees, it is important that the employer be free from the imputation of coercing his employees in their choice of representatives. Since subforemen and group leaders are in some measure identified with management, it is not improbable that their participation in a controversy between rival unions will lead to charges of employer interference. We will, therefore, exclude subforemen and group leaders, as well as general foremen, from the unit.

Where all parties are agreed, however, that employees of a minor supervisory status should be included in a bargaining unit, the Board has ordinarily adopted their decision.[90] However, in *Matter of Roma Wine Company*,[91] where two unions were involved, the Board said:

> Both unions admit foremen to membership and both claim that foremen who are members of either union should be included in the appropriate unit. The record does not indicate which foremen, if any, belong to either union. We might be disposed to adopt a recommendation by both unions for the inclusion of all foremen in the appropriate unit. We cannot, however, include merely those foremen who happen to belong to either union at this time, and thus embody in a definition of the appropriate unit the fortuitous state of organization existing among the foremen at present. We shall, therefore, follow our usual practice and exclude foremen.[92]

Employees who inspect the work of other employees, and whose decisions consequently affect the wages received by the latter, and also disclose bad work performed by them, have been held by the Board sufficiently close to the management to warrant their exclusion from a unit for production workers, where the participating labor organization desires such exclusion.[93] In one case, however, where both of the unions involved admitted inspectors to membership, the Board included them in the unit, despite the objection of one of the unions.[94]

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[90] *Matter of Campbell Machine Company, David C. Campbell and George E. Campbell, copartners, trading as Campbell Machine Company*, and *International Association of Machinists, Local No. 389; Shipwrights, Boatbuilders & Caulkers;* and *International Brotherhood of Electrical Workers, Local No. 569*, 3 N. L. R. B. 793 (foremen and assistant foremen); *Matter of Jones Lumber Company, West Oregon Lumber Company, Clark & Wilson Lumber Company, B. F. Johnson Lumber Company, Portland Lumber Mills, Inman-Poulsen Lumber Company, and Eastern & Western Lumber Company* and *Columbia River District Council of Lumber and Sawmill Workers' Union No. 5, etc., et al.*, 3 N. L. R. B. 855 (foremen; *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412 (foremen); *Matter of McKesson & Robbins, Inc., Blumauer Frank Drug Division* and *International Longshoremen and Warehousemens Union, Local 9, District 1, affiliated with the C. I. O.*, 5 N. L. R. B. 70; *Matter of Santa Fe Trails Transportation Company* and *International Association of Machinists, Local Lodge 1308*, 7 N. L. R. B. 358 (foremen); *Matter of Pier Machine Works, Inc.* and *Industrial Union of Marine and Ship Building Workers of America, Local No. 13*, 7 N. L. R. B. 401 (assistant foremen); and *Matter of National Licorice Company* and *Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity*, 7 N. L. R. B. 537 (working foremen).

[91] *Matter of Roma Wine Company* and *International Longshoremen's and Warehousemen's Union*, 7 N. L. R. B. 135.

[92] See also *Matter of French Maid Dress Company, Inc.*, and *International Ladies Garment Workers Union, Local No. 166*, 5 N. L. R. B. 325.

[93] *Matter of The International Nickel Company, Inc.* and *Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America, through Steel Workers Organizing Committee*, 7 N. L. R. B. 46; and *Matter of Keystone Manufacturing Company* and *United Toy and Novelty Workers Local Industrial Union No. 538 of the C. I. O.*, 7 N. L. R. B. 172.

[94] *Matter of Friedman Blau Farber Company* and *International Ladies' Garment Workers' Union, Local No. 295*, 4 N. L. R. B. 151.

(E) CLERICAL EMPLOYEES, WATCHMEN, AND OTHER CATEGORIES

It is of value to discuss separately the manner in which the Board has treated clerical workers, watchmen, technical employees, and similar groups whose inclusion in a bargaining unit has been in issue in several cases before the Board. The factors of skill, nature of work, wages, and connection with the management, which are discussed above, are each of weight with regard to some or all of these categories.

The Board has held in many cases that clerical employees have interests which normally render their inclusion in one unit with production and maintenance employees inappropriate. In *Matter of Pacific Gas and Electric Company*,[95] it was contended by two unions that the office force of the gas and electric utility company there involved should be included in one unit with the company's outside employees, and a third union argued that the clerical employees should be excluded. The Board pointed out that:

> The considerations advanced in support of the separation of clerical workers from outside or physical workers follow familiar patterns. It was urged that the difference in the type of work performed, the traditional divergence in their social outlook and in their attitude toward labor organizations, and the fact that 75 percent of the clerical employees are women, that large numbers of the outside or physical workers possess special training and skill, and that the outside or physical workers are primarily concerned with hazards of work, a matter in which clerical workers can have but little interest, are compelling reasons for the separation of the two classes of employees into separate units. This contention receives further support from the fact that in the past only the outside or physical workers have become members of labor organizations, while the clerical employees, until very recently, have never been organized as a distinct group or as a part of a larger group.

After reviewing the arguments in support of inclusion of the clerical employees and finding them unconvincing, the Board said:

> There is thus no persuasive evidence tending to blur the well-defined line of demarcation existing between the clerical workers and the outside or physical workers in the operations of the company. We shall therefore not include the clerical employees in the same unit with the outside or physical employees.

With regard to office employees, the Board has followed the practice of excluding them from plant units where no showing has been made that their inclusion is desirable. Thus, in *Matter of Atlantic Basin Iron Works*,[96] the Board said:

> As it is obvious that their status and function are essentially different from the status and function of employees who do manual labor, our usual practice has been to exclude office and clerical employees as well as timekeepers from a unit largely composed of production and maintenance employees. Since no affirmative showing has been made * * * nor any compelling arguments advanced * * * as to why we should depart from this practice, we shall exclude office and clerical employees and timekeepers from the unit.[97]

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[95] *Matter of Pacific Gas and Electric Company* and *United Electrical & Radio Workers of America*, 3 N. L. R. B. 835.

[96] *Matter of Atlantic Basin Iron Works* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13*, 5 N. L. R. B. 402.

[97] See also: *Matter of Atlas Mills, Inc.*, and *Textile House Workers Union, No. 2269, United Textile Workers of America*, 3 N. L. R. B. 10; *Matter of Whittier Mills Company* and *Textile Workers Organizing Committee*, 3 N. L. R. B. 389; *Matter of General Mills, Inc., doing business under the trade name of Washburn Crosby Company* and *Flour, Feed, and Cereal Workers Federal Union No. 19184, and United Grain and Cereal Workers, Local No. 240*, 3 N. L. R. B. 730; *Matter of Pacific Gas and Electric Company* and *United Electrical & Radio Workers of America*, 3 N. L. R. B. 835; *Matter of Alabama Drydock & Shipbuilding Co.* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 18*, 5 N. L. R. B. 149; *Matter of International Harvester Company Tractor*

Office employees have been excluded even where the only union or unions involved desired their inclusion. In *Matter of Allis-Chalmers Manufacturing Company*,[98] where only one union claimed to represent employees in the company's plant generally, the Board said:

> Local No. 248 wants to include the office workers with the other workers in the plant. It has failed, however, to adduce sufficient evidence to support its position. In the absence of such evidence, the clear difference in function and the usual difference in the problems faced by each group, not shown to be otherwise in the instant case, would appear to be controlling.[99]

The case of clerical employees who work in a factory, in close contact with manual workers, differs somewhat from that of office employees. The Board has held that the interests of such employees do not differ so greatly from those of production and maintenance employees as to warrant their separation from the latter, where the only union or unions involved desire their inclusion in one unit,[1] even though the employer desires their exclusion.[2] However, where the only union involved wants such employees excluded,[3] or where one union desires such exclusion, and another does not,[4] it has been practice of the Board to exclude them, unless sufficient reasons are

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Works and *Farm Equipment Workers Association Division of A. A. I. S. & T. W. N. A. Lodge No. 1320, C. I. O.*, 5 N. L. R. B. 192; *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443; *Matter of General Leather Products, Inc.* and *Suitcase, Bag & Portfolio Makers Union*, 5 N. L. R. B. 573; *Matter of Red River Lumber Company* and *Lumber and Sawmill Workers Union Local No. 53, of International Woodworkers of America*, 5 N. L. R. B. 663; *Matter of U. S. Testing Co., Inc.* and *Federation of Architects, Engineers, Chemists & Technicians, C. I. O.*, 5 N. L. R. B. 696; *Matter of Lidz Brothers, Incorporated* and *United Wholesale Employees, (Local No. 65)*, 5 N. L. R. B. 757; *Matter of Tennessee Copper Company* and *A. F. of L. Federal Union No. 21164*, 5 N. L. R. B. 768; *Matter of Armour & Company* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 413*, 5 N. L. R. B. 975; *Matter of The Falk Corporation* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528*, 6 N. L. R. B. 654; *Matter of John Minder and Son, Inc.* and *Butchers Union, Local No. 174*, 6 N. L. R. B. 764; *Matter of Tennessee Electric Power Company* and *International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24; and *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252.

[98] *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159.

[99] See also: *Matter of Northrop Corporation* and *United Automobile Workers, Local No. 229*, 3 N. L. R. B. 228; and *Matter of McKesson & Robbins, Inc., Blumauer Frank Drug Division*, and *International Longshoremen & Warehousemens Union, Local 9, District 1, affiliated with the C. I. O.*, 5 N. L. R. B. 70.

[1] *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412; *Matter of Aluminum Company of America and Its Wholly Owned Subsidiaries, The Aluminum Cooking Utensil Company and The Aluminum Seal Company* and *International Union Aluminum Workers of America*, 6 N. L. R. B. 444; and *Matter of Cleveland Equipment Works* and *United Electrical, Radio and Machine Workers of America, Local 707*, 6 N. L. R. B. 773.

[2] *Matter of Bendix Products Corporation* and *International Union, United Automobile Workers of America, Bendix Local No. 9*, 3 N. L. R. B. 682.

[3] *Matter of The Triplett Electrical Instrument Company, The Diller Manufacturing Company, doing business under the firm name and style of Readrite Meter Works* and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835; *Matter of Simplex Wire and Cable Company* and *Wire & Cable Workers Federal Local Union 21020, affiliated with the A. F. of L.*, 6 N. L. R. B. 251; *Matter of Keystone Manufacturing Company* and *United Toy and Novelty Workers Local Industrial Union No. 538 of the C. I. O.*, 7 N. L. R. B. 172; and *Matter of Burnside Steel Foundry Company and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1719*, 7 N. L. R. B. 714.

[4] *Matter of Westinghouse Airbrake Company* and *United Electric and Radio Workers of America, Railway Equipment Workers Local No. 610*, 4 N. L. R. B. 403; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 6 N. L. R. B. 780; *Matter of The International Nickel Company, Inc.* and *Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel and Tin Workers of North America, through Steel Workers Organizing Committee*, 7 N. L. R. B. 46; *Matter of American Radiator Company (Bond Plant and Terminal Plant)* and *Amalgamated Association of Iron, Steel & Tin Workers, Lodges 1199 and 1629*, 7 N. L. R. B. 452; and *Matter of Walker Vehicle Company and the Automatic Transportation Company, divisions of the Yale & Towne Manufacturing Company* and *Walker-Automatic Independent Labor Association*, 7 N. L. R. B. 827.

given to show that the employees in question should be included in the plant unit.[5]

The considerations above described as applicable to factory clerks have been generally considered as applicable also to timekeepers.[6]

In several cases the Board has found that salesmen who operate in large part outside of an employer's office or plant have interests requiring their exclusion from a unit which includes primarily manual workers.[7] However, salesmen have been included in one unit with other employees where the only unions involved included them among their membership,[8] or where the other employees in the unit were primarily white-collar workers and there was a close interconnection between the work of the salesmen and that of the other employees,[9] or where the salesmen spent most of their time in the employer's place of business, doing work alongside the other employees.[10]

With regard to maintenance employees, the Board has held that where the only union involved desired their exclusion from a unit for production workers, they would be excluded;[11] but where one of two unions desired such exclusion and the other did not, in the absence of any showing of a substantial difference between the production and maintenance employees, they would be included in one unit.[12]

Watchmen, guards, janitors, and the like are usually excluded from a unit consisting of ordinary employees,[13] particularly where such

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[5] *Matter of The B. F. Goodrich Company* and *United Rubber Workers of America, Local No. 43*, 3 N. L. R. B. 420; and *Matter of Mergenthaler Linotype Co.* and *Federation of Architects, Engineers, Chemists and Technicians*, 6 N. L. R. B. 671.

[6] In two cases, *Matter of Interlake Iron Corporation* and *Amalgated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 6 N. L. R. B. 780, and *Matter of American Radiator Company (Bond Plant and Terminal Plant)* and *Amalgamated Association of Iron, Steel & Tin Workers, Lodges 1199 and 1629*, 7 N. L. R. B. 452, timekeepers were excluded at the request of one union, which request was opposed by another. In *Matter of Aluminum Company of America and Its Wholly Owned Subsidiaries, The Aluminum Cooking Utensil Company and The Aluminum Seal Company* and *International Union Aluminum Workers of America*, 6 N. L. R. B. 444, and *Matter of Des Moines Steel Company* and *Lodge 2071, Almalgamated Association of Iron, Steel & Tin Workers of North America, through Steel Workers Organizing Committee, affiliated with C. I. O.*, 6 N. L. R. B. 532, timekeepers were included, as requested by the only union involved, although in the latter cases, the employer contended that they should not be included.

[7] *Matter of Atlas Mills, Inc.* and *Textile House Workers Union No. 2269, United Textile Workers of America*, 3 N. L. R. B. 10; *Matter of Hoffman Beverage Company* and *Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America*, 3 N. L. R. B. 584; *Matter of Bendix Products Corporation* and *International Union, United Automobile Workers of America, Bendix Local No. 9*, 3 N. L. R. B. 682; *Matter of S. Blechman & Sons, Inc.* and *United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15 (separate unit established for outside salesmen); *Matter of Daily Mirror, Inc.* and *The Newspaper Guild of New York*, 5 N. L. R. B. 362; *Matter of Tennessee Electric Power Company* and *International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24; and *Matter of Minnesota Broadcasting Company Operating WTCN* and *Newspaper Guild of the Twin Cities, Minneapolis and St. Paul, Local No. 2 of the American Newspaper Guild*, 7 N. L. R. B. 867.

[8] *Matter of L. A. Nut House* and *United Cracker, Bakery & Confectionery Workers of America*, 5 N. L. R. B. 799.

[9] *Matter of News Syndicate Co., Inc.* and *Newspaper Guild of New York*, 4 N. L. R. B. 1071.

[10] *Matter of Lidz Brothers, Incorporated* and *United Wholesale Employees (Local No. 65)*, 5 N. L. R. B. 757.

[11] *Matter of Northrop Corporation* and *United Automobile Workers, Local No. 229*, 3 N. L. R. B. 228; *Matter of Marks Brothers Company* and *United Toy and Novelty Workers Local Industrial Union No. 538, affiliated with the C. I. O.*, 7 N. L. R. B. 156; and *Matter of Keystone Manufacturing Company* and *United Toy and Novelty Workers Local Industrial Union No. 538 of the C. I. O.*, 7 N. L. R. B. 172. But see *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171, where the union had agreed to the inclusion of maintenance employees generally, but wished to exclude sweepers and clean-up men. The Board held that the latter were maintenance employees and should be included.

[12] *Matter of Richardson Company* and *Local Union No. 442, U. A. W. A.*, 4 N. L. R. B. 835; and *Matter of International Harvester Company Tractor Works* and *Farm Equipment Workers Association Division of A. A. I. S. & T. W. N. A. Lodge No. 1320, C. I. O.*, 5 N. L. R. B. 192.

[13] *Matter of Todd Shipyards Corporation, Robins Dry Dock and Repair Co. and Tietjen and Lang Dry Dock Co.* and *Industrial Union of Marine and Shipbuilding, Workers of America*, 5 N. L. R. B. 20; *Matter of International Harvester Company Tractor Works* and

exclusion is demanded by the only unions involved.[14] This is likewise the case where one union argues for such exclusion and another opposes it. Thus, in *Matter of Plankinton Packing Company*,[15] it was stated:

> The only question raised concerned the contention of the Amalgamated that 19 watchmen and one fire-prevention employee should be included within the bargaining unit. The United opposed such inclusion. The watchmen's duties consist in plant protection, fire prevention and in policing the plant against robbery and theft. They perform no manual labor on livestock. The fire-prevention man looks after the extinguishers, fire apparatus, and equipment, and at times performs the duties of a watchman. It has been our practice not to include watchmen within a bargaining unit composed essentially of production and maintenance employees if objection thereto is raised by a participating labor organization. We find, therefore, that the watchmen and fire-prevention employee should be excluded from the unit.[16]

However, where all parties are agreed that watchmen should be included in a bargaining unit,[17] or where only the employer contends that they should be excluded,[18] they are ordinarily included. Thus, in *Matter of Sweet Candy Company*,[19] it was said:

> The Union desires to include watchmen in the unit claimed to be appropriate. The Company makes no objection. In the past, we have usually excluded watchmen from a bargaining unit composed primarily of production employees, on the basis of the differences in function and interest of the two groups. We shall, however, permit the watchmen to be included in this unit because of the fact that neither party makes any objection to their inclusion, and because to hold otherwise virtually would deprive the watchmen of opportunity for collective action and representation, since there is no other labor organization at the plant to which they are eligible for membership.

The Board has held that shipping and receiving-room employees may be excluded from a bargaining unit for production employees

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Farm Equipment Workers Association Division of A. A. I. S. & T. W. N. A. Lodge No. 1320, C. I. O., 5 N. L. R. B. 192; *Matter of Stephen Ransom, Inc.* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13*, 5 N. L. R. B. 689; and *Matter of Burnside Steel Foundry Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1710*, 7 N. L. R. B. 714.

[14] *Matter of General Mills, Inc., doing business under the trade name of Washburn Crosby Company* and *Flour, Feed, and Cereal Workers Federal Union No. 19184, and United Grain and Cereal Workers, Local No. 240*, 3 N. L. R. B. 730; *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171; *Matter of Eagle Manufacturing Company* and *Steel Workers Organizing Committee*, 6 N. L. R. B. 492; and *Matter of Woodside Cotton Mills Company* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 960.

[15] *Matter of Plankinton Packing Company* and *Packing House Workers Organizing Committee on Behalf of Local 681 of the United Packing House Workers of America*, 5 N. L. R. B. 813.

[16] See also: *Matter of Richardson Company* and *Local Union No. 442, U. A. W. A.*, 4 N. L. R. B. 835; *Matter of American Sugar Refining Company* and *Committee for Industrial Organization*, 4 N. L. R. B. 897; *Matter of Armour & Company* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 413*, 5 N. L. R. B. 975; *Matter of Simmons Company* and *Steel Workers Organizing Committee*, 6 N. L. R. B. 208; *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 6 N. L. R. B. 780; *Matter of Tennessee Electric Power Company* and *International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24; and *Matter of Walker Vehicle Company and the Automatic Transportation Company divisions of the Yale & Towne Manufacturing Company* and *Walker-Automatic Independent Labor Association*, 7 N. L. R. B. 827.

[17] *Matter of Sweet Candy Company, a corporation* and *Candy Workers' Local No. 373*, 5 N. L. R. B. 541; and *Matter of J. G. McDonald Chocolate Company, a corporation* and *Candy Workers' Local No. 373*, 5 N. L. R. B. 547.

[18] *Matter of Holland Reiger Division of Apex Electric Co.* and *United Electrical, Radio & Machine Workers of America*, 6 N. L. R. B. 156; and *Matter of the American Hair & Felt Company* and *Jute, Hair & Felt Workers, Local No. 163*, 6 N. L. R. B. 648. But compare *Matter of Bendix Products Corporation* and *International Union, United Automobile Workers of America, Bendix Local No. 9*, 3 N. L. R. B. 682.

[19] *Matter of Sweet Candy Company, a corporation* and *Candy Workers' Local No. 373*, 5 N. L. R. B. 541.

where all parties are agreed on such exclusion,[20] or where the only union involved desires such exclusion, but the employer does not.[21]

The Board has held in many cases that employees with special technical training will not usually be included in one unit with ordinary production employees. In *Matter of Northrop Corporation*,[22] the inclusion in a plant unit of employees in the company's engineering and production control departments was in issue. The Board said:

> Many of the men employed in the non-clerical portions of these two departments are college graduates, and regard their positions as careers. The economic interests of these workers and their relation to the company are on an entirely different plane from those of the production workers.

The Board has accordingly held that normally [23] engineers and draftsmen,[24] chemists,[25] and other technical employees,[26] should be excluded from a plant unit.

Laboratory employees, by virtue of special training or the fact that their work is entirely separate from that of other employees,

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[20] *Matter of J. G. McDonald Chocolate Company, a corporation* and *Candy Workers' Local No. 373*, 5 N. L. R. B. 547.

[21] *Matter of U. S. Testing Co., Inc.* and *Federation of Architects, Engineers, Chemists & Technicians, C. I. O.*, 5 N. L. R. B. 696; *Matter of John Minder and Son, Inc.* and *Butchers Union, Local No. 174*, 6 N. L. R. B. 764; and *Matter of National Candy Company, Inc., Veribrite Factory* and *Local 351 Candy Workers, affiliated with Bakery and Confectionery Workers International Union of America (A. F. of L. Affil.)*, 7 N. L. R. B. 1207. Compare *Matter of Marks Brothers Company* and *United Toy and Novelty Workers Local Industrial Union No. 538, affiliated with the C. I. O.*, 7 N. L. R. B. 156, and *Matter of Keystone Manufacturing Company* and *United Toy and Novelty Workers Local Industrial Union No. 538 of the C. I. O.*, 7 N. L. R. B. 172, where the union desired the inclusion of shipping room employees but the exclusion of stock room employees. The Board held that both groups should be included in the appropriate unit.

[22] *Matter of Northrop Corporation* and *United Automobile Workers, Local No. 229*, 3 N. L. R. B. 228.

[23] See quotation from *Matter of Tennessee Copper Company* and *A. F. of L. Federal Union No. 21164*, 5 N. L. R. B. 768, in section G 1 above.

[24] *Matter of Northrop Corporation* and *United Automobile Workers, Local No. 229*, 3 N. L. R. B. 228; *Matter of Bartlett & Snow Company* and *The Bartlett & Snow Employees' Association, Inc.*, and *United Automobile Workers of America*, 4 N. L. R. B. 113; *Matter of Westinghouse Airbrake Company* and *United Electric and Radio Workers of America, Railway Equipment Workers Local No. 610*, 4 N. L. R. B. 403; *Matter of Todd Shipyards Corporation, Robins Dry Dock and Repair Co., and Tietjen and Lang Dry Dock Co.* and *Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 20; *Matter of Marlin-Rockwell Corporation* and *Local No. 338, United Automobile Workers of America*, 5 N. L. R. B. 206; *Matter of New Idea, Inc.* and *The A. F. of L.*, 5 N. L. R. B. 381; *Matter of Tennessee Copper Company* and *A. F. of L. Federal Union No. 21164*, 5 N. L. R. B. 768; *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 6 N. L. R. B. 780; *Matter of Keystone Manufacturing Company* and *United Toy and Novelty Workers Local Industrial Union No. 538 of the C. I. O.*, 7 N. L. R. B. 172; and *Matter of Walker Vehicle Company and the Automatic Transportation Company, divisions of the Yale & Towne Manufacturing Company* and *Walker-Automatic Independent Labor Association*, 7 N. L. R. B. 827. See also: *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159, in which a separate unit for draftsmen and engineers was considered appropriate. And compare *Matter of Atlantic Basin Iron Works* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 13*, 5 N. L. R. B. 402, where the Board refused to exclude all employees in the company's engineering department, in the absence of evidence as to the nature of their duties, but held: "If any of the employees of this department are engaged in technical or experimental work requiring special training or skill, they will not be included in the same unit with the production and maintenance employees. All employees of the engineering department whose duties do not involve such special training or skill will, however, be included in the unit."

[25] *Matter of Hoffman Beverage Company* and *Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America*, 3 N. L. R. B. 584; *Matter of International Harvester Company Tractor Works* and *Farm Equipment Workers Association, Division of A. A. I. S. & T. W. N. A., Lodge No. 1320, C. I. O.*, 5 N. L. R. B. 192; *Matter of Tennessee Copper Company* and *A. F. of L. Federal Union No. 21164*, 5 N. L. R. B. 768; *Matter of Armour & Company* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 418*, 5 N. L. R. B. 975; *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 6 N. L. R. B. 780; and *Matter of Pennsylvania Salt Manufacturing Company* and *Local Union, No. 12055 of District No. 50, United Mine Workers of America*, 3 N. L. R. B. 741; although in the last-named case, one of the chemists was an officer of one of the two unions involved, and another chemist had joined the other.

[26] *Matter of Sunshine Mining Company* and *International Union of Mine, Mill, and Smelter Workers*, 7 N. L. R. B., No. 144.

are usually considered as having interests distinguishing them from the latter.[27] Where it appears, however, that in fact their work is of a more or less mechanical nature, requiring little or no skill, they may be included in a plant unit.[28] In *Matter of Hubinger Company*,[29] the two participating unions differed as to the inclusion of the company's laboratory employees in a plant unit. The Board said:

* * * There was no evidence in the record to indicate that any of the production or maintenance employees of that department are engaged in research, experimental, or any other kind of technical work. No special training other than a high school education is required, and most of the employees are engaged solely in gathering samples from the various departments of the Company. If, however, any employees of the laboratory department are engaged in research or experimental work, they should not be included in the same unit with the other production and maintenance employees.

In *Matter of U. S. Testing Co., Inc.*,[30] the company operated two laboratories on separate floors. The union claimed that employees in one of these laboratories constituted an appropriate unit, and the company contended that employees in both laboratories should be considered together. In holding in favor of a separate unit as claimed by the union, the Board pointed out that:

The bulk of the testing done on the fifth floor, however, relates to the physical qualities of raw silk and yarns. This testing requires mere visual or mechanical skill. It is to be contrasted with the general chemical testing of a wide variety of products carried on in the fourth-floor laboratory. It can be no mere chance that most of the fourth-floor employees have academic training while those on the fifth floor have not. Indeed, the fifth-floor supervisor is shown to have no academic training along technical lines.

In two cases,[31] the Board has held that apprentices hired under arrangements made between an employer and a State agency should be excluded from a bargaining unit for other employees. However, in another case,[32] the Board held that the fact that the company signed individual contracts with those of its apprentices who were minors, and with their guardians, did not warrant the exclusion of apprentices from a plant unit, in view of other factors pointing to a similarity of interests between the apprentices and the other employees.

Finally, the Board has held that doctors and nurses[33] and messengers[34] have interests which are sufficiently dissimilar from those

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[27] *Matter of Hoffman Beverage Company* and *Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America*, 3 N. L. R. B. 584; *Matter of Southern Chemical Cotton Company* and *Textile Workers Organizing Committee*, 3 N. L. R. B. 869; *Matter of American Sugar Refining Company* and *Committee for Industrial Organization*, 4 N. L. R. B. 897; and *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 6 N. L. R. B. 780.

[28] *Matter of The B. F. Goodrich Company* and *United Rubbers Workers of America, Local No. 43*, 3 N. L. R. B. 420; and *Matter of Marlin-Rockwell Corporation* and *Local No. 338, United Automobile Workers of America*, 5 N. L. R. B. 206.

[29] *Matter of Hubinger Company* and *Corn Products Workers Union No. 19931 and Hubinger Company Employees Representation Plan*, 4 N. L. R. B. 428.

[30] *Matter of U. S. Testing Co., Inc.* and *Federation of Architects, Engineers, Chemists & Technicians, C. I. O.*, 5 N. L. R. B. 696.

[31] *Matter of Marlin-Rockwell Corporation* and *Local No. 338, United Automobile Workers of America*, 5 N. L. R. B. 206; and *Matter of Fairbanks, Morse & Company* and *Pattern Makers Association of Beloit*, 7 N. L. R. B. 229.

[32] *Matter of Bendix Products Corporation* and *International Union, United Automobile Workers of America, Bendix Local No. 9*, 3 N. L. R. B. 682.

[33] *Matter of Westinghouse Airbrake Company* and *United Electric and Radio Workers of America, Railway Equipment Workers Local No. 610*, 4 N. L. R. B. 403.

[34] *Matter of Armour & Company* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 413*, 5 N. L. R. B. 975; and *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 6 N. L. R. B. 780.

of ordinary production workers to warrant their exclusion from a unit composed chiefly of the latter.

(F) TEMPORARY AND CASUAL EMPLOYEES [35]

Where a company employs men for temporary periods, the question may arise whether such employees are to be included in one unit with those who do the same type of work on a permanent basis.

In *Matter of Bishop & Company, Inc.*,[36] it appeared that in addition to 100 regular production employees, the company took on "extra" or "make-shift" employees during its rush season. About one-quarter of these employees returned from year to year for such rush season. It was contended by one of the unions involved that these employees should be excluded from the bargaining unit because of the casualness of their relationship with the company. The Board agreed, saying:

> We conclude that the difference in the employment relationship of the extra employees and of those employed by the company throughout the year is such that there is not a sufficient community of interest between these groups for collective bargaining as a unit.[37]

However, the mere fact that the employer's business is seasonal has been held not to warrant a distinction between year-round and other employees, where there is no showing that any recognition of a difference between the two classifications has been made by the employer.[38]

Under some circumstances, new employees may also be considered as having temporary status. In *Matter of Stackpole Carbon Company*,[39] the only union involved desired to exclude certain temporary employees from a bargaining unit of production and maintenance workers. It appeared that the company paid lower wages to its new employees for 6 weeks, during which time they were on probation. None of such employees had joined the union, and apparently they were not eligible to membership. The Board held that, in view of these factors, and the shortness of the probationary period, the temporary employees should be excluded.[40]

In cases involving longshoremen and shore gangs, it is commonly necessary for the Board to adopt a formula to determine which employees have worked with an employer with sufficient regularity to entitled them to a voice in determining representatives.[41] In *Matter*

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[35] The problem of determining which men have sufficient status as employees of a company to be entitled to a voice in the selection of representatives, as distinguished from the problem of determining what classes of employees should be included in one appropriate unit, is discussed above in section #3 (A) and (B).

[36] *Matter of Bishop & Company, Inc.*, and *United Cracker, Bakery, and Confectionery Workers, Local Industrial Union No. 212*, 4 N. L. R. B. 514.

[37] See also: *Matter of Southern Chemical Cotton Company* and *Textile Workers Organizing Committee*, 3 N. L. R. B. 869; and *Matter of Armour & Company* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 413*, 5 N. L. R. B. 975.

[38] *Matter of Sheba Ann Frocks, Inc.* and *International Ladies' Garment Workers' Union of America, Locals 121 and 204*, 3 N. L. R. B. 97.

[39] *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171.

[40] Compare *Matter of Century Mills, Inc.* and *South Jersey Joint Board, of the International Ladies Garment Workers Union*, 5 N. L. R. B. 807, where the company's contention that employees who had worked less than 3 months were known as learners and should be excluded was rejected. It did not appear that the learners were employed otherwise than in ordinary work, and many had joined the union involved in the case.

[41] *Matter of McCabe, Hamilton and Renny, Limited* and *Honolulu Longshoremen's Association, Local 38–136 of the International Longshoremen's Association*, 3 N. L. R. B. 547 (those who had worked 75 hours or more during the 6-month period prior to the issuance of the Direction of Election); *Matter of International Mercantile Marine Company and United States Lines Company* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 22*, 3 N. L. R. B. 751 (those who had worked 24 days during the 3 months preceding the date of the hearing).

of Shipowners' Association of the Pacific Coast,[42] in determining what classes of longshoremen had a substantial interest in the working conditions applicable to longshore work, the Board excluded those groups which did not depend chiefly on longshore work for their livelihood, but were called on only when there were no regular longshoremen available.[43]

In *Matter of Flexo Products Corporation*,[44] all but one of the company's employees worked only irregularly and intermittently. In determining the appropriate unit, the Board included those employees whom the company intended to call on as need arose.[45]

The Board has held that part-time employees who are regularly employed may be included in an appropriate unit for full-time employees,[46] although in one case it was held that certain Saturday employees should be excluded from a unit of retail store employees because of their temporary tenure.[47]

(G) FUNCTIONAL COHERENCE

The functional coherence and interdependence of the various departments in mass-production industries has often impelled the Board to treat all of the production and maintenance employees of a given company as a single unit. Some of the reasons for this method of treatment are mentioned above, as are also the reasons for excluding supervisory and clerical employees. It should be noted, however, that the similarity of the nature of the work of production employees, which is stressed above, is not the sole reason for providing for the industrial form of collective bargaining. Functional interdependence between the various departments of a plant may lead to the same result, even where there is some difference between the skill required in those departments.

Hence the Board has held that a close interrelation of the work of various departments of a plant tends to support a finding of one plant unit, rather than departmental units,[48] and also militates against the splitting off of one department from a plant unit.[49] Similarly,

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[42] *Matter of Shipowners' Association of the Pacific Coast, Waterfront Employers Association of the Pacific Coast, The Waterfront Employers of Seattle, The Waterfront Employers of Portland, The Waterfront Employers Association of San Francisco, The Waterfront Employers Association of Southern California,* and *International Longshoremen's and Warehousemen's Union, District No. 1*, 7 N. L. R. B. 1002.

[43] But note that in that case certain men in San Francisco who were known as casual employees were included in the appropriate unit, since it appeared that they differed from the regular employees only in that the latter worked regularly for one company, whereas the former were available for work at any of the companys' docks.

[44] *Matter of Flexo Products Corporation* and *International Brotherhood of Electrical Workers, Local B–713*, 7 N. L. R. B. 1163.

[45] See also discussion of *Matter of Alaska Packers Association* and *Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization*, 7 N. L. R. B. 141, in section E1 above. In that case the three companies involved employed men only during certain parts of the year.

[46] *Matter of Daily Mirror, Inc.* and *The Newspaper Guild of New York*, 5 N. L. R. B. 362.

[47] *Matter of Canadian Fur Trappers Corporation, Canadian Fur Trappers of New Jersey, Inc., Jordan's Inc., Morris Dornfeld doing business as Werth's Wearing Apparel*, and *Department and Variety Stores Employees Union, Local 1115–A*, 4 N. L. R. B. 904.

[48] *Matter of Sheba Ann Frocks, Inc.* and *International Ladies' Garment Workers' Union of America, Locals 121 and 204*, 3 N. L. R. B. 97; *Matter of Huth & James Shoe Mfg. Company* and *United Shoe Workers of America*, 3 N. L. R. B. 220; *Matter of Daily Mirror, Inc.* and *The Newspaper Guild of New York*, 5 N. L. R. B. 362; *Matter of American Oil Company* and *Oil Workers' International Union*, 7 N. L. R. B. 210; and *Matter of Proximity Print Works* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 803.

[49] *Matter of Fleischer Studios, Inc.* and *Commercial Artists & Designers Union—American Federation of Labor*, 3 N. L. R. B. 207; *Matter of Jones Lumber Company, West Oregon Lumber Company, Clark & Wilson Lumber Company, B. F. Johnson Lumber Company, Portland Lumber Mills, Inman-Poulsen Lumber Company, and Eastern & Western Lumber Company* and *Columbia River District Council of Lumber and Sawmill Workers' Union No. 5, etc., et al.*, 3 N. L. R. B. 855; *Matter of News Syndicate Co., Inc.* and *News-*

the fact that two plants owned by a company cooperate in the manufacture of some of the company's products supports a finding of one unit for the employees at both plants.[50] In *Matter of Waggoner Refining Company, Inc.*,[51] the fact that the operations of the respondent's refinery were entirely dependent on those of its other departments was held to support a finding that the refinery employees, although situated 21 miles away from the respondent's oil fields, belonged in the same unit with the oil field employees.

In *Matter of Columbia Broadcasting System, Inc.*,[52] the company operated a Nation-wide broadcasting system. One union claimed that the company's radio technicians and engineers in New York constituted an appropriate unit, while another contended that a unit limited to one portion of the company's system was not appropriate. In sustaining the contention of the latter, the Board said:

> As is generally true in the communications industry, and in radio broadcasting in particular, the work at the various stations must be perfectly coordinated. To distribute satisfactorily radio programs to an international audience requires instantaneous functional coherence throughout the Company's system. Such coherence is made possible by constant intercommunication among the technicians and engineers by direct wires connecting the stations. The elimination of time and distance by the use of radio and the wire line results in all the technicians associated with a program, wherever located, working together as a closely coordinated unit.

The Board has also held that a system-wide unit for employees of a telegraph and radio communication company was appropriate,[53] and that, where one of two unions had organized on a system-wide basis, units limited to one portion of the system of a gas and electric [54] or of an electric [55] utility company were not appropriate.

A total lack of functional coherence between two departments of a company tends to indicate that a single unit for the employees in both departments is not appropriate. Thus, where a company's enameling plant was in no way related to its two foundries,[56] or where a company's foundry was operated entirely separately from its other manufacturing departments,[57] or where a power-house was similarly separated from a company's manufacturing plant,[58] the Board has found that separate units were appropriate.

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paper Guild of New York, 4 N. L. R. B. 1071; *Matter of McKesson & Robbins, Inc., Blumauer Frank Drug Division* and *International Longshoremen & Warehousemens Union, Local 9, District 1, affiliated with the C. I. O.*, 5 N. L. R. B. 70; and *Matter of Lidz Brothers, Incorporated* and *United Wholesale Employees, (Local No. 65)*, 5 N. L. R. B. 757.

[50] *Matter of Goodyear Tire and Rubber Company of California* and *United Rubber Workers of America, Local 131*, 3 N. L. R. B. 431; *Matter of Ohio Foundry Company* and *International Molders' Union of North America, Local No. 218, and Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1596*, 3 N. L. R. B. 701; and *Matters of Rossie Velvet Company* and *Charles B. Rayhall* and *Textile Workers Organizing Committee of the Committee for Industrial Organization*, 3 N. L. R. B. 804.

[51] *Matter of Waggoner Refining Company, Inc., and W. T. Waggoner Estate* and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 6 N. L. R. B. 731.

[52] *Matter of Columbia Broadcasting System, Inc.* and *American Radio Telegraphists Association*, 6 N. L. R. B. 166.

[53] *Matter of Mackay Radio Corporation of Delaware, Inc. and Mackay Radio & Telegraph Company, a Corporation* and *American Radio Telegraphists' Association*, 5 N. L. R. B. 657.

[54] *Matter of Wisconsin Power and Light Company* and *United Electrical, Radio & Machine Workers of America, Local No. 1134*, 6 N. L. R. B. 320.

[55] *Matter of Tennessee Electric Power Company* and *International Brotherhood of Electrical Workers*, 7 N. L. R. B. 24.

[56] *Matter of Ohio Foundry Company* and *International Molders' Union of North America, Local No. 218, and Amalgamated Association of Iron, Steel, & Tin Workers of North America, Local No. 1596*, 3 N. L. R. B. 701.

[57] *Matter of Combustion Engineering Company, Inc.* and *Steel Workers Organizing Committee, for and in behalf of Amalgamated Association of Iron, Steel and Tin Workers of North America*, 5 N. L. R. B. 344.

[58] *Matter of The Warfield Company, a corporation formerly known as The Thomson & Taylor Company* and *International Union of Operating Engineers, Local No. 399, and International Brotherhood of Firemen and Oilers, Local No. 7*, 6 N. L. R. B. 58.

(H) GEOGRAPHICAL CONSIDERATIONS

The geographical arrangement of an employer's business may be the basis of a finding that certain of its employees constitute a separate appropriate unit.[59] Even where it appears that the geographical considerations are not such as to require the divison of employees into separate units, such division will be made when the state of the employees' self-organization indicates its propriety. In *Matter of American Radiator Company*,[60] the company operated two plants in one city, which were two-and-a-half miles apart. In holding that the employees in each plant constituted a separate appropriate unit, the Board said:

* * * Conceivably, employees of the two plants could be included within the same bargaining unit. However, none of the Buffalo plants have ever joined together for the purpose of collective bargaining and the parties to these present proceedings expressly repudiate any such desire. All the unions here involved have organized on a single plant basis.[61]

The Board has held that geographical considerations justify, for example, a separate unit for employees at a company's plant, excluding employees in its distribution branches;[62] the exclusion of employees in a branch sales office;[63] and the exclusion from a plant unit of men who spend most of their time installing machinery away from the plant.[64]

However, the mere fact of geographical separation, which might otherwise require separate appropriate units, may be overcome by the presence of one or more of the factors which are discussed elsewhere in this section. Among these factors are the form of self-organization, the history of collective bargaining, and the central determination of policy.[65]

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[59] *Matter of Erwin Cotton Mills Company* and *Textile Workers' Organizing Committee*, 6 N. L. R. B. 595 (three appropriate units found; one for the employees in three plants in one town, one for those in one plant in a second town, and one for employees in two plants in a third town); *Matter of Industrial Rayon Corporation, a Delaware Corporation*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 877 (employees in plants in two towns several hundred miles apart held to constitute two appropriate units); *Matter of Utah Copper Company, a corporation and Kennecott Copper Corporation, a corporation*, and *International Union of Mine, Mill, and Smelter Workers, Local No. 392*, 7 N. L. R. B. 928 (employees at two mills held to constitute an appropriate unit apart from employees at a mine and plants 17 miles away); *Matter of Jacob A. Hunkele, Trading as Tri-State Towel Service of the Independent Towel Supply Company* and *Local No. 40 United Laundry Workers Union*, 7 N. L. R. B. 1276 (employees at Cumberland, Maryland, held to constitute a unit apart from employees at Pittsburgh, Pennsylvania).

[60] *Matter of American Radiator Company (Bond Plant and Terminal Plant)* and *Amalgamated Association of Iron, Steel & Tin Workers, Lodges 1199 and 1629*, 7 N. L. R. B. 452.

[61] See also: *Matter of Associated Press* and *The American Newspaper Guild*, 5 N. L. R. B. 43 (separate unit for employees in three offices of a nation-wide news distribution service); and *Matter of Postal Telegraph-Cable Company of Massachusetts* and *American Radio Telegraphists Association*, 7 N. L. R. B. 444 (separate unit for one office of a telegraphic communication system).

[62] *Matter of Hoffman Beverage Company* and *Joint Local Executive Board of International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America*, 3 N. L. R. B. 584.

[63] *Matter of Lidz Brothers, Incorporated* and *United Wholesale Employees, (Local No. 65)*, 5 N. L. R. B. 757.

[64] *Matter of Diamond Iron Works* and *United Electrical Radio Machine Workers of America, Local 1140*, 6 N. L. R. B. 94.

[65] *Matters of Rossie Velvet Company* and *Charles B. Rayhall* and *Textile Workers Organizing Committee of the Committee for Industrial Organization*, 3 N. L. R. B. 804 (two plants 40 miles apart); *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412 (four plants in groups of two, ¾ of a mile apart); *Matter of Canadian Fur Trappers Corporation, Canadian Fur Trappers of New Jersey, Inc., Jordan's Inc., Morris Dornfeld doing business as Werth's Wearing Apparel*, and *Department and Variety Stores Employees Union, Local 1115–A*, 4 N. L. R. B. 904 (three stores in one town and one in another); *Matter of Todd Shipyards Corporation, et al.* and *Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 20 (two plants in one State and one in another, where all were situated on New York Harbor); *Matter of American Woolen Company, Nat'l. and Providence Mills* and *Independent Textile Union of Olneyville*, 5 N. L. R. B. 144 (three mills

In *Matter of Stackpole Carbon Company*,[66] the employer moved one department of its factory to a town eight miles away from the town in which the balance of the factory was located. The Board said:

> The removal of its volume control department to Johnsonburg, approximately 8 miles from St. Marys, cannot be said to have destroyed that mutuality of interest between production employees of that department and production employees of other departments in the respondent's plant which existed before the removal. It does not appear that the problems of the production employees of the volume control department are different in Johnsonburg from what they were in St. Marys.

It was therefore held that prior to the removal, the appropriate unit was limited to employees in the one town, whereas thereafter, it included employees in both towns.

(I) SEPARATE COMPANIES AND SUBCONTRACTORS

The Board has held in several cases that the employees of separate companies, whose only relationship to one another is the fact that they are competitors, did not constitute a single appropriate unit. In *Matter of Metro-Goldwyn-Mayer Studios*,[67] a proceeding which involved a large number of companies, it was contended by one union that the employees of those companies which were members of an association, which had been made a party to the proceeding, should be considered as one unit. After discussing the extent to which the association had acted for its members in the past, the Board said:

> The foregoing shows that, in certain instances, the Association has negotiated on behalf of various motion picture companies as regards the employment conditions of certain occupational groups in the motion picture industry. The evidence does not disclose whether in negotiating particular agreements the Association represented companies other than those constituting its membership or whether it represented its entire membership. Nor is the extent or the character of the Association's participation revealed in most instances. The record does not show that the Association is authorized generally to control labor policies or to handle employment problems of members of the Association. Clearly, it cannot be concluded on the basis of the evidence now before the Board that the Association is an employer within the meaning of the Act or that screen writers employed by companies which are members of the Association should be included within a single bargaining unit.[68]

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in one town, within a radius of ¾ mile); *Matter of United Shipyards, Inc.* and *Locals No. 12, No. 13, No. 15 of the Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 742 (situation similar to that in the *Todd case* above); *Matter of Standard Oil Company of California* and *Oil Workers International Union, Local 299*, 5 N. L. R. B. 750 (three refineries in one State); *Matter of American Steel & Wire Company* and *Steel and Wire Workers Protective Association*, 5 N. L. R. B. 871 (twelve widely distributed plants of one employer); *Matter of C. A. Lund Company* and *Novelty Workers Union, Local 1866 (A. F. of L.) successor*, 6 N. L. R. B. 423 (two plants 20 miles apart); *Matter of Aluminum Company of America and Its Wholly Owned Subsidiaries, The Aluminum Cooking Utensil Company and The Aluminum Seal Company* and *International Union Aluminum Workers of America*, 6 N. L. R. B. 444 (five plants of which one was 1 mile away from the others); *Matter of Phelps Dodge Corporation United Verde Branch* and *International Association of Machinists, Local No. 223; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers, Local No. 406; International Brotherhood of Electrical Workers, Local No. B 657; and International Brotherhood of Carpenters and Joiners, Local No. 1061*, 6 N. L. R. B. 624 (mine and smelter, 7 miles apart); *Matter of Waggoner Refining Company, Inc., and W. T. Waggoner Estate* and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 6 N. L. R. B. 731 (refinery and oil well 21 miles apart); and *Matter of American Oil Company* and *Oil Workers' International Union*, 7 N. L. R. B. 210 (two plants 3 miles apart).

[66] *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171.

[67] *Matter of Metro-Goldwyn-Mayer Studios, and Motion Picture Producers Assn., et al.*, and *Screen Writers' Guild, Inc.*, 7 N. L. R. B. 662.

[68] See also: *Matter of Des Moines Steel Company* and *Lodge 2071, Amalgamated Association of Iron, Steel & Tin Workers of North America, through Steel Workers Organizing Committee, affiliated with C. I. O.*, 6 N. L. R. B. 532; and *Matter of Alaska Packers Association* and *Alaska Cannery Workers Union Local No. 5, Committee for Industrial Organization*, 7 N. L. R. B. 141.

Where, however, two or more companies are closely interconnected by interlocking directorates, common officers, or the like, so that they are subject to a single, centralized control, the Board has found in many cases that the employees of the companies so controlled constitute a single unit. In *Matter of Waggoner Refining Company, Inc.*,[69] it was agreed by both of the unions involved that the employees of a corporation and of a trust estate should be treated together. This was denied by the respondents. After finding that the oil operations of the two legal entities constituted a single enterprise, the Board said:

* * * The testimony of members of both labor organizations clearly confirms the finding which we have made above that all the oil departments comprise a single business venture and that the separation of the Company and the Estate into two legal entities is not carried over into the operations, management, or ownership. The employees of the production, water, and casinghead gasoline departments of the Estate and of the pipe-line department of the Company all work in the oil field and, for the most part, live there. The Company's refinery is located 21 miles away from the oil field, but its operations are entirely dependent upon the other departments and its employees have by their past organizational efforts shown a close contact with the employees in the field. Cocanower, the general manager of all the oil departments, determines the labor policies from a common general office, with the result that wages and working conditions are similar.

It was then held that a single unit was appropriate.[70]

However, the mere fact that two companies are interrelated does not require a holding that their employees constitute a single unit. In *Matter of Pennsylvania Salt Manufacturing Company*,[71] it appeared that a wholly-owned subsidiary of a chemical-producing concern was engaged in producing electric power. Although it was located on the premises of the parent company, and supplied the latter with its entire requirements for steam, it was operated as a separate business enterprise, and transformed most of the steam power produced by it into electric power which was sold to other customers. The Board held that the employees of the power company should not be included in one unit with employees of the chemical company.[72]

One factor which may require the inclusion in one unit of employees even of competing companies which are not financially interrelated is the fact that those companies have joined together for the purposes of collective bargaining with a single representative

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[69] *Matter of Waggoner Refining Company, Inc., and W. T. Waggoner Estate* and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 6 N. L. R. B. 731.

[70] See also: *Matter of United Press Associations* and *American Newspaper Guild*, 3 N. L. R. B. 344; *Matter of Whittier Mills Company* and *Textile Workers Organizing Committee*, 3 N. L. R. B. 389; *Matter of Pennsylvania Greyhound Lines et al.* and *The Brotherhood of Railroad Trainmen*, 3 N. L. R. B. 622; *Matter of Mackay Radio Corporation of Delaware, Inc.* and *Mackay Radio & Telegraph Company, a Corporation* and *American Radio Telegraphists' Association*, 5 N. L. R. B. 657; *Matter of The Triplett Electrical Instrument Company, The Diller Manufacturing Company, doing business under the firm name and style of Readrite Meter Works* and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835; *Matter of Paragon Rubber Co.-American Character Doll Company* and *Toy & Novelty Workers Organizing Committee of the C. I. O.*, 6 N. L. R. B. 23; *Matter of C. A. Lunt Company* and *Novelty Workers Union, Local 1866 (A. F. of L.) successor*, 6 N. L. R. B. 423; and *Matter of Art Crayon Company, Inc. and its affiliated company, American Artists Color Works, Inc.*, and *United Artists Supply Workers*, 7 N. L. R. B. 102.

[71] *Matter of Pennsylvania Salt Manufacturing Company* and *Local Union No. 12055 of District No. 50, United Mine Workers of America*, 3 N. L. R. B. 741.

[72] See also: *Matter of Industrial Rayon Corporation, a Delaware Corporation*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 877, where it was held that the geographical separation of the plants owned respectively by a parent and a subsidiary corporation required a finding that employees in the two plants constituted separate units.

of their respective employees. The quotation from the *Metro-Goldwyn-Mayer* case above shows that in the absence of such a factor, employees of competing companies will not ordinarily be joined in a single unit. However, in *Matter of Shipowners' Association of the Pacific Coast*,[73] that factor was clearly shown to be present. The arguments in favor of a single unit for the longshoremen employed by companies throughout the Pacific Coast who were members of employer associations, and the reasons why it was proper to treat them as a single unit are set forth in the language of the Board in that case as follows:

> The numerous factors which have been pointed to as indicating that the coast unit is the one which will best insure to the longshoremen the full benefit of their right to self-organization and to collective bargaining, are all reflections of the organization of the employers. The history of bargaining and of the longshoremen's organizations is a vivid portrayal of the experiences of the longshoremen as they learned that, since their employers were acting together on a coast basis, they, too, would have to build a coast organization which would parallel the organization of the employers. The desires of the men for a coast unit are the result of their failures when they acted on a port basis, and their success when they acted with their fellow longshoremen on the coast. The imperative need of the longshoremen for the coast unit and the dangers of smaller units arise because the companies on the Pacific coast which use their labor are organized on a coast basis.
>
> We have set out in some detail the history of the organization of these companies and we have considered the present set-up of the four regional associations, Shipowners Association of the Pacific Coast, and Waterfront Employers Association of the Pacific Coast. The organization of the employers is another important factor which militates toward the conclusion that the coast unit is the one most appropriate for purposes of collective bargaining.
>
> It is contended that the Board has no jurisdiction to go beyond the individual company in deciding upon an appropriate unit of employees. The Board, however, is expressly given the authority to decide that the "employer" unit is the unit most appropriate for purposes of collective bargaining. The Act includes within the term *employer* "any person acting in the interest of an employer, directly or indirectly," and the term *person* "includes one or more * * * associations * * *."
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> * * * The regional associations clearly act in the interest of these various companies. We have also shown the close articulation between the regional associations, effected by Waterfront Employers Association of the Pacific Coast, and the fact that, in actual practice, the existence of the Coast Association resulted in the regional associations' acting through the Coast Association as an integrated unit. What has been stated as applicable to the various regional associations is substantially true of Shipowners Association of the Pacific Coast.

The considerations stated above with regard to separate companies are applicable generally to the employees of subcontractors. In *Matter of Union Lumber Company*,[74] the parties had agreed on a unit which included the employees of a private contractor, on the ground that the company involved determined the working conditions of the contractor's employees. The Board rejected the agreement, insofar as it included such employees, saying:

> There is no showing in the record that the company exercises any control whatsoever over the hiring or discharge of such persons; nor is there any showing as to the extent or nature of the alleged dictation relative to wages, hours, and working conditions. On the basis of the facts presented we are of

[73] *Matter of Shipowners' Association of the Pacific Coast, Waterfront Employers Association of the Pacific Coast, The Waterfront Employers of Seattle, The Waterfront Employers of Portland, The Waterfront Employers Association of San Francisco, The Waterfront Employers Association of Southern California*, and *International Longshoremen's and Warehousemen's Union, District No. 1*, 7 N. L. R. B. 1002.

[74] *Matter of Union Lumber Company* and *Lumber & Sawmill Workers Union Local 2826*, 7 N. L. R. B. 1094.

the opinion that such persons may not properly be included in the same unit with employees of the company.[75]

H. ADMINISTRATIVE REMEDIES

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

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

Cease and desist orders and orders requiring affirmative action issued by the Board when it has found that unfair labor practices were committed, will be considered under the following categories:

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

1. Orders in Cases in Which the Board Has Found That an Employer Has Engaged in Unfair Labor Practices Within the Meaning of Section 8 (2) of the Act.

Upon finding that an employer has dominated or interfered with the formation or administration of a labor organization, the Board has ordered him to cease and desist from the unfair labor practices. Inasmuch as "the mere withdrawal of the respondent's [employer's] domination and support of the Employees' Group will not be sufficient

[75] See also: *Matter of Red River Lumber Company* and *Lumber and Sawmill Workers Union Local No. 53 of International Woodworkers of America*, 5 N. L. R. B. 663; and *Matter of Armour & Company* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 413*, 5 N. L. R. B. 975.

to overcome the impression created by the circumstances which surrounded its origin," [76] it has further required that he completely disestablish such organization as an agency for collective bargaining.[77] In a typical instance, *Matter of Pacific Greyhound Lines, Inc.*,[78] the order required the employer to—

> cease and desist from dominating or interfering with the administration of the Drivers' Association, Pacific Greyhound Lines, or with the formation or administration of any other labor organization of its operators, and from contributing financial or other support to the Drivers' Association, Pacific Greyhound Lines, or any other labor organization of its operators, except that nothing in this paragraph shall prohibit the respondent from permitting its operators to confer with it during working hours without loss of time or pay,

and to

> withdraw all recognition from the Drivers' Association, Pacific Greyhound Lines, as the representative of its operators for the purposes of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish the Drivers' Association, Pacific Greyhound Lines as such representative.

In approving these orders the Supreme Court of the United States stated:

> In view of all the circumstances the Board could have thought that continued recognition of the association would serve as a means of thwarting the policy of collective bargaining by enabling the employer to induce adherence of employees to the association, in the mistaken belief that it was truly representative and afforded an agency for collective bargaining, and thus to prevent self-organization * * * There was ample basis for its conclusion that withdrawal of recognition of the Association by respondents, accompanied by suitable publicity, was an appropriate way to give effect to the policy of the Act.[79]

The typical Board order requiring the employer to disestablish the dominated organization as the representative of his employees for the purposes of dealing with him concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work does not prevent such an organization from carrying on other activities, such as health programs, as long as these functions are "administered without discrimination to encourage or discourage membership in any labor organization." [80]

The Board has required an employer to cease and desist from interfering with the formation or administration of a labor organization, even though no organization ever came into being, explaining that its order requires the employer to discontinue, and refrain from, unfair practices which might, at some future time, prove more successful.[81]

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[76] *Matter of M. Lowenstein & Sons, Inc.* and *Bookkeepers', Stenographers' and Accountants' Union, Local No. 16, United Office and Professional Workers of America, C. I. O., etc.*, 6 N. L. R. B. 216, 236.

[77] "The orders will of course be adapted to the need of the individual case; they may include such matters as refraining from collective bargaining with a minority group, recognition of the agency chosen by the majority for the purposes of collective bargaining, posting of appropriate bulletins, refraining from bargaining with an organization corrupted by unfair labor practices." H. R. Rep. No. 1147, 74th Cong., 1st sess. (1935) 24.

[78] *Matter of Pacific Greyhound Lines, Inc.* and *Brotherhood of Locomotive Firemen and Enginemen*, 2 N. L. R. B. 431, order enforced in *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272.

[79] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company*, 303 U. S. 261.

[80] *Matter of Central Truck Lines, Inc.* and *Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America*, 3 N. L. R. B. 317, 326; *Matter of S. Blechman and Sons, Inc.* and *United Wholesale Employees of New York, Local 65, Textile Workers Organizing Committee—Committee for Industrial Organization*, 4 N. L. R. B. 15, 24; *Matter of Utah Copper Company, a Corporation and Kennecott Copper Corporation, a Corporation*, and *International Union of Mine, Mill and Smelter Workers, Local No. 392*, 7 N. L. R. B. 928.

[81] *Matter of Canvas Glove Manufacturing Works, Inc.*, and *National Glove Makers Union, Local No. 88*, 1 N. L. R. B. 519. See also *Matter of Regal Shirt Company* and *Amalgamated Clothing Workers of America*, 4 N. L. R. B. 567, 574.

Where the employer-dominated labor organization has become dormant, the Board has required the employer to cease and desist from dominating it or interfering with its administration, and to refrain from recognizing it as a representative of any of his employees for the purposes of collective bargaining, but has withheld its order of disestablishment.[82] When there was doubt whether the organization had, in fact, been dissolved, or had merely suspended its activities for the time being, the Board has ordered the employer not to accord it any recognition as a collective bargaining agency, "if it should ever return to active existence under its present form and name, or any other." [83]

In *Matter of The Heller Brothers Company of Newcomberstown*,[84] the Board, in addition to issuing its usual cease and desist order, required the employer to reimburse his employees for amounts deducted from their wages as dues for an employer-dominated organization under a check-off arrangement.[85]

Orders of the Board in cases in which the employer granted an agreement to an employer-dominated labor organization,[86] or in which the Board has found that a strike was caused by the employer's domination of a labor organization [87] are discussed elsewhere in this section.

2. Orders in Cases in Which the Board Has Found That the Employer Has Engaged in Unfair Labor Practices Within the Meaning of Section 8 (3) of the Act.

In cases in which the Board has found that an employer has encouraged or discouraged membership in a labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment, it has ordered the employer to cease and desist from the discriminatory practices and to take specific affirmative action remedial of their effect. A typical cease and desist order under this section is that in *Matter of American Potash & Chemical Corporation*,[88] where the Board required the employer to cease and desist:

> From discouraging membership in Borax and Potash Workers' Union No. 20181, or any other labor oganization of its employees, by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire or tenure of employment or any term or condition of employment.

The specific practice which it is intended to prevent is sometimes stated in the order. Thus, in addition to discharges and refusals to reinstate, discrimination in the assignment of working places,[89] and

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[82] *Matter of American Manufacturing Company, Inc.* and *International Association of Machinists, Local Union No. 791*, 7 N. L. R. B. 375; *Matter of American Manufacturing Company; Company Union of The American Manufacturing Company; The Collective Bargaining Committee of the Brooklyn plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443.

[83] *Matter of Yates-American Machine Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1787*, 7 N. L. R. B. 627.

[84] *Matter of The Heller Brothers Company of Newcomberstown* and *International Brotherhood of Blacksmiths, Drop Forgers, and Helpers*, 7 N. L. R. B. 646.

[85] The Board said, "Thus the same pressures by the respondent [employer] which compelled its employees to abandon their free choice of representatives enforced their acquiescence in the check-off. Under these circumstances we will restore the status quo by ordering the respondent to reimburse its employees for amounts deducted from wages as dues for the Independent [employer-dominated organization]."

[86] See p. 212, *infra*.

[87] See p. 209, *infra*.

[88] *Matter of American Potash & Chemical Corporation* and *Borax & Potash Workers' Union No. 20181*, 3 N. L. R. B. 140, order enforced in *National Labor Relations Board* v. *American Potash and Chemical Corp.*, 98 F.(2d) 488 (C. C. A. 9th, 1938).

[89] *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America*, 4 N. L. R. B. 202, order enforced in *Clover Fork Coal Co.* v. *National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th, 1938).

discriminatory lay-offs,[90] furloughs,[91] and lock-outs,[92] have been proscribed.[93]

Except where the unfair labor practices have already been remedied,[94] the Board has consistently ordered the reinstatement, with compensation for loss of pay, of employees discriminatorily discharged, refused reinstatement, laid off, furloughed, demoted, or locked out. Employers are usually required to offer such employees "immediate and full reinstatement to their former positions without prejudice to seniority rights or other rights or privileges previously enjoyed by them." [95]

Persons hired to take the places of employees who have been discriminatorily discharged or refused reinstatement must be dismissed if their dismissal is necessary to effectuate such reinstatement.[96]

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[90] *Matter of Waterman Steamship Corporation* and *National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama*, 7 N. L. R. B. 237.

[91] *Matter of The Kelly-Springfield Tire Company* and *United Rubber Workers of America, Local No. 26 and James M. Reed and Minnie Rank*, 6 N. L. R. B. 325.

[92] *Matter of Hopwood Retinning Company, Inc. and Monarch Retinning Company, Inc.* and *Metal Polishers, Buffers, Platers and Helpers International Union Local No. 8, and Teamsters Union, Local No. 584*, 4 N. L. R. B. 922, order enforced, as modified as to other issues, in *National Labor Relations Board* v. *Hopwood Retinning Co., Inc.*, 98 F. (2d) 97 (C. C. A. 2d, 1938); *Matter of The Triplett Electrical Instrument Company, The Diller Manufacturing Company, doing business under the firm name and style of Readrite Meter Works* and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835; *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304.

[93] For Board orders in cases in which it has found that an employer has discriminated by requiring as a condition of employment the execution of individual antiunion contracts of employment or membership in a labor organization, see p. 212, *infra*.

[94] *Matter of Federal Carton Corporation* and *New York Printing Pressmen's Union No. 51*, 5 N. L. R. B. 879.

[95] Orders couched in this or similar language have been issued in cases too numerous to cite. In a few instances, however, the Board has required that reinstatement be made either to former positions or to positions substantially equivalent to those formerly held. This type of reinstatement has been ordered where reinstatement to positions formerly held is not feasible, as where an employer has curtailed production at one plant, simultaneously increasing production at another (*Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304); where, at the time of decision, it is uncertain at what place the employer will resume operations (*Matter of Kuehne Manufacturing Company, supra, Matter of Hopwood Retinning Company, Inc. and Monarch Retinning Company, Inc.* and *Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 8*, and *Teamsters Union, Local No. 584*, 4 N. L. R. B. 922, order enforced, as modified as to other issues, in *National Labor Relations Board* v. *Hopwood Retinning Co., Inc.*, 98 F. (2d) 97 (C. C. A. 2d, 1938); or where the record leaves doubt as to the continued existence of the position from which the employee was illegally discharged (*Matter of The Warfield Company, a Corporation formerly known as The Thomson & Taylor Company* and *International Union of Operating Engineers, Local No. 399, and International Brotherhood of Firemen and Oilers, Local No. 7*, 6 N. L. R. B. 58). Similar orders were issued in *Matter of Waggoner Refining Company, Inc., and W. T. Waggoner Estate* and *International Association of Oil Field, Gas Well and Refinery Workers of America*, 6 N. L. R. B. 731; *Matter of Smith Wood Products, Inc.* and *Plywood and Veneer Workers Local No. 2691, International Woodworkers of America*, 7 N. L. R. B. 950; *Matter of American Radiator Company, a Corporation* and *Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, affiliated with the Committee for Industrial Organization*, 7 N. L. R. B. 1127; *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelters Workers*, 7 N. L. R. B. 1252; and *Matter of Jacob A. Hunkele, trading as Tri-State Towel Service of the Independent Towel Supply Company and Local No. 40 United Laundry Workers Union*, 7 N. L. R. B. 1276. In *Matter of Montgomery Ward and Company, Incorporated, a Corporation* and *United Mail Order and Retail Workers of America*, 4 N. L. R. B. 1151, the Board ordered that an employee who had been irregularly employed and who was discriminatorily denied employment be placed upon a preferential list for temporary employment in work of the nature he had previously done for the respondent and be offered such employment when it was available.

[96] *Matter of Frederick R. Barrett* and *International Longshoremen's Association, Local No. 978*, 3 N. L. R. B. 513; *Matter of Highway Trailer Company* and *United Automobile Workers of America, Local No. 135 and Local No. 136*, 3 N. L. R. B. 591, order enforced upon consent in *National Labor Relations Board* v. *Highway Trailer Co.*, 95 F. (2d) 1012 (C. C. A. 7th, 1938); *Matter of Leo L. Lowy, individually, doing business as Tapered Roller Bearing Corporation* and *International Association of Machinists, District No. 15*, 3 N. L. R. B. 939; *Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304; *Matter of Smith Wood Products, Inc.*, and *Plywood and Veneer Workers Local No. 2691, International Woodworkers of America*, 7 N. L. R. B., 950; *Matter of American Radiator Company, a Corporation* and *Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, affiliated with the Committee for Industrial Organization*, 7 N. L. R. B. 1127; *Matter of Sunshine*

Where, even after such persons have been dismissed, full reinstatement of employees discriminated against is rendered impossible by curtailment of operations, the Board has ordered that the necessary reduction of staff be made among the respondent's employees on a nondiscriminatory basis, and that those employees for whom immediate reinstatement is not available be placed upon a preferential list to be offered employment as it becomes available, before other persons are hired.[97] In such cases the Board has required that to the extent that a system of seniority has been in force at the respondent's plant it shall be observed in making staff reductions.[98]

In addition to requiring the reinstatement of employees discriminated against, the Board usually orders employers to make them whole for loss of pay.[99] Such back pay orders require payment of a sum of money equal only to that which the employees would normally have earned had the unfair labor practices not occurred. Explaining its order in *Matter of Atlas Mills, Inc.*, the Board stated:

> If the respondent can show, however, that due to the seasonal character of its business, certain of the employees of low seniority would not have been employed full time during the entire period which has elapsed since the discharges, we will order the payment to them of only that amount of back pay which they would in fact have earned under normal conditions.[1]

The period for which back pay is computed begins at the time of the discrimination,[2] and ends at the time at which reinstatement is

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Mining Company and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252; *Matter of Jacob A. Hunkele, trading as Tri-State Towel Service of the Independent Towel Supply Company* and *Local No. 40 United Laundry Workers Union*, 7 N. L. R. B. 1276.

[97] In *Matter of Smith Wood Products, Inc.* and *Plywood and Veneer Workers Local No. 2691, International Woodworkers of America*, 7 N. L. R. B. 950, the manner in which reinstatement should be effected was set forth, as follows:

"All persons hired after September 21, 1937 [the date of the discriminatory practice], shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If, thereupon, by reason of a reduction of force, there is not sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work."

[98] In *Matter of Frederick R. Barrett* and *International Longshoremen's Association, Local No. 978*, 3 N. L. R. B. 513, 525, the Board required the application of a seniority rule in making reinstatement for the following reasons:

"We accept as true the respondent's contention that a decreased volume of business necessitates the employment of fewer men than were employed prior to February 21, 1936. It is impossible to order the reinstatement of the 32 discharged employees when such positions are not now available. However, since the manner of selection of employees for discharge was in direct violation of the provisions of the Act, as many of the discharged employees are entitled to reinstatement as would not have been discharged had the selection been made in some manner not constituting discrimination because of union affiliation. The respondent does not keep efficiency records so selection on this basis is impossible. The only remaining objective test available which will prevent discrimination and will not be unfair to the respondent, is selection on the basis of seniority."

[99] A typical back pay order is that in *Matter of Atlas Mills, Inc.* and *Textile House Workers Union No. 2269, United Textile Workers of America*, 3 N. L. R. B. 10, in which reimbursement of employees was ordered "by payment to each of them, respectively, of a sum of money equal to that which each of them, respectively, would normally have earned as wages during the period from the date of their discharge to the date of such offer of reinstatement, less any amount earned by each of them, respectively, during that period."

[1] *Matter of Atlas Mills, Inc.* and *Textile House Workers Union No. 2269, United Textile Workers of America*, 3 N. L. R. B. 10, 23.

[2] In *Matter of Black Diamond Steamship Corporation* and *Marine Engineers' Beneficial Association Local No. 33*, 3 N. L. R. B. 84, order enforced in *Black Diamond Steamship Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d, 1938), certiorari denied, 304 U. S. 579, back pay for marine engineers who had been denied reinstatement was ordered computed for the period commencing on the date of the first sailing after the discriminatory refusal to reinstate of vessels upon which they, respectively, had been employed.

offered.[3] When, during such period, the employer's business is completely shut down for business reasons,[4] or as the result of a strike,[5] no back pay accrues during the shut-down. But when operations continue during a strike employees previously discriminated against are awarded back pay throughout the strike period.[6] If the employer discriminatorily locks out employees back pay is awarded them for the period of the lock-out whether or not it resulted in complete cessation of operations.[7]

The Board has ordered that the sum of money to be paid shall include the amount of a bonus which would normally have been earned;[8] the reasonable value of maintenance on shipboard, in the case of seafaring employees normally provided such maintenance;[9] and that such sum may not be reduced by charging an employee who occupies an employer-owned house for rent, water or electricity at rates higher than those normally charged him by the employer.[10] Conversely, amounts earned elsewhere during the period of discrimination are excluded from the sum to be paid.[11]

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[3] In several cases in which placement upon a preferential list for employment when it becomes available had been required as an alternative to an offer of immediate reinstatement, back pay has been ordered computed to the date of such placement or offer (*Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304; *Matter of Smith Wood Products, Inc.*, and *Plywood and Veneer Workers Local No. 2691, International Woodworkers of America*, 7 N. L. R. B. 950; *Matter of Sunshine Mining Company* and *International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252; *Matter of Jacob A. Hunkele, trading as Tri-State Towel Service of the Independent Towel Supply Company* and *Local No. 40 United Laundry Workers Union*, 7 N. L. R. B. 1276). When an employee who has been discriminated against has found other employment and does not desire reinstatement, back pay is ordered only to the date upon which the employee secured the employment enjoyed by him at the time of the hearing (*Matter of John Minder and Son, Inc.* and *Butchers Union, Local No. 174*, 6 N. L. R. B. 764; *Matter of Union Die Casting Company Ltd. a Corporation; Udico Collective Bargaining Union* and *International Union United Automobile Workers of America, Local No. 188*, 7 N. L. R. B. 846).

[4] *Matter of Stylecraft Leather Goods Company, Inc.* and *Benjamin Marsala*, 3 N. L. R. B. 920. In *Matter of Leo L. Lowy, Individually, doing business as Tapered Roller Bearing Corporation* and *International Association of Machinists, District No. 15*, 3 N. L. R. B. 938, and *Matter of American Radiator Company, a Corporation* and *Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, affiliated with the Committee for Industrial Organization*, 7 N. L. R. B. 1127, employers shut their plants for valid business reasons shortly after having committed discriminatory practices. Because it was impossible to determine at what date the plants would normally have closed, no back pay was ordered.

[5] *Matter of Montgomery Ward and Company, Incorporated, a Corporation* and *United Mail Order and Retail Workers of America*, 4 N. L. R. B. 1151.

[6] *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443.

[7] See *Matter of Regal Shirt Company* and *Amalgamated Clothing Workers of America*, 4 N. L. R. B. 567; *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509; *Matter of The Triplett Electrical Instrument Company, The Diller Manufacturing Company, doing business under the firm name and style of Readrite Meter Works* and *United Electrical and Radio Workers of America, Local No. 714*, 5 N. L. R. B. 835. Cf. *Matter of Leo L. Lowy, Individually, doing business as Tapered Roller Bearing Corporation* and *International Association of Machinists, District No. 15*, 3 N. L. R. B. 938.

[8] *Matter of Central Truck Lines, Inc.* and *Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America*, 3 N. L. R. B. 317.

[9] *Matter of Waterman Steamship Corporation* and *National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama*, 7 N. L. R. B. 237.

[10] *Matter of National Weaving Company, Inc.*, and *Textile Workers Organizing Committee*, 7 N. L. R. B. 916.

[11] Thus, the Board has excluded from the sum to be paid the reasonable value of board and lodgings received by an employee who, during the discrimination period had secured employment as a domestic (*Matter of The Grace Company* and *United Garment Workers of America, Local No. 47*, 7 N. L. R. B. 766). But home relief payments received during such period are not deductible (*Matter of Vegetable Oil Products Company, Inc., a Corporation* and *Soap and Edible Oil Workers Union, Local No. 18409*, 5 N. L. R. B. 52, amending 1 N. L. R. B. 989), nor are amounts received from unions as relief payments, or payments received from job insurance (*Matter of Missouri-Arkansas Coach Lines, Inc.* and *The Brotherhood of Railroad Trainmen*, 7 N. L. R. B. 186).

Two recent Board decisions require brief consideration at this point. In *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B., No. 51, the Board ordered that to the extent that expenses incurred by employees in seeking employment elsewhere

In an early decision [12] the Board enunciated the rule that where, in his intermediate report, a trial examiner finds that the employer has not violated section 8 (3) of the act and the Board later reverses that finding, back pay will not be ordered for the period from the date of the intermediate report to the date of the Board's decision and order. The reason for the rule is that the employer cannot have been expected to reinstate the discharged men after receipt of the trial examiner's report. The Board has adhered to this principle in cases decided during the past year.[13] A different conclusion was reached, however, upon the facts in *Matter of American Potash & Chemical Corporation.*[14] There the Trial Examiner found discriminatory discharges and recommended reinstatement. He further recommended the dismissal of the complaint, however, upon a finding that the employer's acts were not unfair labor practices affecting commerce within the meaning of section 2 (6) and (7) of the act. The Board, thereafter, reversed the latter finding. It ordered back pay for the full period of discrimination, stating:

> It would * * * clearly appear that the respondent by its failure to reinstate these discharged employees did not rely upon the Trial Examiner's recommendations. On the contrary, it used the Trial Examiner's finding as a basis for discharging union members and their sympathizers without even a pretense that the discharges were for any reason but to destroy completely the desire of its employees to self-organization without interference.

A further variation was introduced in *Matter of Whiterock Quarries, Inc.*,[15] where, too, the trial examiner had found violations of section 8 (3) but had recommended dismissal of the complaint for lack of jurisdiction. For failure of the union to except, the case became closed. More than 2 years later the Board reopened the case and thereupon reversed the trial examiner's finding as to jurisdiction. In its order directing back pay, the Board excluded the long period during which no action in the case was being taken, i. e., the period from the date of the trial examiner's report to the date of the Board's order reopening the case.[16]

Additional affirmative action required by the Board to be taken in cases in which it has found that strikes have been caused by discrim-

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diminished their earnings during the period of discrimination such earnings should not be deducted in computing loss of pay for which the employees must be made whole In *Matter of Republic Steel Corporation* and *Steel Workers Organizing Committee,* 9 N. L. R. B., No. 33, the Board ordered that the sums payable to employees who had been discriminated against be reduced by amounts earned by them during the period of discrimination upon work relief projects, and that the employer repay such amounts to the appropriate fiscal agents of the Federal, State, country, municipal, or other government or governments which supplied the funds for the work relief projects.

[12] *Matter of E. R. Haffelfinger Company, Inc.* and *United Wall Paper Crafts of North America, Local No. 6,* 1 N. L. R. B. 760.

[13] See, for example, *Matter of Kentucky Firebrick Company* and *United Brick and Clay Workers of America, Local Union No. 510,* 3 N. L. R. B. 455, order enforced in *National Labor Relations Board* v. *Kentucky Firebrick Company,* 99 F. (2d) 89 (C. C. A. 6th, 1938) rehearing denied Oct. 12, 1938; *Matter of the Louisville Refining Company* and *International Association, Oil Field, Gas Well and Refinery Workers of America,* 4 N. L. R. B. 844; *Matter of Kuehne Manufacturing Company* and *Local No. 7191, United Brotherhood of Carpenters and Joiners of America,* 7 N. L. R. B. 304.

[14] *Matter of American Potash & Chemical Corporation* and *Borax & Potash Workers' Union No. 20181,* 3 N. L. R. B. 140, order enforced in *National Labor Relations Board* v. *American Potash and Chemical Corp.,* 98 F. (2d) 488 (C. C. A. 9th, 1938).

[15] *Matter of Whiterock Quarries, Inc.* and *Limestone Workers Union No. 19450,* 5 N. L. R. B. 601.

[16] See also *Matter of M. and M. Wood Working Company* and *Plywood and Veneer Workers Union Local No. 102, affiliated with International Woodworkers of America,* 6 N. L. R. B. 372, where the Board, in view of the employer's honest reliance upon the decision of a district court of the United States which sustained an interpretation of a contract as requiring the employer to discharge certain employees, withheld its order for back pay although requiring the reinstatement of the employees in question.

inatory discharges [17] and the effect upon reinstatement orders of violent or unlawful conduct on the part of employees who have been discriminatorily discharged [18] are discussed elsewhere in this section.

3. Orders in Cases in Which the Board Has Found That the Employer Has Engaged in Unfair Labor Practices Within the Meaning of Section 8 (4) of the Act

In *Matter of Aluminum Products Company et al.*[19] the Board found that two employees had been discharged because they had filed charges under the act. It ordered the respondent to cease and desist from "discharging, refusing to reinstate, or otherwise discriminating against an employee because he has filed charges under the National Labor Relations Act." The discharges were found to constitute unfair labor practices within the meaning of section 8 (3), also, and the Board issued an order requiring reinstatement with back pay, similar to orders in cases involving that section alone.

4. Orders in Cases in Which the Board Has Found That the Employer Has Engaged in Unfair Labor Practices Within the Meaning of Section 8 (5) of the Act

In cases in which it has found a refusal to bargain collectively the Board has ordered the respondent to cease and desist from its refusal and has, consistently, required the respondent to bargain, upon request,[20] with the representatives [21] designated by the majority of the employees in an appropriate unit. A typical case is *Matter of Atlas Mills, Inc.*, [22] in which the Board ordered the respondent to:

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[17] See p. 209, *infra*.

[18] See p. 211, *infra*.

[19] *Matter of Aluminum Products Company, Metal Rolling and Stamping Company, Lemont Stamping Corporation, Banner Stamping Company, and Stainless Steel Products Company* and *Aluminum Workers Union No. 19064* and *Aluminum Workers Union No. 19078*, 7 N. L. R. B. 1219.

[20] In *Matter of American Radiator Company, a corporation* and *Local Lodge No. 1770, Amalgamated Association of Iron, Steel and Tin Workers of North America, affiliated with the Committee for Industrial Organization*, 7 N. L. R. B. 1127, the employer offered as a reason for refusing to bargain that inasmuch as the plant was closed, there was nothing to bargain about. Rejecting this excuse, the Board said:

"This reason is also without merit since we have found that the respondent discriminatorily laid off its employees. Since their work ceased as a consequence of an unfair labor practice, they were and still are employees for the purposes of the Act. Furthermore, despite the position taken with the Union Committee, the respondent considered that the plant was closed only temporarily and would reopen as soon as business conditions warranted, and so stated at the hearing. On June 23, 1937, the respondent sent letters to its employees stating, 'If you have a Group Life Insurance Policy, our company has made arrangements so that it can be continued through the present lay-off, provided the monthly premium is paid by you on or before the 25th of each month.' The men employed at the Litchfield plant can reasonably expect to return to work when the plant reopens after such a temporary lay-off. Since these individuals have retained their status as employees of the respondent, they had and still have a right to bargain with the respondent concerning the reopening of the plant, the terms and conditions thereof, and other related matters."

Cf. *Matter of N. Kiamie* and *International Fur Workers Union of the United States and Canada*, 4 N. L. R. B. 808; *Matter of Kuehne Manufacturing Company* and *Local No. 1791, United Brotherhood of Carpenters and Joiners of America*, 7 N. L. R. B. 304.

[21] In *Matter of Omaha Hat Corporation* and *United Hatters, Cap and Millinery Workers International Union, Local Nos. 7 & 8*, 4 N. L. R. B. 878, the Board ordered that, should the respondent resume operations in a locality outside the territorial jurisdiction of the local union representing its employees, it bargain collectively with agents of the international union with which the local union was affiliated; and in *Matter of Hopwood Retinning Company, Inc.* and *Monarch Retinning Company, Inc. and Metal Polishers, Buffers, Platers and Helpers International Union Local No. 8*, and *Teamsters Union, Local No. 584*, 4 N. L. R. B. 922, order enforced, as modified as to other issues, in *National Labor Relations Board* v. *Hopwood Retinning Co., Inc.*, 98 F. (2d) 97 (C. C. A. 2d, 1938), the Board required the respondents to bargain collectively with unions representing employees in two bargaining units "or with the respective affiliated organizations of the said unions to which the employees within the respective units may have transferred their membership."

[22] *Matter of Atlas Mills, Inc., and Textile House Workers Union No. 2269, United Textile Workers of America*, 3 N. L. R. B. 10.

1. Cease and desist from: * * * (c) Refusing to bargain collectively with Textile House Workers Union No. 2269, United Textile Workers of America, as the exclusive representative of the employees in its shipping department; and

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act: (a) Upon request bargain collectively with Textile House Workers Union No. 2269, United Textile Workers of America, as the exclusive representative of its employees in the shipping department in respect to rates of pay, wages, hours of employment, and other conditions of employment, * * *.

Where, after an employer's refusal to bargain and as the result of his unfair labor practices, a number of union members have revoked or transferred their membership the Board has, nevertheless, ordered the employer to bargain collectively with the union.[23] Its reason for such action is stated in *Matter of Bradford Dyeing Association (U. S. A.) (a Corporation)*:[24]

Prior to the hearing many of the members of the T. W. O. C. joined the Federation and by implication renounced their T. W. O. C. affiliation. We have found that such action was the result of the respondent's unfair labor practices. We are ordering the respondent to inform its employees that they are free to become or remain members of the T. W. O. C. and are not required to become or remain members of the Federation. In the presence of such a finding and order, to refrain from ordering the respondent to bargain collectively with the T. W. O C., would be to hold that the obligation of one subdivision of the Act may be evaded by the successful violation of another; that the freely expressed wishes of the majority of the employees may be destroyed if the employer brings to bear sufficient interference, restraint, and coercion to undermine the representatives' majority support. We cannot permit the purposes of the Act to be thus circumvented.

In several cases the Board, following its earlier decision in *Matter of St. Joseph Stock Yards Company*,[25] has ordered that the employer, upon request, bargain collectively, and, if requested to do so, embody in an agreement for a definite term, to be agreed upon, an understanding reached as the result of such bargaining.[26]

Additional affirmative action ordered by the Board to be taken in cases in which it has found that strikes have been caused or prolonged by refusals of employers to bargain collectively is discussed elsewhere in this section.[27]

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[23] *Matter of Bradford Dyeing Association (U. S. A.) (a Corporation)* and *Textile Workers Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604; *Matter of American Manufacturing Company; Matter of National Motor Bearing Company* and *International Union, United Automobile Workers of America, Local No. 76*, 5 N. L. R. B. 409; *Company Union of the American Manufacturing Company; The Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443; *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509; *Matter of Taylor Trunk Company* and *Luggage Workers Union, Local No. 50 of the International Ladies' Hand Bag, Pocketbook and Novelty Workers Union*, 6 N. L. R. B. 32; *Matter of Arthur L. Colten, and A. J. Colman, Co-partners, doing business as Kiddie Kover Manufacturing Company* and *Amalgamated Clothing Workers of America*, 6 N. L. R. B. 355; *Matter of Burnside Steel Foundry Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1719*, 7 N. L. R. B. 714.

[24] In *Matter of Bradford Dyeing Association (U. S. A.) (a Corporation)* and *Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604, 617.

[25] *Matter of St. Joseph Stock Yards Company* and *Amalgamated Meat Cutters & Butcher Workmen of North America, Local Union No. 159*, 2 N. L. R. B. 39.

[26] *Matter of Federal Carton Corporation* and *New York Printing Pressmen's Union No. 51*, 5 N. L. R. B. 879; *Matter of Globe Cotton Mills* and *Textile Workers Organizing Committee*, 6 N. L. R. B. 461; *Matter of National Licorice Company* and *Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vicinity*, 7 N. L. R. B. 537; *Matter of Piqua Munising Wood Products Company* and *Federal Labor Union Local 18787*, 7 N. L. R. B. 782; *Matter of Sunshine Mining Company* and *International Union of Mine, Mill, and Smelter Workers*, 7 N. L. R. B. 1252. The order in the *Sunshine Mining Company* case requires, in addition, that such understanding be embodied in a "written signed" agreement.

[27] See p. 209, *infra*.

5. Orders in Cases in Which the Board Has Found That an Employer Has Engaged in Unfair Labor Practices Within the Meaning of Section 8 (1) of the Act

Unfair labor practices within the meaning of any of the four other subdivisions of section 8 are also unfair labor practices within the meaning of section 8 (1).[28] Cease and desist orders under this subdivision are usually general in nature and couched in the language of sections 7 and 8 (1) of the act, as follows:

> Cease and desist from in any manner interfering with, restraining, or coercing its employees * * * in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.[29]

When, however, acts of the employer are found to constitute unfair labor practices independent of any practice particularized in the other subdivisions of section 8, the Board frequently issues an additional order requiring the employer specifically to cease and desist from such acts. In *Matter of Clover Fork Coal Company*,[30] for example, the Board ordered the employer to cease and desist from the following practices which constituted interference with and restraint and coercion of its employees:

> (a) Maintaining surveillance of or employing any manner of espionage for the purpose of ascertaining and investigating the activities of United Mine Workers of America and of the activities of its employees in connection with such organization or any other labor organization; (b) indicating to its employees the respondent's attitude and desires with respect to the relationship of its employees to any particular labor organization, or indicating to its employees the respondent's judgment of union organizers or particular labor organizations; (c) threatening to close its mine if its employees join with any labor organization; (d) expressing to its employees its approval of anti-union sentiment or activities; and (e) in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.[31]

The employer, in the same case, was a member of the Harlan County Coal Operators Association, an organization found by the Board to have been engaged in labor practices declared unfair by the act. From the evidence the Board concluded that the illegal acts of the Association were in effect those of the respondent. It accordingly ordered the employer to "cease and desist from contribut-

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[28] Section 8 (1) is treated last, inasmuch as it is the most inclusive subdivision and "the four succeeding unfair labor practices are designed not to impose limitations or restrictions upon the general guarantees of the first, but rather to spell out with particularity some of the practices that have been most prevalent and most troublesome." (Sen. Rep. No. 573, 74th Cong., 1st Sess. (1935) 9). In a few cases where the Board has found a violation of 8 (1) solely by virtue of a finding of a refusal to bargain collectively under 8 (5), it has deemed it unnecessary to issue the more general cease and desist order. See, for example, *Matter of St. Joseph Stockyards Company*, and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 159*, 2 N. L. R. B. 39.

[29] See, for example, *Matter of Proximity Print Works* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 803.

[30] *Matter of Clover Fork Coal Company* and *District 19, United Mine Workers of America*, 4 N. L. R. B. 202, order enforced in *Clover Fork Company* v. *National Labor Relations Board*, 94 F. (2d) 331 (C. C. A. 6th, 1938).

[31] For other cases containing specific orders, see *Matter of Consolidated Edison Company of New York, Inc., et al.* and *United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization*, 4 N. L. R. B. 71, order enforced in *Consolidated Edison Co.* v. *National Labor Relations Board*, 95 F. (2d) 390 (C. C. A. 2d, 1938), certiorari granted, 58 S. Ct. 1038, U. S. Sup. Ct., decided Dec. 5, 1938. *Matter of Botany Worsted Mills and Textile Workers Organizing Committee*, 4 N. L. R. B. 292.

ing to, cooperating with, or assisting, through membership therein or otherwise, the Harlan County Coal Operators Association or any other organization engaging in, interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act."

Orders under section 8 (1) frequently require employers to cease and desist from the use of espionage [32] or of violence [33] as a means of interfering with the rights of his employees to self-organization. In *Matter of Ford Motor Company*,[34] the employer had hired thugs to terrorize and beat union members, and utilized the services of guards in its service department to stamp out union activity. The Board ordered the employer to cease and desist from:

> Threatening, assaulting, beating, or in any other manner interfering with, restraining, or intimidating, directly or indirectly, members of International Union, United Automobile Workers of America or any other labor organization of its employees distributing or otherwise disseminating union literature in the vicinity of its River Rouge plant;
>
> Organizing, maintaining, supporting or assisting vigilante or similar groups, or employing or using such groups, the members of its Service Department, or any other persons, directly or indirectly, for the purpose of intimidating or coercing its employees from joining International Union, United Automobile Workers of America or any other labor organization of its employees.

In *Matter of General Shoe Corporation*,[35] the Board found that union employees had been evicted from the plant by a "bouncing squad" composed of members of an employer-dominated organization. During the hearing, the employer offered to reinstate the evicted employees, but there was no guaranteee of full protection while at their employment. The Board ordered the respondent to "provide full reinstatement and adequate protection from violence or molestation by other employees during the working hours." [36]

Affirmative orders under section 8 (1) are not as common as cease and desist orders. They occur in cases in which affirmative action is deemed essential to remedy the situation brought about by the unfair labor practices.[37] In *Matter of Engineering Company and Metro-*

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[32] *Matter of United States Stamping Company* and *Enamel Workers Union*, No. 18630, 5 N. L. R. B. 172 (employer hired agents of the National Corporation Service, Inc., to report on union activities, and was ordered to cease and desist from "* * * engaging the services of any agency or individuals for the purpose of, or in any other manner interfering with, restraining, or coercing its employees * * *"); *Matter of Metropolitan Engineering Company and Metropolitan Device Corporation* and *United Electrical and Radio Workers of America, Local No. 1203*, 4 N. L. R. B. 542 (employer sent an office employee to spy upon a union meeting, and was ordered to cease and desist from "spying, maintaining surveillance, or employing any other manner of espionage over the meetings or meeting places and activities of the [union] * * * or any other labor organization * * *")

[33] *Matter of Ford Motor Company* and *International Union, United Automobile Workers of America*, 4 N. L. R. B. 621.

[34] *Matter of Ford Motor Company* and *International Union, United Automobile Workers of America*, 4 N. L. R. B. 621.

[35] *Matter of General Shoe Corporation* and *Georgia Federation of Labor*, 5 N. L. R. B. 1005.

[36] The employer was further ordered to "instruct all of its employees that physical assault and other acts of intimidation and coercion of its employees shall not be permitted in the plant during working hours."

[37] See, for example, *Matter of General Shoe Corporation* and *Georgia Federation of Labor*, 5 N. L. R. B. 1005. In certain cases the Board has issued orders under this subdivision which it would normally issue under another subdivision of section 8. See Second Annual Report, pages 145–7, and also *Matter of Indianapolis Glove Company* and *Amalgamated Clothing Workers of New York, Local No. 145*, 5 N. L. R. B. 231.

politan Device Corporation,[38] supervisory employees made anti union statements and advised employees not to join the United Electrical and Radio Workers. The Board ordered the employer to:

> Instruct all of their officials and agents, including their superintendents, foremen, and other supervisory employees, that they shall not in any manner approach employees concerning, or discuss with the employees, the question of their labor affiliation or threaten employees in any manner because of their membership in any labor organization in general, or the United Electrical and Radio Workers of America, Local 1203, in particular.

Other affirmative orders have been issued in cases in which the Board found that the employer discriminated in his treatment of two labor organizations by granting special privileges to one of them and not to the other. In *Matter of Alaska Juneau Gold Mining Company*,[39] the employer allowed the Juneau Mine Workers Association to post notices on its bulletin boards but denied that privilege to the International Union of Mine, Mill and Smelter Workers, Local 203. The Board ordered the employer to "prohibit the use of its bulletin boards for posting of notices by the Juneau Mine Workers Association [found to be employer-dominated] or any other labor organization of its employees unless free and unconditional privileges as to the use thereof shall be equally extended to International Union of Mine, Mill and Smelter Workers, Local 203, and to any other labor organization of its employees."[40] In *Matter of Waterman Steamship Corporation*,[41] the employer refused to grant passes to authorized representatives of the National Maritime Union of America, for the same purpose and under the same conditions as it granted passes to representatives of the International Seamen's Union of America. The Board ordered the employer to cease and desist "from refusing to issue passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America or its successor."

Additional affirmative action required by the Board to be taken in cases in which it has found that a strike was caused or prolonged by an employer's unfair labor practices under section 8 (1) is discussed elsewhere in this section.[42]

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[38] *Matter of Engineering Company and Metropolitan Device Corporation* and *United Electrical and Radio Workers of America, Local No. 1203*, 4 N. L. R. B. 542.

[39] *Matter of Alaska Juneau Gold Mining Company* and *International Union of Mine, Mill, and Smelter Workers, Local 203*, 2 N. L. R. B. 125.

[40] See also *Matter of Consolidated Edison Company of New York, Inc., et al.* and *United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization*, 4 N. L. R. B. 71, order enforced in *Consolidated Edison Co. v. National Labor Relations Board*, 95 F. (2d) 390 (C. C. A. 2d), certiorari granted, 58 S. Ct. 1038, where the Board ordered the employer to cease and desist from "permitting organizers and collectors of dues for International Brotherhood of Electrical Workers [favored labor organization] or any other labor organization to engage in activities among the employees in behalf of such labor organizations during working hours or on the respondent's property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees." U. S. Sup. Ct., decided Dec. 5, 1938.

[41] *Matter of Waterman Steamship Corporation* and *National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama*, 7 N. L. R. B. 237.

[42] See p. 209, *infra*.

6. Orders in Cases in Which the Board Has Found That a Strike Was Caused or Prolonged by the Employer's Unfair Labor Practices

In a number of early decisions the Board held that when an employer's unfair labor practices cause [43] or prolong [44] a strike among his employees, reinstatement of the striking employees is necessary in order to remedy the unfair labor practices and to effectuate the policies of the act.[45] The Board has adhered to this principle and has consistently ordered the reinstatement of strikers who quit work in protest against unfair labor practices,[46] or whose return to their jobs is delayed by unfair labor practices.[47] To justify reinstatement of strikers it is not necessary that unfair labor practices be the sole cause of the strike or of its prolongation,[48] and the Board has ordered reinstatement where it has found that unfair labor practices were a contributing cause of the strike.[49]

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[43] See, for example, *Matter of Brown Shoe Company, Inc., a Corporation* and *Boot and Shoe Workers' Union, Local No. 655*, 1 N. L. R. B. 803; *Matter of Carlisle Lumber Company* and *Lumber & Sawmill Workers' Union, Local 2511, Onalaska, Washington* and *Associated Employees of Onalaska, Inc., Intervener*, 2 N. L. R. B., 248, order enforced in *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th, 1937), certiorari denied in 304 U. S. 575.

[44] See, for example, *Matter of Remington Rand, Inc.*, and *Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626, order enforced in *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d, 1938), certiorari denied in 304 U. S. 576; rehearing denied 304 U. S. 590.

[45] The propriety of orders requiring the reinstatement of strikers was upheld by the Circuit Court of Appeals for the Ninth Circuit in *National Labor Relations Board* v. *Biles-Coleman Lumber Company*, 98 F. (2d) 18 (C. C. A. 9th, 1938), enforcing order in *Matter of Biles-Coleman Lumber Company* and *Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679, where it said:

"Section 10 (c) authorizes the Board to require such affirmative action, 'including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.' The term 'employees' as defined in Section 2 (3) includes 'any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice.' The reinstatement remedy was designed to vindicate the policy of the Act and to compel observance of its purpose and spirit. There is nothing in the Act which limits the reinstatement remedy to members of labor organizations or even to striking employees who are primarily and directly aggrieved by an unfair labor practice which causes a strike. An entire crew, union or non-union, may strike by reason of an unfair labor practice involving the discharge of only one man. It could hardly be contended that reinstatement of the entire crew in such case would not be a reasonable measure for effectuating the policies of the Act, under Section 10 (c)."

[46] See, for example, *Matter of Lenox Shoe Company, Inc.*, and *United Shoe Workers of America, affiliated with the C. I. O.*, 4 N. L. R. B. 372, strike caused by violations of Section 8 (1); *Matter of Tiny Town Togs, Inc.* and *International Ladies Garment Workers Union*, 7 N. L. R. B. 54, strike caused by violations of section 8 (2); *Matter of Louisville Refining Company* and *International Association, Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 844, strike caused by violations of Section 8 (3) and (5); *Matter of U. S. Stamping Company* and *Enamel Workers Union, No. 18630*, 5 N. L. R. B. 172, strike caused by violations of Section 8 (5).

[47] See, for example, *Matter of Oregon Worsted Company* and *United Textile Workers of America, Local 2485*, 3 N. L. R. B. 36, order enforced in *National Labor Relations Board* v. *Oregon Worsted Co.*, 96 F. (2d) 193 (C. C. A. 9th, 1938), strike prolonged by violations of Section 8 (1); *Matter of N. Kiamie* and *International Fur Workers Union of the United States and Canada*, 4 N. L. R. B. 808, strike prolonged by violations of Section 8 (5); *Matter of Biles-Coleman Lumber Company* and *Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679, order enforced in *National Labor Relations Board* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9th, 1938), and *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171, strikes caused by unfair labor practices and prolonged by further unfair labor practices.

[48] In *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d, 1938), enforcing order in *Matter of Remington Rand, Inc.* and *Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626, certiorari denied 58 S. Ct. 1046, the Circuit Court of Appeals for the Second Circuit said:

"We have assumed hitherto that the strike here in question was only for the purpose of enforcing the union's power to negotiate for all the men. That is not true; there had been a wage dispute and, the men's inability to get at the truth of the Elmira business was another cause. It is, of course, possible that the parties might have split over wages, or over the Elmira plant, even if the respondent had negotiated with the Joint Board. But since the refusal was at least one cause of the strike, and was a tort—a 'substraction'—it rested upon the tortfeasor to disentangle the consequences for which it was chargeable from those from which it was immune. Since it cannot show that the negotiations, if undertaken, would have broken down, it cannot say that the loss of the men's jobs was due to a controversy which the Act does not affect to regulate."

[49] *Matter of Todd Shipyards Corporation, Robins Dry Dock and Repair Co., and Tietjen and Lang Dry Dock Co.* and *Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R. B. 20; *Matter of Titan Metal Manufacturing Company* and *Federal*

The employer is ordered to reinstate strikers upon application. As in cases of employees discriminatorily discharged,[50] he must dismiss, if necessary to effect such reinstatement, all persons hired since the occurrence of the unfair labor practices to take the place of strikers.[51] The manner in which strikers must be reinstated, similar to that applicable to the reinstatement of employees who have been discriminatorily discharged, is set forth in *Matter of Electric Boat Company*,[52] as follows:

> All employees hired after the commencement of the strike shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If, thereupon, by reason of a reduction in force, there is not sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

Unlike employees who have been discriminatorily discharged, however, strikers are awarded back pay only from the date of their application for reinstatement pursuant to the Board's order [53] to the date upon which the employer complies with its terms by offering them reinstatement, or, if so ordered, by placing them upon a preferential list for employment when it becomes available.[54] Such back

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Labor Union No. 19981, 5 N. L. R. B. 577. See also *Matter of Oregon Worsted Company* and *United Textile Workers of America, Local 2435*, 3 N. L. R. B. 36, order enforced in *National Labor Relations Board* v. *Oregon Worsted Co.*, 96 F. (2d) 193 (C. C. A. 9th), where the Board said: "We have found that the respondent impeded and interfered with the election which the Board by its decision in case numbered R–111 (supra) directed to be held among respondent's employees on December 21, 1936. In the light of the purposes of the Act and the experience upon which it is based, we are justified in assuming that had the election been held when scheduled, respondent's striking employees would thereafter have returned to work. It does not lie in the mouth of respondent, whose conduct precluded that possibility, to assert the contrary."

[50] See p. 200, *et seq., supra.*

[51] See, for example, *Matter of Oregon Worsted Company* and *United Textile Workers of America, Local 2435*, 3 N. L. R. B. 36, order enforced in *National Labor Relations Board* v. *Oregon Worsted Co.*, 96 F. (2d) 193 (C. C. A. 9th); *Matter of Biles-Coleman Lumber Company* and *Puget Sound District Council of Lumber and Sawmill Workers*, 4. N. L. R. B. 679, order enforced in *National Labor Relations Board* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 2d, 1938).

[52] *Matter of Electric Boat Company* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 6*, 7 N. L. R. B. 572. (This is a case in which the unfair labor practices preceded the strike.)

[53] In the more recent cases, the Board has limited the back pay period to commence 5 days after such application for reinstatement (*Matter of Tiny Town Togs, Inc.* and *International Ladies Garment Workers Union*, 7 N. L. R. B. 54; *Matter of Electric Boat Company* and *Industrial Union of Marine and Shipbuilding Workers of America, Local No. 6*, 7 N. L. R. B. 572).

[54] Cf. *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; The Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company* and *Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443, where the Board ordered back pay for strikers from the date upon which the employer refused them reinstatement unless they would accept conditions, the imposition of which constituted new unfair labor practices, stating:

> "When employees voluntarily go on strike, even if in protest against unfair labor practices, it has been our policy not to award them back pay during the strike. However, when the strikers abandon the strike and apply for reinstatement despite the unfair labor practices, and the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor practices, we are of the opinion that the considerations impelling our refusal to award back pay are no longer controlling. Accordingly, we hold that where, as in this case, an employer refuses to reinstate strikers except upon their acceptance of new conditions that discriminate against them because of their union membership or activities, the strikers who refuse to accept the conditions and are consequently refused reinstatement are entitled to be made whole for any losses of pay they may have suffered by reason of the respondent's discriminatory acts."

pay is limited, in each case, to the amount the striking employees would normally have earned, less amounts earned by them, during the period of its computation.

7. Effect on Board Orders of Violent or Unlawful Conduct on the Part of Employees Who Were Discriminatorily Discharged or Who Went on Strike in Protest Against Unfair Labor Practices.

In several cases involving discriminatory discharges, or strikes caused or prolonged by unfair labor practices, the contention has been advanced that because of violent or unlawful conduct upon the part of the employees involved the Board ought not to require their reinstatement.[55] The Board's power of reinstatement is discretionary in nature, to be exercised in the light of all the circumstances of each case in the manner best calculated to effectuate the policies of the act.[56] In the exercise of that discretionary power, the Board considers the probable effect of the restoration of the working relationship upon future relations between the employer and the employees. The Board does not condone violence on the part of any party to a labor dispute.[57] In cases of serious offenses, it has withheld orders for the reinstatement of the guilty individuals.[58] But where the misconduct is not grave,[59] and where, in addition, the employer's conduct, whether in reinstating persons equally guilty with those whose reinstatement is opposed,[60] or in other ways,[61] gives rise to the inference that union activities rather than misconduct is the basis of his objection, the Board has usually required reinstatement.[62] In *Matter of Electric Boat Company*,[63] for example, the Board reviewed the factors leading it to require reinstatement of strikers charged with misconduct in the following passage:

> It may be noted in the first place that the action of the strikers was undertaken in protest against an unfair labor practice of the respondent. Laying aside this fact, however, we shall consider whether the strikers' conduct would in any circumstances warrant refusal of relief. We may assume that the strikers were guilty of violation of local law when they engaged in a sit-down

[55] Cases in which unlawful conduct is assigned by the employer as the real causes of discharge requiring determination whether, in the light of such contention, an unfair labor practice has been committed, and cases giving rise to the question whether, for the purposes and within the meaning of the act, an individual "whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice" (*National Labor Relations Act*, sec. 2 (3)) can be discharged for violence or other cause are discussed on pp. 76, 84, 88, supra.)

[56] The contention that the equitable nature of proceedings before the Board requires that when a labor organization has been guilty of wrongdoing the Board is powerless to redress the employer's unfair labor practices has been rejected by the courts (*National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2nd, 1938), certiorari denied, 58 S. Ct. 1046; *National Labor Relations Board* v. *Carlisle Lumber Company*, 94 F. (2d) 138 (C. C. A. 9th, 1937), certiorari denied, 304 U. S. 575. But cf. *National Labor Relations Board* v. *Columbian Enameling and Stamping Company, Inc.*, 96 F. (2d) 948 (C. C. A. 7th, 1938) 59 S. Ct. 86; *Fansteel Metallurgical Corporation* v. *National Labor Relations Board*, 98 F. (2d) 375 (C. C. A. 7th, 1938; certiorari granted Nov. 19. 1938.

[57] See *Matter of Kentucky Firebrick Company* and *United Brick and Clay Workers of America, Local No. 510*, 3 N. L. R. B. 455, order enforced in *National Labor Relations Board* v. *Kentucky Firebrick Company*, 99 F. (2d) 89 (C. C. A. 6th, 1938); rehearing denied Oct. 12, 1938.

[58] See, for example, *Matter of Kentucky Firebrick Company* and *United Brick and Clay Workers of America, Local No. 510*, 3 N. L. R. B. 455, order enforced in *National Labor Relations Board* v. *Kentucky Firebrick Company*, 99 F. (2d) 89 (C. C. A. 6th, 1938).

[59] See, for example, *Matter of The Louisville Refining Company* and *International Association, Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 844.

[60] See, for example, *Matter of United States Stamping Company* and *Enamel Workers Union, No. 18630*, 5 N. L. R. B., 29.

[61] See, for example, *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171.

[62] Cf. *Fansteel Metallurgical Corporation* v. *National Labor Relations Board*, 98 F. (2d) 375 (C. C. A. 7th, 1938), setting aside order in 5 N. L. R. B. 930; certiorari granted Nov. 19. 1938.

[63] *Matter of Electric Boat Company and Industrial Union of Marine and Shipbuilding Workers of America, Local No. 6*, 7 N. L. R. B. 572.

strike on February 23. However, the local authorities, whose responsibility it is to enforce that law, failed to take a serious view of the crime, as the penalty imposed attests. As stated above, no injury to person or property resulted from the strikers' conduct. We are, therefore, in agreement with the view of its seriousness taken by the local authorities. In such a case we see no reason to inflict a further and much more drastic penalty for violation of the Connecticut statute.

It is true that the Board, in its discretion, has withheld orders for reinstatement of strikers because of crimes committed during the course of strikes. But in each case the crime has been a far more serious offense, amounting to a felony rather than a misdemeanor as here, and involving such conduct as shooting or dynamiting. In such situation, recognizing that restoration of the working relationship would not only not produce harmony, but might also involve actual danger to the employer and his representatives, we have taken the offense into account and withheld the order. There is nothing in the present case which would justify such an exercise of discretion.

8. Orders Requiring Employers Not to Give Effect to Agreements

The Board has ordered employers to cease and desist from giving effect to contracts made with their employees individually [64] or with employer-dominated [65] or other labor organization,[66] when it has

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[64] *Matter of Federal Carton Corporation* and *New York Printing Pressmen's Union No. 51*, 5 N. L. R. B. 879 ("Cease and desist from discriminating in regard to hire or tenure of employment or in term or condition of employment through in any manner offering, soliciting, entering into, continuing or enforcing or attempting to enforce the individual antiunion contracts of employment with its employees in order to discourage membership in * * * or any other labor organization") see also, *Matter of Hopwood Retinning Company, Inc., and Monarch Retinning Company, Inc.* and *Metal Polishers, Buffers, Platers and Helpers, International Union Local No. 8, and Teamsters Union, Local No. 584* 4 N. L. R. B. 922 ("Personally inform in writing each and every one of their employees who has entered into the individual contract of employment, whether in the form proposed by the Hopwood Company or by the Monarch Company, as set forth in the findings of fact above, that such contract was entered into pursuant to an unfair labor practice within the meaning of the National Labor Relations Act and will therefore be discontinued as a term or condition of employment and will in no manner be enforced or attempted to be enforced; post notices * * * that the individual contracts of employment which have been entered into with the employees are in violation of the National Labor Relations Act and will no longer be offered, solicited, entered into, continued, enforced or attempted to be enforced"), order enforced, as modified as to other issues, in *National Labor Relations Board* v. *Hopwood Retinning Co., Inc.*, 98 F. (2d) 97 (C. C. A. 2d, 1938).

[65] *Matter of Clinton Cotton Mills* and *Local No. 2181, United Textile Workers of America*, 1 N. L. R. B. 97 (The employer and employer-dominated labor organization entered into a contract whose sole provision was a closed shop. The Board ordered the employer to cease and desist from "requiring as a condition of employment in its mill that the employee or applicant for employment become a member of the Clinton Friendship Association [employer-dominated labor organization] or sign a power of attorney or other document authorizing the Clinton Friendship Association to represent him for the purpose of collective bargaining or grant any other authorization to the Clinton Friendship Association"); *Matter of Taylor Trunk Company* and *Luggage Workers Union, Local No. 50 of the International Ladies' Hand Bag, Pocketbook and Novelty Workers Union*, 6 N. L. R. B. 32. See also, *Matter of Burnside Steel Foundry Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1719*, 7 N. L. R. B. 714 (oral agreement); *Matter of Trenton-Philadelphia Coach Company* and *Amalgamated Association of Steel, Electric Railway and Motor Coach Employees of America*, 6 N. L. R. B. 112 (contract as bargaining agent); *Matter of H. E. Fletcher Co.* and *Granite Cutters' International Association of America*, 5 N. L. R. B. 729 (written agreement); *Matter of Titan Metal Manufacturing Company* and *Federal Labor Union, No. 19981*, 5 N. L. R. B. 577 (memoranda of understanding and check-off); *Matter of Phillips Packing Company, Incorporated, and Phillips Can Company*, a corporation, and *United Cannery, Agricultural, Packing and Allied Workers of America*, 5 N. L. R. B. 272 (contract as exclusive bargaining agency including check-off provisions).

[66] *Matter of National Electric Products Corporation* and *United Electrical and Radio Workers of America, Local No. 609*, 3 N. L. R. B. 475 ("Cease and desist from encouraging membership in the International Brotherhood of Electrical Workers, Local No. 1073–B [favored labor organization] or any other labor organization of its employees, by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire and tenure of employment or any term or condition of employment because of nonmembership therein, either through the performance of the contract made on May 27, 1937, with the International Brotherhood of Electrical Workers, Local No. 1073–B, or by any other means.): *Matter of Zenite Metal Corporation* and *United Automobile Workers of America, Local No. 442*, 5 N. L. R. B. 509; *Matter of Jacob A. Hunkele, trading as Tri-State Towel Service of the Independent Towel Supply Co.* and *Local No. 40, United Laundry Workers Union*, 7 N. L. R. B. 1276. See also, *Matter of Lenox Shoe Co., Inc.*, and *United Shoe Workers of America, affiliated with the Committee for Industrial Organization*, 4 N. L. R. B. 372 ("Cease and desist from giving effect to its June 9, 1937, contract with Boot and Shoe Workers' Union [favored labor organization], providing however that

found that the procurement or execution,[67] or enforcement [68] of such contracts by the employer constituted or were part of the unfair labor practices.[69]

9. Effect on Board Orders of Agreements Purporting to Compromise Unfair Labor Practices

The Board's power to prevent any person from engaging in any unfair labor practices affecting commerce is exclusive and cannot be affected "by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise." [70] The Board has stated that "no private party can sanction an employer's interference, restraint, or coercion in the exercise of the rights guaranteed by section 7 of the act, nor can such a party sanction unlawful domination, interference, or support of a labor organization by an employer, in contravention of the policies of the act." [71]

When charges of unfair labor practice have been filed, the Board investigates any contract or agreement which purports to settle or compromise the charges. Ordinarily the Board will not interfere with a settlement or agreement between an employer and the union which effectuates the policies of the act,[72] particularly if the agreement is concluded with the safeguard of the presence of a governmental representative.[73] If the Board finds that the agreement will effectuate the policies of the act, it ascertains whether the employer has substantially complied with its terms; if he has not, it issues appropriate orders.[74] When the facts relating to performance are in doubt, the Board has issued its order in the alternative.[75]

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nothing in this order shall preclude the employer from hereafter making an agreement with Boot and Shoe Workers' Union or any labor organization (not established, maintained, or assisted by any action defined in the National Labor Relations Act as an unfair labor practice requiring, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in Sec. 9 (a) of said Act." Also, "Cease and desist from recognizing Boot and Shoe Workers' Union as the exclusive representative of its employees unless and until Boot and Shoe Workers' Union is certified as such by the Board").

[67] See, for example, *Matter of Hopwood Retinning Co., Inc. and Monarch Retinning Co., Inc.*, 4 N. L. R. B. 922, order quoted in note 64, *supra*, and enforced in *National Labor Relations Board* v. *Hopwood Retinning Co., Inc.*, 98 F. (2d) 97 (C. C. A. 2d, 1938); *Matter of David C. Kennedy, Inc. and Isidore Greenberg*, 6 N. L. R. B. 699.

[68] See for example, *Matter of Highway Trailer Co.* and *United Automobile Workers of America, Local No. 135 and Local No. 136*, 3 N. L. R. B. 591, order enforced upon consent in *National Labor Relations Board* v. *Highway Trailer Co.*, 95 F. (2d) 1012 (C. C. A. 7th, 1938); *Matter of National Electric Products Corporation* and *United Electrical and Radio Workers of America, Local No. 1073–B*, 3 N. L. R. B. 475, order quoted in note 66, *supra*.

[69] See, for discussion, *Matter of Atlas Bag and Burlap Company, Inc.* and *Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers, Local Union No. 2469, affiliated with United Textile Workers Union*, 1 N. L. R. B. 292; *Matter of Clinton Cotton Mills* and *Local No. 2181, United Textile Workers of America*, 1 N. L. R. B. 97; *Matter of National Electric Products Corporation* and *United Electrical and Radio Workers of America, Local No. 509*, 3 N. L. R. B. 475; *Matter of Consolidated Edison Company of New York, Inc., et al.* and *United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization*, 4 N. L. R. B. 71, order enforced in *Consolidated Edison Co.* v. *National Labor Relations Board*, 95 F. (2d) 390 (C. C. A. 2d), cert. granted 58 S. Ct. 1038.

[70] Sec. 10 (a), 49 Stat. 449.

[71] *Matter of Ingram Manufacturing Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 908, 911.

[72] *Matter of T. W. Hepler* and *International Ladies Garment Workers Union*, 7 N. L. R. B. 255.

[73] *Matter of Ingram Manufacturing Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 908, 911. In numerous cases, the Board has approved stipulations entered into by parties to its proceedings, and has issued orders based upon such agreements. See, for example, *Matter of David and Hyman Zoslow, trading as Golden Star Shoe Renewing Company, etc.* and *United Shoe Workers of America, Local No. 136*, 4 N. L. R. B. 829; *Matter of Brown Shoe Company, Inc.* and *Boot, Shoe Worker's Union, Local 649*, 5 N. L. R. B. 212; *Matter of Hawkeye Pearl Button Company* and *Amalgamated Clothing Workers of America*, 7 N. L. R. B. 491.

[74] *Matter of the Kelly-Springfield Tire Co.* and *United Rubber Workers of America, Local No. 26*, and *James M. Reed and Minnie Rank*, 6 N. L. R. B. 325.

[75] *Matter of T. W. Hepler* and *International Ladies, Garment Workers Union*, 7 N. L. R. B. 255 ("If the agreement for the reinstatement of strikers has not been complied with, upon application offer to those employees who went out on strike on May 26, 1937, and

10. REQUIREMENTS THAT EMPLOYERS PUBLICIZE TERMS OF BOARD ORDERS AMONG EMPLOYEES

In cases in which the Board has found that an employer has engaged in unfair labor practices it has ordered him to post notices in conspicuous places in his plant or place of business.[76] All such notices are required to contain a statement that the employer will cease and desist from the unfair labor practices found; some are required to include additional statements the publicizing of which among the employees is deemed necessary to effectuate the policies of the act. Thus, the Board has required that notices state that the employer will take certain affirmative action indicated in the order;[77] that the employees are free to join or assist a particular union which has been discriminated against, or any other labor organization of their own choosing;[78] that an employer-dominated labor organization is disestablished as a representative of the employees for the purposes of collective bargaining;[79] that the employer will not discharge or in any manner discriminate against members or those desiring to become members of a union;[80] and that he "has instructed its [his] foremen and other supervisory officials to remain neutral as between organizations and that any violations of this instruction should be reported to it [him]."[81] Usually the employer is required to keep the notices posted for at least 30 consecutive days.

In some cases the nature of the unfair labor practices has required that notice be given to employees individually. Thus, where individual contracts were exacted from employees in violation of their rights under the act, the employer was ordered to inform each employee that the contract was void and would not be enforced.[82]

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thereafter, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled "Remedy," above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section").

[76] It was intended that sec. 10 (c) of the act would include the power to require the "posting of appropriate bulletins" (H. R. Rep. No. 1147, 74th Cong., 1st Sess. (1935) 21); and it had been held that "suitable publicity" is an appropriate remedy for effectuating the policies of the act. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company*, 303 U. S. 261; *National Labor Relations Board* v. *J. Freezer and Son*, 95 F. (2d) 840 (C. C. A. 4th, 1938). Cf. *National Labor Relations Board* v. *The A. S. Abell Company*, 97 F .(2d) 951 (C. C. A. 4th, 1938), and *Moorsville Cotton Mills* v. *National Labor Relations Board*, 97 F. (2d) 959 (C. C. A. 4th, 1938), where the court ordered the form of notice modified so as to require the posting of a copy of the order of the Board, together with a statement that the order had been approved by the Circuit Court of Appeals and was binding upon the employer.

[77] See, for example, *Matter of Consolidated Edison Company of New York, Inc., et al. and United Electrical and Radio Workers of America, Local No. 509, affiliated with the Committee for Industrial Organization*, 4 N. L. R. B. 71, order enforced, 95 F. (2d) 390 (C. C. A. 2d, 1938), cert. granted, 58 S. Ct. 1038; *Matter of The Kelly-Springfield Tire Company and United Rubber Workers of America, Local No. 26, and James M. Reed and Minnie Rank* (notice required to state that the employer will take all the affirmative action specified in the order) (consent decree) 4 Cir., off'g (1938) 6 N. L. R. B. 325.

[78] *Matter of Proximity Print Works* and *Textile Workers Organizing Committee*, 7 N. L. R. B. 803.

[79] *Matter of Montgomery Ward and Company, Incorporated, a corporation* and *United Mail Order and Retail Workers of America*, 4 N. L. R. B., 1151.

[80] *Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200*, 1 N. L. R. B., No. 503, order enforced in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 92 F. (2d) 182 (C. C. A. 5th, 1936), 301 U. S. 1.

[81] *Matter of Highway Trailer Company* and *United Automobile Workers of America, Local No. 135 and Local No. 136*, 3 N. L. R. B. 591, order enforced upon consent in *National Labor Relations Board* v. *Highway Trailer Co.*, 95 F. (2d) 1012 (C. C. A. 7th, 1938). See also *Matter of Metropolitan Engineering Company and Metropolitan Device Corporation and United Electrical and Radio Workers of America, Local 1208*, 4 N. L. R. B. 542; *Matter of Botany Worsted Mills* and *Textile Workers Organizing Committee*, 4. N. L. R. B. 292.

[82] *Matter of David E. Kennedy, Inc.* and *Isidore Greenberg*, 6 N. L. R. B. 699; *Matter of Hopwood Retinning Company, Inc. and Monarch Retinning Company, Inc.* and *Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 8, and Teamsters Union, Local 584*, 4 N. L. R. B. 922, order enforced, as modified as to other issues in *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2nd).

Section 10 (c) empowers the Board to require an employer to make reports from time to time showing the extent to which he has complied with its order. Ordinarily the Board has ordered that the employer notify its regional director within 10 days from the time of the order what steps he has taken to comply therewith.[83]

[83] Longer periods have been specified in some cases; *Matter of Burnside Steel Foundry Company* and *Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1719*, 7 N. L. R. B. 714 (15 days); *Matter of Columbian Enameling & Stamping Co.* and *Enameling & Stamping Mill Employees Union, No. 19694*, 1 N. L. R. B. 181 (30 days).

VIII. JURISDICTION

In section 10 of the act Congress entrusted the Board with jurisdiction "to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce."[1] Issues before the Courts involving the jurisdiction of the Board have been of two separate types: first, those involving the right of the Board to determine in the first instance whether a controversy before it is one "affecting commerce," and second, those relating to the question whether the Board in issuing an order to prevent an unfair labor practice has correctly found that such unfair labor practice is one "affecting commerce." We will take up in order the cases bearing upon these issues.

A. THE EXCLUSIVE JURISDICTION OF THE BOARD TO DETERMINE IN THE FIRST INSTANCE WHETHER AN ALLEGED UNFAIR LABOR PRACTICE IS ONE AFFECTING COMMERCE

On January 5, 1938, the Supreme Court in *Myers et al* v. *Bethlehem Shipbuilding Corporation*, 303 U. S. 41, and in *Newport News Shipbuilding & Dry Dock Co.* v. *Schauffler et al*, 303 U. S. 54, sustained the position of the Board, maintained from the time of its creation, that the authority conferred upon it by the act of determining whether an employer had engaged in an unfair labor practice affecting commerce, was exclusive, subject to subsequent judicial review after Board decision by the appropriate Circuit Court of Appeals of the United States. In two unanimous opinions in the above cases the Court held that a Federal district court is without jurisdiction to enjoin the Board from holding a hearing upon a complaint filed by it against an employer alleged to be engaged in unfair labor practices prohibited by the act. In the *Myers* case, the Court pointed out:

> The District Court is without jurisdiction to enjoin hearings because the power "to prevent any person from engaging in any unfair labor practice affecting commerce" has been vested by Congress in the Board and the Circuit Court of Appeals, and Congress has declared: "This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise." The grant of that exclusive power is constitutional, because the act provided for appropriate procedure before the Board and in the review by the Circuit Court of Appeals an adequate opportunity to secure judicial protection against possible illegal action on the part of the Board.[2] * * *
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> The corporation contends that, since it denies that interstate or foreign commerce is involved and claims that a hearing would subject it to irreparable damage, rights guaranteed by the Federal Constitution will be denied unless it be held that the District Court has jurisdiction to enjoin the holding of a hearing by the Board. So to hold would, as the Government insists, in effect substitute the District Court for the Board as the tribunal to hear and determine what Con-

[1] The term "commerce" is defined in sec. 2 (6) of the act to include trade, traffic, commerce, transportation, or communication among the several States and foreign countries, and in the District of Columbia and the Territories. The term "affecting commerce" is defined to mean "in commerce or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce" (sec. 2 (7)).

[2] 303 U. S. 41, at 48.

gress declared the Board exclusively should hear and determine in the first instance. The contention is at war with the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.[3] * * *

The above decisions in substance closed the controversies involved in the great wave of injunction proceedings inaugurated shortly after the passage of the act in the effort to destroy the statutory method provided by Congress for the orderly conduct of the work of the Board.[4] The exclusive jurisdiction of the Board to determine in the first instance whether an employer has engaged in unfair labor practices affecting commerce is now well settled in the law. Its decisions, as the statute provides, are reviewable by the Circuit Courts of Appeals, and finally by the Supreme Court on writ of certiorari.

B. THE SCOPE OF THE BOARD'S JURISDICTION TO PREVENT UNFAIR LABOR PRACTICES

As pointed out above (p. 216) the jurisdiction of the Board to prevent unfair labor practices is limited to unfair labor practices "affecting commerce."[5] The first 2 years of the act's operations were marked by a long legal contest to sustain its application in the field laid out for it by Congress.[6] This contest reached a successful conclusion on April 12, 1937, when the Supreme Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, and four companion cases, upheld the authority of the Board not only over operations or instrumentalities of commerce, but also over manufacturing and production activities whenever a stoppage of such operations by industrial strife would result in burdens and obstructions to interstate or foreign commerce, though such operations when separably viewed are local.

The decisions of the Supreme Court in the Labor Board Cases decided April 12, 1937, resulted in an almost general acceptance of the jurisdiction of the Board over manufacturing enterprises receiving a large proportion of their raw materials from without the State of manufacture and shipping a large proportion of their finished products to points outside such State. Many concerns, however, misunderstanding the principle laid down by the Supreme Court, still contended that where the flow of commerce was in only one direction,[7] the act was inapplicable and the jurisdiction of the Board did not apply.

On March 28, 1938, the Supreme Court, in *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, reasserted the principles announced in the *Jones & Laughlin* case, and set at rest the contention that unfair labor practices of enterprises whose products are not part of a continuous flow of interstate commerce are beyond the reach of congressional control under the commerce power. In this case, the Court sustained the jurisdiction of the

[3] 303 U. S. 41, at 50.
[4] For a full discussion of the Board's injunctive litigation during the present fiscal year, see ch. IX, *infra*.
[5] National Labor Relations Act, sec. 10. The jurisdiction is more extensive in the District of Columbia and the Territories (sec. 2 (6)).
[6] The history of the Board's early struggle in the courts is considered at length in the Second Annual Report, ch. XI, pp. 52–57.
[7] In all three of the cases involving production employees decided by the Supreme Court on April 12, 1937, the enterprises involved were manufacturing concerns receiving a substantial proportion of their raw materials in interstate commerce and shipping a substantial proportion of their finished products into interstate commerce,

Board over a California concern which obtained all of its raw materials from within California and shipped 37 percent of its finished products outside the State. Pointing out that the test for applicability of the act enunciated in the *Jones & Laughlin* decision was whether a stoppage of operations by industrial strife would result in substantial interruption to the flow of interstate commerce, the Court said:

> Petitioner urges that the principle is inapplicable here as the fruits and vegetables which petitioner prepares for shipment are grown in California and petitioner's operations are confined to that State. It is not a case where the raw materials of production are brought into the State of manufacture and the manufactured product is handled by the manufacturer in other States. In view of the interstate commerce actually carried on by petitioner, the conclusion sought to be drawn from this distinction is without merit. The existence of a continuous flow of interstate commerce through the State may indeed readily show the intimate relation of particular transactions to that commerce. *Stafford* v. *Wallace*, 258 U. S. 495, 516; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 33. But, as we said in the *Jones & Laughlin* case, the instances in which the metaphor of a "stream of commerce" has been used are but particular, and not exclusive, illustrations of the protective power which Congress may exercise. The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. Burdens and obstructions may be due to injurious actions springing from other sources. Id., p. 36.[8]

The Court rejected the argument that an arbitrary rule of 50 percent be established as the dividing line between State and Federal power, and that persons transmitting less than that percentage of their total products into interstate commerce were beyond the scope of the Board's jurisdiction.[9] The Court stated:

> To express this essential distinction, "direct" has been contrasted with "indirect," and what is "remote" or "distant" with what is "close and substantial." Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as "interstate commerce," "due process," "equal protection." In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion.
>
> There is thus no point in the instant case in a demand for the drawing of a mathematical line. And what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialetic of suggesting doubtful and extreme cases. The critical words of the provision of the National Labor Relations Act in dealing with the described labor practices are "affecting commerce," as defined. § 2 (6). It is plain that the provision cannot be applied by a mere reference to percentages and the fact that petitioner's sales in interstate and foreign commerce amounted to 37 percent, and not to more than 50 percent, of its production cannot be deemed controlling. The question that must be faced under the act upon particular facts is whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes.[10]

The various circuit courts of appeals, applying the principles of the *Jones & Laughlin* decision, have sustained the jurisdiction of the Board over a wide variety of industrial activities during the present

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[8] 303 U. S. 453, at 464.

[9] The Court also rejected the contention that an employer shipping goods into interstate commerce can withdraw himself from Federal control by delivering the goods f. o. b. at stated points within the State of origin for transportation (303 U. S. 453, at 463).

[10] 303 U. S. 453, at 466.

fiscal year. The jurisdictional questions presented in cases coming before the Courts for enforcement of Board orders are, for the most part, readily divisible into three categories; first, those involving concerns which are themselves directly engaged in interstate commerce;[11] second, those involving concerns which both receive and transmit materials in interstate commerce;[12] and third, those involving concerns which obtain all or practically all of their raw materials in the State of manufacture but ship a substantial proportion of their finished products to points in other States.[13] The jurisdictional problem in this last group of cases is similar to that dealt with in the *Santa Cruz* case, where all of the products to be packed were obtained within the state of packing but a substantial proportion of the finished products were shipped to other states,[14] and in mining.[15]

In addition to the above situations, the act was held applicable to the employees of a daily newspaper in *National Labor Relations Board* v. *Star Publishing Co.*, 97 F. (2d) 465 (C. C. A. 9th).

Consolidated Edison Company v. *National Labor Relations Board*, 95 F. (2d) 390 (C. C. A. 2d), *cert. granted*, 58 S. Ct. 1038, is perhaps the best illustration of the principle that the effect upon interstate commerce of a labor dispute, if one should occur, in a particular industrial enterprise, and not the percentage of materials received or transmitted in interstate commerce, is the test by which Board jurisdiction is determined. In that case, the Circuit Court of Appeals for the Second Circuit sustained the jurisdiction of the Board with respect to New York public utility companies which confined all of their operations within the State of New York, made no shipments into interstate commerce, and supplied no light or energy beyond the State's boundaries. The companies did, however, supply electric energy to three interstate railroads for the lighting and operation of

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[11] *Black Diamond Steamship Corporation* v. *National Labor Relations Board*, 94 F. (2d) 18 (C. C. A. 2d), *cert. denied* 304 U. S. 579 (steamship company engaged in interstate and foreign commerce); *Appalachian Electric Power Company* v. *National Labor Relations Board*, 93 F. (2d) 985 (C. C. A. 4th) (public utility transmitting electric power across State lines); *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 91 F. (2d) 509 (C. C. A. 5th) (oil company transporting oil and gas in two States).

[12] *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), *cert. denied*, 304 U. S. 576; rehearing denied 304 U. S. 590 (office equipment manufacturer with plants all over the world); *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), *cert. denied*, 302 U. S. 731 (insulator manufacturer); *National Labor Relations Board* v. *J. Freezer & Son*, 95 F. (2d) 840 (C. C. A. 4th) (shirt manufacturer); *Memphis Furniture Mfg. Co.* v. *National Labor Relations Board*, 96 F. (2d) 1018 (C. C. A. 6th). *cert. denied* October 10, 1938 (furniture manufacturer); *National Labor Relations Board* v. *Sands Mfg. Co.*, 96 F. (2d) 721 (C. C. A. 6th), *cert. granted* October 10, 1938, 59 S. Ct. 91 (manufacturer of water heaters); *National Labor Relations Board* v. *Thompson Products, Inc.*, 97 F. (2d) 13 (C. C. A. 6th) (automobile accessory manufacturer); *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 96 F. (2d) 948 (C. C. A. 7th), *cert. granted* October 10, 1938, 59 S. Ct. 86 (enameling manufacturer). Although this report does not extend beyond the end of the fiscal year, we have noted, for the convenience of Congress, the cases in which certiorari was granted or denied by the Supreme Court prior to November 1, 1938. *Sands Mfg. Co.* and *Columbian Enameling & Stamping* are cases in which the jurisdiction of the Board was upheld although Board orders were set aside (see ch. IX, *infra*). Jurisdictional issues were not involved in the applications for certiorari.

[13] *National Labor Relations Board* v. *Lion Shoe Co.*, 97 F. (2d) 448 (C. C. A. 1st) (shoe manufacturer); *Mooresville Cotton Mills* v. *National Labor Relations Board*, 94 F. (2d) 61 (C. C. A. 4th) (towel manufacturer); *National Labor Relations Board* v. *Wallace Mfg. Co.*, 95 F. (2d) 818 (C. C. A. 4th) (textile manufacturer); *National Labor Relations Board* v. *Kentucky Firebrick Company*, 99 F. (2d) 89 (C. C. A. 6th), (firebrick refractory); *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), *cert. denied* 304 U. S. 575 (lumber company); *National Labor Relations Board* v. *American Potash and Chemical Corp.*, 98 F. (2d) 488 (C. C. A. 9th) (potash and borax manufacturer).

[14] *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453.

[15] *Clover Fork Coal Co.* v. *National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th). This case, as well as the *Santa Cruz* case, *supra*, involved the distinction between the National Labor Relations Act, as a regulation of commerce, and the statute involved in the case of *Carter* v. *Carter*, 298 U. S. 238, in which the regulation of coal mining as attempted in the Bituminous Coal Conservation Act of 1935 was held invalid.

their passenger and freight terminals and for the movement of interstate trains, to the Pennsylvania Railroad for the operation of switches in its tunnel under the Hudson River, and to numerous other consumers engaged in interstate and foreign commerce, including telegraph, telephone, and radio companies. The Court pointed out that, although only a small percentage of their total business was done with such interstate or foreign enterprises, the effect upon interstate commerce of a labor dispute disrupting service would be "catastrophic," and accordingly ruled that the Board had properly assumed jurisdiction. It is true that in this case the Board proved that the companies purchased large supplies of materials in interstate commerce, but the Court did not ground its decision upon this aspect of the case.

The above decisions leave no doubt that neither the character of the enterprise involved nor its size, nor the number of men employed, nor the nature of the commodities produced or service rendered, is a controlling factor in determining whether the act may be constitutionally applied in any given situation. The test, as laid down in the *Jones & Laughlin* case and reaffirmed in the *Santa Cruz* case, is whether stoppage of operations by industrial strife would result in substantial interruption to or burden upon interstate or foreign commerce. Where such interruption would occur, unfair labor practices on the part of employers, shown by long experience to be "prolific causes of strife," have a close and intimate relation to such commerce and are subject to Federal regulation under the act.

The Board has been careful to exercise its authority only within constitutional limits. This is best exemplified by the fact that in no case during the present fiscal year has an order of the Board been set aside for lack of jurisdiction.

IX. LITIGATION

During the third year of its existence, the litigation of the Board was, for the most part, confined to proceedings for the enforcement or review of Board orders. In addition, the Board continued to be engaged in a small number of injunction proceedings against the Board and its agents, and in miscellaneous litigation involving the operations of the Board under the act.

A. INJUNCTION PROCEEDINGS

The tide of injunction suits against the Board and its agents considered at length in previous annual reports,[1] virtually subsided as the Supreme Court on January 5, 1938, rendered its decisions in *Myers et al.* v. *Bethlehem Shipbuilding Corporation*, 303 U. S. 41, and *Newport News Shipbuilding & Dry Dock Co.* v. *Schauffler et al.*, 303 U. S. 54.[2] Even prior to those decisions, however, these suits had been retarded substantially by the Labor Board decisions of the Supreme Court of April 12, 1937, and by the favorable decisions of the circuit courts of appeals in injunction proceedings against the Board. Only five injunction suits[3] were commenced in federal district courts during this fiscal year. These, together with four other pending injunction suits,[4] were all disposed of favorably to the Board before the end of the year.[5] Occasional suits in the future along injunction lines may possibly occur, but, by and large, the decisions of the Supreme Court end this phase of the Board's history.

B. ENFORCEMENT AND REVIEW

Under section 10 (e) of the act the Board may, if its order is not complied with, petition any circuit court of appeals wherein the unfair labor practice in question occurred or wherein the employer resides or transacts business, for the enforcement of its order. Likewise, any person aggrieved by a final order of the Board may, under section 10 (f), obtain a review of such order in any like circuit court of appeals, or in the circuit court of appeals for the District of Columbia. The filing of either a petition for enforcement by the Board or of a petition for review by an employer brings the merits of the

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[1] First Annual Report, ch. IX, pp. 46–50; Second Annual Report, ch. VIII, pp. 31–32.

[2] See ch. VIII, *supra*.

[3] *Aircraft Workers Union, Inc.*, v. *Nylander* (S. D. Calif.). Dismissed August 21, 1937; *Washington Shoe Workers Union et al.* v. *National Labor Relations Board* (U. S. D. C. for D. C.). Dismissed November 5, 1937; *Northrop Corp.* v. *Madden* (S. D. Calif.). Dismissed August 21, 1937; *Surpass Leather Co.* v. *Winters* (W. D. New York). Dismissed June 13, 1938; *H. E. Fletcher Co.* v. *Myers* (D. Mass.). Dismissed October 15, 1937.

[4] *Myers et al.* v. *Bethlehem Shipbuilding Corporation*, 303 U. S. 41; *Myers* v. *MacKenzie*, 303 U. S. 41; *Newport News Shipbuilding & Dry Dock Company* v. *Schauffler et al.*, 303 U. S. 54; *Cocheco Woolen Mfg. Co.* v. *Myers*, 16 F. Supp. 188. (Reversed February 9, 1938, 94 F. (2d) 590 (C. C. A. 1st).)

[5] Another suit, *Prettyman* v. *Bowen*, commenced in the Circuit Court for Washtenaw County, Michigan, has not been disposed of, though proceedings under the act have not been interrupted by it. The Court still has a motion to dismiss under advisement.

controversy before the Court for its consideration.[6] We will briefly summarize the cases decided during the present fiscal year, which arose as a result of the filing of either type of petition. The principles established by the decisions in these cases will be more fully considered in section D, *infra*.

Four cases involving orders of the Board were decided by the Supreme Court during the present fiscal year. In each case, enforcement of the Board's order was granted in full. One of the cases, *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, involved primarily, when it reached the Supreme Court, the question of jurisdiction and is considered at length in Chapter VIII, *supra*. In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, and *National Labor Relations Board* v. *Pacific Greyhound Lines*, 303 U. S. 272, the Court had before it for consideration decisions of the Circuit Courts of Appeals for the Third [7] and Ninth [8] Circuits, respectively, sustaining findings of the Board that the employer had violated section 8 (2) of the act by dominating and interfering with the formation and administration of a labor organization and by contributing financial and other support to it, but refusing to enforce a provision of the order requiring disestablishment of the company-dominated union as a collective bargaining representative. The Supreme Court reversed the decisions of the circuit courts and sustained the orders of the Board requiring such disestablishment of unions found to be under employer control.

National Labor Relations Board v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, involved primarily the right of the Board to direct reinstatement of striking employees. The employees of the San Francisco office of the Mackay Co. had gone on strike, but not because of unfair labor practices condemned by the act. During the strike the company had engaged other workers and, as a result, when the strike was called off, work was not available for all of the strikers. In reinstating the strikers to the available jobs, however, the company discriminated against certain union men. The Court reversed the decision of the circuit court [9] and granted enforcement of the Board's order requiring reinstatement with back pay of the employees disorder was granted, including reinstatement of a large number of employees who had gone on strike because of the employer's unfair labor practices.

Twenty-seven cases were decided by the various circuit courts of appeals during the present fiscal year involving petitions to enforce or set aside orders of the Board. Two of the cases, *National Labor Relations Board* v. *Pacific Greyhound Lines*, and *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, were subsequently reversed by the Supreme Court and have been considered above. In another, *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, the Supreme Court affirmed the order of the Board. Orders of the Board were sustained in full in 16 of the other 24 cases, and in part, in 2 cases. In 6 cases, orders of the Board were set aside. We will take up by circuits these decisions of the circuit courts.

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[6] Whenever an employer against whom an order has been issued files a petition for review of such order, the Board files, with its answer, a request for enforcement of the order.
[7] 91 F. (2d) 178.
[8] 91 F. (2d) 458.
[9] 92 F. (2d) 761.

FIRST CIRCUIT

National Labor Relations Board v. *Lion Shoe Co.*, 97 F. (2d) 448, was the only case involving an order of the Board decided by the Circuit Court of Appeals for the First Circuit during the present fiscal year. In this case, the Court set aside, for lack of substantial evidence, an order of the Board based upon findings that the company had engaged in unfair labor practices, within the meaning of section 8 (1), (2), and (3) of the act.

SECOND CIRCUIT

Black Diamond Steamship Corp. v. *National Labor Relations Board*, 94 F. (2d) 875, *cert. denied*, 58 S. Ct. 1044, involved violations of section 8 (1), (3), and (5). During an election conducted by the Board, the engineers employed by the company had gone on strike. The union won the election and was certified by the Board as exclusive bargaining agent. The Board found that the company had subsequently refused to bargain with the union and to reinstate the striking employees. Enforcement of the Board's order was granted.

National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862, *cert. denied*, 58 S. Ct. 1046, was concerned with a Board decision finding the company guilty of numerous violations of section 8 (1), of interfering with the formation and administration of two labor organizations in violation of section 8 (2), of violating section 8 (3) by discharging 30 workers and refusing to reinstate employees who had gone on strike, and of refusing to bargain collectively with the representatives of its employees as required by section 8 (5). The findings of the Board were sustained in full, except with respect to one of the two labor organizations found by the Board to have been company-dominated, and as to two of the 30 employees found to have been wrongfully discharged. The Court modified the Board's order, in so far as it was based upon these findings. It also removed from the order provisions requiring disestablishment of the company-dominated union [10] and the payment of transportation expenses to strikers ordered reinstated in a new plant of the company which had been opened during the strike. Enforcement of the other portions of the order was granted, including reinstatement of a large number of employees who had gone on strike because of employer's unfair labor practices.

In *Consolidated Edison Company* v. *National Labor Relations Board*, 95 F. (2d) 390, *cert. granted*, 58 S. Ct. 1038, the Court sustained the findings of the Board that the companies involved had violated section 8 (1), by coercing their employees into joining a labor organization and by discriminating in favor of such organization, and had violated section 8 (3) by discharging six employees because of their union activities. The Court upheld the validity of the Board's order, including a provision setting aside contracts entered into between the companies and the union which they had favored and which contracts the Board found had grown out of the unfair labor practices which had occurred.

[10] The decision in the *Remington Rand* case was handed down by the Circuit Court of Appeals for the Second Circuit 2 weeks before the Supreme Court, in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, supra,* upheld the right of the Board to disestablish company-dominated unions.

In *National Labor Relations Board* v. *Millfay Manufacturing Company*, 97 F. (2d) 1009, the Court granted the Board's request for enforcement of its order directing the company to cease violating section 8 (1), (2), and (5) of the act, and to reinstate its employees who had gone on strike as a result of the company's unfair labor practices.

FOURTH CIRCUIT

Jeffery-DeWitt Insulator Co. v. *National Labor Relations Board*,[11] 91 F. (2d) 134, *cert. denied*, 302 U. S. 731, involved the validity of an order of the Board directing the company to reinstate strikers who had gone on strike prior to the effective date of the act, and to bargain collectively with the representatives of its employees. The Court sustained the Board's finding that the company had, subsequent to July 5, 1935, refused to bargain collectively with the union at a time when the union was the representative of a majority of the company's employees. Enforcement of the Board's order was granted.

In *Appalachian Electric Power Co.* v. *National Labor Relations Board*, 93 F. (2d) 985, the Court set aside, for lack of evidence, an order of the Board based upon a finding that the company had discriminated in regard to the hire and tenure of employment of three individuals, but sustained the Board's jurisdiction.

In *Mooresville Cotton Mills* v. *National Labor Relations Board*, 94 F. (2d) 61, the Court sustained the finding of the Board that the company had violated section 8 (3) by refusing to reinstate eight of its employees following a strike. The Court refused to enforce, however, a provision in the Board's order directing reinstatement of four of the eight employees, on the ground that such employees had obtained regular and substantially equivalent employment elsewhere and were, therefore, no longer employees of the company within the meaning of section 2 (3) of the act.[12] Subsequently, the case was remanded to the Board for further hearing on this question.

In *National Labor Relations Board* v. *J. Freezer & Son*, 95 F. (2d) 840, the Court sustained findings of the Board that the company had discriminatorily discharged three employees and had dominated and interfered with the formation and administration of a labor organization. The Court granted the Board's request for enforcement of its order requiring the company to reinstate with back pay the wrongfully discharged employees and to disestablish the company-dominated union.

National Labor Relations Board v. *Wallace Manufacturing Co., Inc.*, 95 F. (2d) 818, involved the validity of findings of the Board that the company had violated section 8 (1), (2), and (3) of the act. The Board's findings were sustained, and enforcement of its order, including reinstatement with back pay of a wrongfully discharged employee and disestablishment of a company-dominated union, was granted.

In *Standard Lime & Stone Co.* v. *National Labor Relations Board*, 97 F. (2d) 531, the Court sustained the Board's contention that employees who were on strike on July 5, 1935, were employees of the

[11] This case was discussed in the Second Annual Report, p. 34.

[12] The Court held, however, that the Board could order the company to pay such workers back pay for the period between the refusal to reinstate them and the date of their acquisition of substantially equivalent employment.

company, within the meaning of section 2 (3). The Court, however, reversed the Board's finding that the union had represented a majority of the employees on the date of the company's refusal to bargain on the ground that the Board, in determining the majority, had failed to find and exclude strikers who had received regular and substantially equivalent employment elsewhere. In this case, the Court also held that strikers who had been convicted of acts of violence committed during a strike could not be considered employees in determining the question of majority. The order of the Board was set aside.

FIFTH CIRCUIT

In *National Labor Relations Board* v. *Bell Oil & Gas Co.*,[13] 91 F. (2d) 509, the Court sustained a finding of the Board that the company had violated section 8 (1) and (3), by refusing to reinstate a striking employee. On October 18, 1937, a modified Board order, requiring the reinstatement with back pay of such employee, was affirmed.

SIXTH CIRCUIT

Memphis Furniture Mfg. Co. v. *National Labor Relations Board*, 96 F. (2d) 1018, *cert. denied* October 10, 1938, involved the validity of an order of the Board based upon a finding that the company had engaged in unfair labor practices, within the meaning of section 8 (1) and (3) of the act. The petition for enforcement of the Board's order was granted.

In *National Labor Relations Board* v. *Sands Manufacturing Co.*, 96 F. (2d) 721, *cert. granted* October 10, 1938, findings of the Board that the company had violated section 8 (1), (3), and (5) of the act were disapproved. The Court found that the employees had violated their contract and that, as a result, the company had been justified in discharging them. The Court also found that the company had sincerely attempted to negotiate with the union over a long period of time, but that an impasse had been reached as a result of the breach of contract. It held that the refusal of the company to bargain further was not a violation of the act. The order of the Board was set aside. The Supreme Court, on October 10, 1938, granted the Board's petition for writ of *certiorari* to review this decision.

In *National Labor Relations Board* v. *Thompson Products, Inc.*, 97 F. (2d) 13, the Court set aside, for lack of evidence, an order requiring the company to reinstate with back pay three employees found by the Board to have been discriminatorily discharged.

Clover Fork Coal Co. v. *National Labor Relations Board*, 97 F. (2d) 331, was concerned with a decision of the Board finding the company guilty of numerous violations of section 8 (1), and of discriminatorily discharging 60 employees. The findings of the Board were sustained in full, and the order requiring the company to cease and desist from its unfair labor practices and to reinstate with back pay the wrongfully discharged employees was enforced.

In *National Labor Relations Board* v. *Kentucky Firebrick Company*, 99 F (2d) 89, the Court sustained findings of the Board that the company had violated section 8 (1) and (3) by refusing

[13] Discussed in the Second Annual Report, p. 34.

to reinstate 30 employees following a strike. The Court granted the Board's request for enforcement of its order directing the company to reinstate the employees who had been wrongfully discriminated against.

SEVENTH CIRCUIT

In *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 96 F. (2d) 948, *cert. granted* October 10, 1938, the Court set aside an order of the Board requiring the company to reinstate strikers who had gone on strike before July 5, 1935, and to bargain collectively with the representatives of its employees. The Court found that the employees had, by striking, violated their contract. It held that such violation of contract before the effective date of the Act had resulted in a discontinuance of their status as employees. On October 10, 1938, the Supreme Court granted the Board's petition for writ of *certiorari* to review this decision.

NINTH CIRCUIT [14]

National Labor Relations Board v. *Carlisle Lumber Company*, 94 F. (2d) 1038, *cert. denied*, 58 S. Ct. 1045, involved violations of section 8 (1), (2), (3), and (5). The company had, on July 8, 1935, and on subsequent occasions thereafter, refused to bargain collectively with the representative of its employees who had gone on strike prior to the effective date of the act. The Court sustained the Board's findings of fact and approved an order requiring the company to cease and desist from its unfair labor practices and to reinstate its striking employees with back pay from July 29, 1935, the date of the company's first act of discrimination against all of the members of the union.

In *National Labor Relations Board* v. *Oregon Worsted Company*, 96 F. (2d) 193, the Court sustained two orders of the Board directed against the Oregon Worsted Company. In the first case, the Board's findings were that the company had dominated and interfered with the formation and administration of a labor organization and had discriminatorily discharged one of its employees. The Board ordered the company to cease and desist from its unfair labor practices and to reinstate the wrongfully discharged employee with back pay. In the second case, the employees of the company had gone on strike as a result of the company's anti-union activities. The Board's order directed the company to offer reinstatement to its striking employees. The Board's findings of fact were sustained in full in both cases.

National Labor Relations Board v. *Star Publishing Company*, 97 F. (2d) 465, involved a dispute between rival labor organizations. The Court upheld the Board's finding that the company had violated section 8 (1) and (3) by transferring, to other jobs, its circulation employees who were members of the Newspaper Guild and replacing them with members of the International Brotherhood of Teamsters. The transfer had resulted in a strike on the part of the transferred employees. The Court rejected the company's argument that it was justified in discriminating against the members of the Guild because

[14] In view of the Supreme Court decisions in *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board, National Labor Relations Board* v. *Pacific Greyhound Lines*, and *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, summarized on p. 222 above, a discussion of the circuit court decisions in these cases will be omitted. They were discussed in the Second Anual Report, pp. 34 and 35, however.

economic pressure on the part of the Brotherhood would have subjected it to great hardship if it had refused to do so. Enforcement of the Board's order, requiring the company to reinstate to jobs in the circulation department the members of the Guild, was granted.

National Labor Relations Board v. *American Potash and Chemical Corp.*, 98 F. (2d) 488, was concerned with Board findings that the company had committed violations of section 8 (1), (2), and (3) of the act. The Board's findings were sustained in full, and enforcement of the order, including reinstatement with back pay of the wrongfully discharged employees and disestablishment of the company-dominated union, was granted.

COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

In *National Labor Relations Board* v. *Willard, Inc.*, 98 F. (2d) 244, the Court sustained findings of the Board that the Willard Hotel, Washington, D. C., had discharged two employees because of their union activities. Enforcement of the Board's order, requiring reinstatement of the two employees with back pay, was granted.

C. MISCELLANEOUS COURT PROCEEDINGS

In addition to the injunction suits against the Board and the cases in the circuit courts of appeals for enforcement and review of Board orders, elsewhere discussed in this chapter, there has been, during the present fiscal year, a considerable amount of miscellaneous litigation involving the operations of the Board under the act.

In five cases [15] during the year efforts were made to review or stay action taken by the Board in representation cases arising under section 9 (c) of the act. In each of these cases, brought respectively in the Circuit Court of Appeals for the Third, Fifth, Sixth, and Seventh Circuits, and in the Court of Appeals for the District of Columbia, the Board's contention that the Court was without jurisdiction to enjoin the hearings and investigations of the Board was sustained.

In six cases,[16] where petitions to review orders of the Board were appropriately filed in accordance with section 10 (f) of the act, stays of the Board orders pending review have been requested and, after opposition, denied.

In the *Matter of Baldwin Locomotive Works* (E. D. Pa.), C. C. H. Labor Law Service, par. 18107, the Board petitioned the Court for leave to issue a complaint directed to a company operating under the supervision of the Court pursuant to section 77 (b) of the bankruptcy law. The petition was denied because the bankruptcy proceedings were soon to be terminated.

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[15] *United Employees Association* v. *National Labor Relations Board*, 96 F. (2d) 875 (C. C. A. 3d); *Unlicensed Employees Collective Bargaining Agency of the Marine Department of Sabine Transportation Company of Dover, Delaware, Inc. et al.* v. *National Labor Relations Board* (C. C. A. 5th), decided November 12, 1937; *Combustion Engineering Company, Inc.* v. *National Labor Relations Board*, 95 F. (2d) 996 (C. C. A. 6th); *New York Handkerchief Mfg. Co.* v. *National Labor Relations Board*, 97 F. (2d) 1010 (C. C. A. 7th); *Commercial Telegraphers Union* v. *J. Warren Madden et al.* (C. A.–D. C.), decided November 18, 1937, stay also denied by Supreme Court, C. C. H. Labor Law Service, par. 14108.

[16] *Consolidated Edison Co. et al* v. *National Labor Relations Board* (C. C. A. 2d); *Regal Shirt Co.* v. *National Labor Relations Board* (C. C. A. 3d); *Whiterock Quarries, Inc.* v. *National Labor Relations Board* (C. C. A. 3d); *McNeeley & Price Co.* v. *National Labor Relations Board* (C. C. A. 3d); *National Electric Products Corp. et al* v. *National Labor Relations Board* (C. C. A. 3d); *Swift & Co.* v. *National Labor Relations Board* (C. C. A. 10th).

In two cases,[17] where Board subpœnas had not been complied with, enforcement proceedings, pursuant to section 11 (2) of the act, were commenced in district courts and successfully concluded.

During the year contempt proceedings were initiated in two cases[18] wherein respondents had failed to comply with orders of the Circuit Court of Appeals for the Second and Fifth Circuits enforcing orders of the Board requiring respondents to cease and desist from unfair labor practices found to have been engaged in, and to take certain affirmative action to remedy the conditions caused by such practices.

Two attempts[19] have been made to enjoin the Board from excluding a former employee of the Board from participation in two cases before it.

In *Metropolitan Employees Association* v. *National Labor Relations Board et al* (S. D. N. Y., January 20, 1938), C. C. H. Labor Law Service, paragraph 18075, the Court denied relief prayed for by an employee organization to compel the Board and its agent to conduct a representation investigation under section 9 (c) of the act.

On June 22, 1938, the Circuit Court of Appeals for the Third Circuit, pursuant to petition of the Board, directed the respondent to post security for the probable costs of a further hearing before the Board, which further hearing had been directed by the Court at the request of the respondent. *National Labor Relations Board* v. *Stylecraft Leather Goods Company, Inc.*

A suit for damages alleged to have been suffered by reason of certain allegations in a Board complaint was brought in the Harlan Circuit Court of Kentucky. The suit, *Clover Fork Coal Co.* v. *National Labor Relations Board*, was removed to the United States District Court for the Eastern District of Kentucky, where, upon the Board's motion, it was dismissed on December 16, 1937, for lack of jurisdiction. The plaintiff thereafter appealed to the Circuit Court of Appeals for the Sixth Circuit, where the case is now pending. This case is not to be confused with the case of *Clover Fork Coal Co.* v. *National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th), in which the Circuit Court of Appeals for the Sixth Circuit sustained the Board's jurisdiction over the coal mining operations of this concern and enforced the order of the Board there contested.

The power of the Board to vacate its orders under section 10 (d) of the act has been involved in several cases,[20] of which cases the most

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[17] *National Labor Relations Board* v. *Dominick Calderazzo et al.* C. C. H. Labor Law Service, par. 18109 (N. D. N. Y., February 14, 1938); *National Labor Relations Board* v. *United Shipyards, Inc.* (S. D. N. Y., June 1, 1938).

[18] *National Labor Relations Board* v. *Bell Oil and Gas Co.* (C. C. A. 5th); *National Labor Relations Board* v. *Remington Rand, Inc.* (C. C. A. 2d). In this case, the Court on June 1st directed compliance by July 15, 1938.

[19] *Mueller* v. *Madden et al* (W. D. of Mo.). Dismissed April 25, 1938; *Mueller* v. *Madden et al* (N. D. of Texas). Submitted April 15, 1938.

[20] Motions filed by the Board to dismiss petitions to review or enforce were granted after the Board had set aside its orders for the purpose of taking further proceedings in *Douglas Aircraft Co.* v. *National Labor Relations Board*, 96 F. (2d) 1016 (C. C. A. 9th); *Empire Furniture Corp.* v. *Textile Workers Organizing Committee and National Labor Relations Board*, 97 F. (2d) 1000 (C. C. A. 9th); *Inland Steel Company* v. *National Labor Relations Board*, 97 F. (2d) 1006 (C. C. A. 7th); *H. J. Heinz Company* v. *National Labor Relations Board*, C. C. H. Labor Law Service, Par. 18237 (C. C. A. 3d); *Washington Mfg. Co.* v. *National Labor Relations Board*, 97 F. (2d) 1010 (C. C. A. 6th).

A motion of the Board to remand for further proceedings was granted in *North Whittier Heights Citrus Assn.* v. *National Labor Relations Board*, 97 F. (2d) 1010 (C. C. A. 9th).

A motion of the Board to withdraw its petition to enforce for further proceedings before the Board was granted by the Circuit Court of Appeals for the Sixth Circuit in *National Labor Relations Board* v. *Ford Motor Company*. In another case before the Court resulting from the company's petition for review of the same order, the Board's motion to remand for further proceedings before the Board was granted. *Certiorari* was granted by the Supreme Court in both cases on October 10, 1938.

notable is that of *In re National Labor Relations Board*, 58 S. Ct. 1001, decided May 31, 1938. In this case the Republic Steel Corporation had filed, on April 18, 1938, a petition to review an order of the Board in the Circuit Court of Appeals for the Third Circuit, but had not filed a transcript of the record upon which the Board's order was based, a prerequisite to the completion of the Court's jurisdiction.[21]

The Board, having advised the Court that it was considering vacating its order so that it might have further proceedings, a rule was issued by the Court directing the Board to show cause why the transcript should not be filed. The Board answered the rule, stating in substance that it had decided to vacate its order to take further proceedings and that accordingly the Court was without jurisdiction of the cause. On May 13, 1938, the Court enjoined the Board from further action until the transcript was filed. This action of the Court prevented the Board from taking the further proceeding which the statute authorized it to do prior to filing of the transcript of the record with the Court. The Board, therefore, petitioned the Supreme Court for a writ of mandamus directing the judges of the Circuit Court of Appeals for the Third Circuit to vacate the injunction of May 13 and for a writ of prohibition against the exercise of jurisdiction by the Circuit Court. The case was heard on a rule to show cause. The Supreme Court held that the writs prayed for were appropriate remedies and that the Circuit Court of Appeals for the Third Circuit was without jurisdiction to enter its order of May 13 (58 S. Ct. 1001).

D. PRINCIPLES ESTABLISHED

With the constitutionality of the act determined and the Board's jurisdiction to prevent unfair labor practices affecting interstate and foreign commerce established, proceedings in the courts for the enforcement and review of Board orders during the present fiscal year have been largely concerned with the correctness of the Board's findings of fact in particular cases and the propriety of the remedies adopted by the Board to prevent unfair labor practices and to remedy conditions caused by them. In the determination of these questions, important principles of law concerning the act have been enunciated by the courts in their review, as authorized by the statute, of the decisions and orders of the Board. In this chapter, we will attempt to set forth the more important of the principles which have been judicially established.[22]

WORKERS ON STRIKE RETAIN THE STATUS OF EMPLOYEES AND ARE ENTITLED TO THE PROTECTION OF THE ACT IRRESPECTIVE OF WHETHER THE STRIKE WAS CAUSED BY AN UNFAIR LABOR PRACTICE

Section 2 (3) of the act provides that the term "employee" shall include "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular

[21] Section 10 (d) of the Act provides that "Until a transcript of a record in a case shall have been filed in a Court * * * the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order issued by it.

[22] The principles established by the Board in its decisions have been considered in Chapter VII, above.

and substantially equivalent employment." [23] Many of the Board's decisions passed upon by the courts during the present year have involved controversies growing out of industrial strife. The principle was early established in these cases that under Section 2 (3) strikers remain employees and are entitled to the protection of the act so long as the dispute is current, irrespective of whether the strike was caused in the first instance by an unfair labor practice on the part of the employer.[24]

Employers desirous of interfering with the fundamental rights guaranteed their employees by the act, often seize the opportunity to break the unions within their plants presented by the conclusion of an unsuccessful strike, and refuse to reinstate active union members. The principle that such action on the part of an employer is a violation of section 8 (3) of the act was clearly established by the Supreme Court in *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333. In this case the Court sustained an order of the Board requiring the company to reinstate with back pay five workers who had been refused reinstatement at the end of a strike because of their union activities. Rejecting the company's contention that the men were not entitled to reinstatement because the Board had failed to find the company guilty of an unfair labor practice prior to the strike, the Court said:

> The wisdom or unwisdom of the men, their justification or lack of it, in attributing to respondent an unreasonable or arbitrary attitude in connection with the negotiations, cannot determine whether, when they struck, they did so as a consequence of or in connection with a current labor dispute.

Emphasizing that under section 2 (3), the term "employee" includes persons whose work has ceased as "a consequence of, or in connection with, any current labor dispute," the Court added:

> Within this definition the strikers remained employees for the purpose of the act and were protected against the unfair-labor practices denounced by it.

The Court then pointed out that under section 8, "discrimination in regard * * * to hire or tenure of employment to encourage or discourage membership in any labor organization" is prohibited, and concluded:

> But the claim put forward is that the unfair labor practice indulged in by the respondent was discrimination in reinstating striking employes by keeping out certain of them for the sole reason that they had been active in the union. As we have said, the strikers retained, under the act, the status of employes. Any such discrimination in putting them back to work is, therefore, prohibited by section 8.

Striking employees are entitled not only to the protection of section 8 (3) of the act but also to that of section 8 (5). In *Jeffery DeWitt Insulator Company* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), *cert. denied*, 302 U. S. 731, the Court upheld an

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[23] The term "labor dispute" is defined in section 2 (9) to include "any controversy concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

[24] *National Labor Relations Board* v. *Mackay Radio & Telegraph Company*, 304 U. S. 333; *Black Diamond Steamship Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d), *cert. denied*, 304 U. S. 579; *Jeffery DeWitt Insulator Company* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), *cert. denied*, 302 U. S. 731; *Mooresville Cotton Mills* v. *National Labor Relations Board*, 94 F. (2d) 61 (C. C. A. 4th); *Standard Lime & Stone Co.* v. *National Labor Relations Board*, 94 F. (2d) 531 (C. C. A. 4th); *National Labor Relations Board* v. *Carlisle Lumber Company*, 94 F. (2d) 138 (C. C. A. 9th), *cert. denied*, 304 U. S. 575.

order of the Board finding that an employer had violated section 8 (5) by refusing, during a strike not caused by an unfair labor practice, to bargain with the union representing a majority of his employees. After setting out the definitions of "employee" and "labor dispute" contained in section 2 (3) and (9) of the act, the Court stated:

> Here there was clearly a current labor dispute within the above definition and the striking employees were persons whose work had ceased because of it. It is an unfair labor practice within the meaning of the act for an employer to refuse to bargain collectively with representatives of his employees. Section 8 (5), 29 U. S. C. A. § 158 (5). The Board is empowered to prevent any person from engaging in an unfair labor practice affecting commerce as defined in the act; and it is required to take jurisdiction of a labor dispute when it is charged that any person has engaged in an unfair practice within its meaning. Section 10 (a), (b), 29 U. S. C. A. § 160 (a), (b).[25]

In determining whether an employer has been guilty of an unfair labor practice in refusing to bargain with the union representing his striking employees, the fact that the labor dispute commenced before the effective date of the act is of no importance so long as it was current at the time of the refusal to bargain. In both the *Jeffery DeWitt* case and in *National Labor Relations Board* v. *Carlisle Lumber Company*, 94 F. (2d) 138 (C. C. A. 9th), *cert. denied* 58 S. Ct. 1045, the Court sustained findings of the Board that the company had engaged in an unfair labor practice in refusing to bargain, subsequent to the effective date of the act, with the union representing a majority of their employees even though such employees had gone on strike before such date.[26] Explaining that the Board's finding did not amount to a retroactive application of the act, the Court, in the *Jeffery DeWitt case*, said:

> It is argued, however, that the act, which was not passed until July 5, must be given a prospective operation and not be applied to disputes which had their origin prior to its passage. It is a sufficient answer to this that the dispute was current at the time of the passage of the act and that, under the principles of law theretofore recognized, the relationship between the company and its striking employees had not been so completely terminated as to have no further connection with the company's business or the commerce in which it was engaged. * * * So long as there was an existing relationship between the company and its striking employees affecting commerce as defined in the act, this relationship was subject to the regulatory power of Congress; and the act is given a prospective operation when applied to subsequent unfair labor practices affecting such relationship, notwithstanding they may have occurred in the course of a labor dispute which had its origin before the act was passed. Cf. *George* v. *City of Asheville* (C. C. A. 4th) 80 F. (2d) 50, 55, 103 A. L. R. 568.[27]

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[25] See also *Black Diamond Steamship Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d), *cert. denied* 304 U. S. 579, and *National Labor Relations Board* v. *Carlisle Lumber Company*, 94 F. (2d) 138 (C. C. A. 9th), *cert. denied* 304 U. S. 575.
In the *Jeffery DeWitt* case, the Court rejected the company's contention that, once an impasse in negotiations had been reached, the company was under no further duty to bargain. Compare, however, *National Labor Relations Board* v. *Sands Mfg. Co.*, 96 F. (2d) 721 (C. C. A. 6th), in which the Court, after finding that the union had violated its contract, held that such violation created an impasse which relieved the employer of his obligations under the act. The Board believes this decision to be at variance with the intent of Congress enunciated in section 8 (5). The Board's application for *certiorari* was granted by the Supreme Court on October 10, 1938.

[26] In *National Labor Relations Board* v. *Kentucky Firebrick Company*, 99 F. (2d) 89 (C. C. A. 6th), the Court sustained the findings of the Board that the company had violated section 8 (1) and (3) by refusing to reinstate the leaders of a strike which had begun before the effective date of the act.

[27] A unique qualification of this principle was enunciated by the Circuit Court of Appeals for the Seventh Circuit in *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 96 F. (2d) 948. In this case, the Court held that where prior to the passage of the act, the strike had been called in violation of contract, the striking workmen did not retain the status of employees, irrespective of whether the labor dispute was current on July 5, 1935. In view of the clear definition of "labor dispute" contained in sec-

It also seems clear that the action of the employer in notifying his striking employees prior to the effective date of the act that they were discharged did not take from them, so long as the labor dispute was current at such date, the status of employees for the purpose of determining a subsequent violation of section 8 on the part of such employer. *National Labor Relations Board* v. *Carlisle Lumber Company, supra.*[28]

WHERE A STRIKE HAS BEEN CAUSED BY AN UNFAIR LABOR PRACTICE THE BOARD MAY, UNDER SECTION 10 (C), ORDER THE EMPLOYER TO REINSTATE THE STRIKING EMPLOYEES, DISCHARGING, IF NECESSARY, WORKERS HIRED SUBSEQUENT TO THE UNFAIR LABOR PRACTICE WHICH CAUSED THE STRIKE

Section 10 (c) of the act provides that when the Board finds that a person has been guilty of an unfair labor practice it "shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees, with or without back pay, as will effectuate the policies of this act." Since the constitutionality of the act was first established the law has been well settled that the Board may order an employer to reinstate with back pay employees against whom he has discriminated.[29] In order thus to restore the status which existed at the time of the unlawful act of the employer, it is, of course, often necessary for the employer to discharge the workers whom he has hired in the places of those who were deprived of their employment by violations of the statute.

Since it is appropriate for the Board to require the discharge of an individual workman who has been given the position of one who has been the victim of an illegal deprivation of employment, it would seem to be equally appropriate for the Board to require the discharge of an entire group of workmen from positions which they hold only because the employees to whose jobs they succeeded were forced to cease their work as a result of the employer's unfair labor practices, if such an order is found necessary to a fair readjustment of the conditions brought about by violations of the statute. An order of the Board requiring such reinstatement, without back pay, was sustained

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tion 2 (9), the Board believes the position of the Circuit Court is erroneous. The Board's petition for *certiorari* to review this decision was granted by the Supreme Court on October 10, 1938.

[28] See also *Standard Lime & Stone Co.* v. *National Labor Relations Board,* 97 F. (2d) 531 (C. C. A. 4th).

[29] Such orders have been approved in more than a score of proceedings including the following Supreme Court cases: *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.,* 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.,* 301 U. S. 58; *The Associated Press* v. *National Labor Relations Board,* 301 U. S. 103; *Washington, Virginia and Maryland Coach Co.* v. *National Labor Relations Board,* 301 U. S. 142; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board,* 303 U. S. 453; *National Labor Relations Board* v. *Mackay Radio & Telegraph Company,* 304 U. S. 333.

The Circuit Court of Appeals for the Fourth Circuit in *Mooresville Cotton Mills* v. *National Labor Relations Board,* 94 F. (2d) 61 (C. C. A. 4th), relying upon the language of section 2 (3), defining an employee as an "individual whose work has ceased * * * because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment," limited the Board's power of reinstatement to employees who had not obtained any other regular and substantially equivalent employment at the time of the hearing on the unfair labor practice. The Court held, however, that the Board might order back pay to such individuals for the period between the date of the discrimination against them and the date of their acquisition of regular and substantially equivalent employment. See also *Standard Lime & Stone Company* v. *National Labor Relations Board, supra,* where the Court held that the Board, in determining whether the Union represented a majority of the employees at the time of a refusal to bargain during a strike, must find and exclude strikers who had obtained other regular and substantially equivalent employment.

in *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), *cert. denied* 58 S. Ct. 1046.[30]

It is also clear that where a strike has been called for a reason other than an unfair labor practice on the part of the employer the Board may, if the employer thereafter during the strike violates the Act with respect to the striking employees, require reinstatement of the striking employees, though this necessitates the discharge of all persons hired after the date of the unfair labor practice. Board orders of this type have been upheld in a number of cases [31] as appropriate remedies to effectuate the policies of the act.

WHERE AN EMPLOYER HAS DOMINATED OR INTERFERED WITH THE FORMATION OR ADMINISTRATION OF A LABOR ORGANIZATION THE BOARD MAY, UNDER SECTION 10 (C), ORDER THE EMPLOYER TO WITHDRAW RECOGNITION FROM SUCH ORGANIZATION, AND TO DISESTABLISH IT AS A COLLECTIVE BARGAINING AGENCY

Section 8 (2) of the act prohibits an employer from dominating or interfering with the "formation or administration of any labor organization" or contributing "financial or other support to it." In order to remedy the situation created by an employer's violation of this Section, the Board has often found it necessary to order the employer to withdraw recognition from the company-dominated organization and to disestablish it as a bargaining agent. The propriety of this type of remedial order is now firmly established by court decisions.

In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, and *National Labor Relations Board* v. *Pacific Greyhound Lines*, 303 U. S. 272, the Supreme Court (reversing in this respect decisions of the Circuit Courts of Appeals for the Third [32] and Ninth Circuits [33] respectively) upheld orders of the Board directing the Greyhound companies to withdraw recognition from, and disestablish, labor organizations which they had sponsored and dominated, and which therefore constituted a bar to true collective bargaining. After studying the provision of the order with reference to the legislative history of the act the Court, in the *Pennsylvania Greyhaund* case, stated:

> It is plain that the challenged provisions of the present order are of a kind contemplated by Congress in the enactment of § 10 (c) and are within its terms.

Since the decision of the Supreme Court in the *Greyhound* cases, orders of the Board requiring disestablishment of company-domi-

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[30] See also *National Labor Relations Board* v. *Millfay Manufacturing Co.*, 97 F. (2d) 1009 (C. C. A. 2d) and *National Labor Relations Board* v. *Star Publishing Co.*, 97 F. (2d) 465 (C. C. A. 9th). In the *Remington Rand* case, the Court in upholding the Board's order directing reinstatement of the strikers, said:

"The act expressly preserves the right to strike, section 13, 29 U. S. C. A., § 163, and that includes a strike for refusing to negotiate as well as any other. It is a remedy parallel with recourse to the Labor Board; its use, when unsuccessful, but in a controversy where the men are right, ought not therefore to be prejudicial to them. Moreover—and this is conclusive—the remedy which the act provides expressly includes reinstatement as a part of it. It is, of course, true that the consequences are harsh to those who have taken the strikers' places; * * * as between those who have used a lawful weapon and those whose protection will limit its use, the second must yield; and indeed, it is probably true today that most men taking jobs so made vacant, realize from the outset how tenuous is their hold."

[31] *Black Diamond Steamship Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d), *cert. denied*, 304 U. S. 579; *Jeffery DeWitt Insulator Company* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), *cert. denied*, 302 U. S. 731; *National Labor Relations Board* v. *Carlisle Lumber Company*, 94 F. (2d) 138 (C. C. A. 9th), *cert. denied*, 304 U. S. 575. In the *Black Diamond* case, the Court said:

"From the date of the respondent's first unfair labor practice, its ordinary right to select its employees became vulnerable."

[32] 91 F. (2d) 178.

[33] 91 F. (2d) 458.

nated unions have been sustained by the circuit courts in a number of cases.[34]

NOTICE TO THE COMPANY-DOMINATED UNION NEED NOT BE GIVEN FOR THE BOARD TO ORDER THE EMPLOYER TO DISESTABLISH SUCH UNION AS A COLLECTIVE BARGAINING AGENT

The principal ground upon which the circuit courts in the *Greyhound* cases, *supra*, refused to enforce the Board's orders affecting the dominated organizations was the failure of the Board to give notice and hearing to the company-dominated unions. The principle is now well established, however, that since the orders of the Board run against the employer found to have violated the statute and not against the company-dominated union itself, only the employer is required to be given notice and hearing of proceedings of the character involved in cases of company-dominated unions. In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, *supra*, the Court held:

> As the order did not run against the Association it is not entitled to notice and hearing. Its presence was not necessary in order to enable the Board to determine whether respondents had violated the statute or to make an appropriate order against them. See *General Investment Co.* v. *Lake Shore & M. S. R. Co.*, 260 U. S. 261, 285–286.[35]

IMPROPER CONDUCT BY A UNION GRANTS NO IMMUNITY TO AN EMPLOYER TO VIOLATE THE ACT

The principle is well established by judicial decisions that improper conduct on the part of a union does not grant a license to an employer to engage in unfair labor practices prohibited by the act. *National Labor Relations Board* v. *Remington Rand, Inc.*, *supra*. The corrolary is also clear that improper conduct by the union cannot deprive the Board of its power to prevent violations of the statute. *National Labor Relations Board* v. *Carlisle Lumber Co.*, *supra*. With respect to the latter point the Court, in the *Carlisle Lumber* case, said:

> Respondent contends that the proceeding before us is an equitable proceeding; that the union's picketing resulted in violence, as the Board found, which was a violation of the laws of Washington, and therefore enforcement should be

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[34] *National Labor Relations Board* v. *J. Freezer & Son*, 95 F. (2d) 840 (C. C. A. 4th); *National Labor Relations Board* v. *Wallace Mfg. Co.*, 95 F. (2d) 818 (C. C. A. 4th); *National Labor Relations Board* v. *American Potash and Chemical Corp.*, 98 F. (2d) 488 (C. C. A. 9th).

In *Consolidated Edison Company* v. *National Labor Relations Board*, 95 F. (2d) 390 (C. C. A. 2d), *cert. granted*, 58 S. Ct. 1038, the Court sustained the power of the Board to order an employer to cease and desist from giving effect to contracts, entered into in violation of Section 8 (1) of the act, with a labor organization which the employer had actively aided to the detriment of a rival organization. It was held that since the Board's conclusion, that it was necessary to invalidate the contracts "in order to establish conditions for the exercise of an unfettered choice of representatives" by the employees, was not unwarranted, the order was proper. This case is now pending in the Supreme Court.

[35] *National Labor Relations Board* v. *J. Freezer & Son*, 95 F. (2d) 840 (C. C. A. 4th); *National Labor Relations Board* v. *Wallace Mfg. Co.*, 95 F. (2d) 818 (C. C. A. 4th). See also *Consolidated Edison Company* v. *National Labor Relations Board*, *supra*, where the Court held that since an order directing an employer to cease giving effect to contracts entered into with a labor organization in violation of Section 8 (1) ran only against the employer, such labor organization was not a necessary party to the proceeding.

In *National Labor Relations Board* v. *Star Publishing Co.*, *supra*, the Court affirmed the right of the Board to deny intervention in a proceeding before it to workers who had been hired to replace the employees against whom the employer had discriminated, as follows:

"Respondent argues that the proposed intervenors had such an interest in the controversy that to deny their petition was an abuse of discretion. We think the Board rightfully held that the question before it was whether respondent had engaged in an unfair labor practice as charged. Whether respondent had so engaged was a question which, by the provisions of the Act, was of no concern, we think, to the proposed intervenors. It was not they who were discriminated against."

denied for the reason that the union has not come into court with clean hands. It is not the union, but the Board, which is asking enforcement.[36]

AN EMPLOYER MAY NOT ENGAGE IN UNFAIR LABOR PRACTICES IN ORDER TO AVOID THREATENED ECONOMIC LOSS AND THUS TRANSFER THE BURDEN TO HIS EMPLOYEES

It has been squarely decided that an employer may not violate the act because it is thought to be to his economic benefit to do so. In *National Labor Relations Board* v. *Star Publishing Co.*, 97 F. (2d) 465 (C. C. A. 9th), the Court rejected the company's contention that it had been justified in discriminating against certain of its employees because a failure to do so would have disrupted its business. The Court held:

> The Act prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute.

THE BOARD IS ENTITLED TO LEGAL ENFORCEMENT OF ITS ORDER BY THE COURT NOTWITHSTANDING THE ORDER HAS BEEN COMPLIED WITH

The principle is clearly established that a proceeding for the enforcement of an order of the Board does not become moot because of compliance on the part of the employer or because of a change in circumstances subsequent to the issuance of the order. In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, *supra*, the Supreme Court rejected the contention of the company that the case had become moot by reason of the fact that neither it nor the company-dominated union involved had objected to a Board certification, made subsequent to the issuance of the order, of another labor organization as the exclusive bargaining agency of the company's employees. The Court stated:

> But an order of the character made by the Board, lawful when made, does not become moot because it is obeyed or because changing circumstances indicate that the need for it may be less than when made.[37]

AN EMPLOYER WHO HAS REFUSED TO BARGAIN WITH REPRESENTATIVES SELECTED BY A MAJORITY OF HIS EMPLOYEES ON THE GROUND THAT IT WAS UNDER NO OBLIGATION TO DO SO, CANNOT SUBSEQUENTLY JUSTIFY HIS CONDUCT ON THE GROUND THAT HE HAD BEEN OFFERED NO PROOF OF MAJORITY

The principle has been established that an employer who has refused to bargain with representatives of his employees because such representatives were "outsiders" cannot thereafter defend his refusal

[36] Cf. *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, *supra*, where the Court in denying the Board's petition for enforcement of its order, apparently mistook the proceeding for a suit in equity by the union and applied the "clean hands" doctrine. The Supreme Court granted the Board's petition for *certiorari* in this case on October 10, 1938, so that the correctness of the Circuit Court's decision will no doubt receive final judicial determination.

In *Standard Lime & Stone Co.* v. *National Labor Relations Board*, *supra*, the Circuit Court of Appeals for the Fourth Circuit ruled that the Board, in determining whether the union represented a majority of the employees at the time of a refusal to bargain during a strike, could not consider as employees strikers who had been subsequently convicted of acts of violence which occurred before the refusal to bargain. The effect of employee misconduct is now before the Supreme Court for determination in the *Columbian* case.

[37] See also *National Labor Relations Board* v. *Remington Rand, Inc.*, *supra*, and *National Labor Relations Board* v. *Oregon Worsted Co.*, 96 F. (2d) 193 (C. C. A. 9th). In the *Oregon Worsted case*, the Court had previously rejected a motion of the company for an order requiring the Board to certify to the Court a so-called report of the company showing compliance with the recommendations of the trial examiner's intermediate report, as follows:

"The motion is based on the theory that since such report states that respondent has complied with the recommendations of the trial examiner, the case is ended and the

on the ground that no proof of majority was offered him. *National Labor Relations Board* v. *Remington Rand, Inc., supra.* The principle, as enunciated in the *Remington Rand* case, is as follows:

> In the case at bar even though the respondent were in doubt as to the Joint Board's authority, that doubt did not excuse it; for it is quite plain that its position was not based upon any doubt, but upon its unwillingness to treat with "outside" representatives of its employees; * * * The greater included the less, and having taken that position, it may not now say that it could not know whether the Joint Board was properly accredited.

THE BOARD'S FINDINGS OF FACT, IF SUPPORTED BY EVIDENCE, ARE CONCLUSIVE

Section 10 (e) of the act provides that the "findings of the Board, as to the facts, if supported by evidence, shall be conclusive." The binding effect of this provision has been recognized in a number of cases, and it is now well settled that in determining the validity of an order of the Board which is supported by evidence, the reviewing court may not substitute its judgment for that of the Board.[38]

Not only are the Board's findings of subsidiary facts binding on the Court, but its conclusion, based upon such subsidiary facts, as to the appropriate remedy necessary to alleviate the effects of the illegal conduct of an employer will not be disturbed. In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, supra*, the Supreme Court stated:

> Section 10 (e) declares that the Board's findings of fact "if supported by evidence, shall be conclusive." Whether the continued recognition of the Employees Association by respondents would in itself be a continuing obstacle to the exercise of the employees' right of self-organization and to bargain collectively through representatives of their own choosing, is an inference of fact to be drawn by the Board from the evidence reviewed in its subsidiary findings. See *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297.[39]

In conclusion, it will be seen from a perusal of the Court decisions referred to above, and from the decisions of the Board considered in these cases by the Courts, that the purpose of the Board in each case has been one of thoughtful regard for the effectuation of the policies of the act, so that collective bargaining by freely chosen representatives of the employees may be protected where efforts have been made to destroy it. By this means conditions are corrected, in conformity with the public policy enunciated by Congress, so that collective bargaining may be permitted to exist and to function as a means for the peaceful adjustment of disputes in the area of industrial activity subject to the regulatory power of Congress under the commerce clause.

Board has lost its jurisdiction to make any orders we are called upon to enforce, whether in addition to or modification of the recommendations.

"We do not so hold to be the character of the recommendations of the trial examiner. The remedy of the statute, National Labor Relations Act, 29 U. S. C. A. § 151 et seq., is in the orders of the *Board* to cease and desist and take the designated affirmative action. The recommendations of the trial examiner are no more than *recommendations* to the Board as to its action." 94 F. (2d) 671.

[38] The principle, enunciated in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, has been reaffirmed by the Supreme Court and the various circuit courts of appeals in more than a score of cases under the act.

[39] It is clear also that the evidence upon which the Board's findings are based need not be of the kind usually admitted in courts of law. The act, in section 10 (b), specifically declares:

"In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling."

In *National Labor Relations Board* v. *Remington Rand, Inc., supra,* the Circuit Court of Appeals for the Second Circuit interpreted this Section to mean that hearsay evidence is admissible in proceedings before the Board. See also *Consolidated Edison Company* v. *National Labor Relations Board,* 95 F. (2d) 390 (C. C. A. 2d), *cert. granted,* 58 S. Ct. 1038, and *National Labor Relations Board* v. *American Potash and Chemical Corp.,* 98 F. (2d) 488 (C. C. A. 9th).

E. CUMULATIVE SUMMARY OF LITIGATION FOR FISCAL YEAR, 1938

I. Proceedings for the Enforcement or Review of Board Orders

A. PROCEEDINGS ON THE MERITS

Supreme Court Cases

1. Cases in which the Supreme Court upheld orders of the Board:
   National Labor Relations Board v. *Pacific Greyhound Lines*, 303 U. S. 272;
   National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261;
   Santa Cruz Fruit Packing Co. v. *National Labor Relations Board*, 303 U. S. 453;
   National Labor Relations Board v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333.
2. Cases in which the Supreme Court denied petitions for writs of *certiorari* to review decisions of courts of appeals enforcing Board orders:
   Black Diamond Steamship Corp. v. *National Labor Relations Board, cert. denied*, 58 S. Ct. 1044;
   Remington Rand, Inc. v. *National Labor Relations Board, cert. den.* 58 S. Ct. 1046, 1061;
   Jeffery De-Witt Insulator Co. v. *National Labor Relations Board, cert. denied*, 302 U. S. 731;
   Carlisle Lumber Co. v. *National Labor Relations Board, cert. denied*, 58 S. Ct. 1045.
3. Cases in which the Supreme Court denied petitions for writs of *certiorari* to review decision of court of appeals denying enforcement of Board orders:
   National Labor Relations Board v. *Delaware-New Jersey Ferry Company, cert. denied*, 302 U. S. 738.
4. Cases in which the Supreme Court granted petitions for writs of *certiorari* to review decision of court of appeals enforcing order of Board, in which no decision or final hearing had been rendered by Supreme Court at end of year:
   Consolidated Edison Co. of New York v. *National Labor Relations Board, cert. denied*, 58 S. Ct. 1038.
5. Cases in which the Supreme Court upheld the right of the Board under section 10 (d) to vacate its order for further proceedings before the Board:
   In re National Labor Relations Board, 58 S. Ct. 1001 (writ of mandamus granted directing the Judges of the Circuit Court of Appeals for the Third Circuit to vacate an injunction prohibiting the Board from vacating its order).

Circuit Courts of Appeals Cases

1. Circuit Court decisions granting enforcement of Board orders.
   (*a*) Board orders enforced without modification:
   Black Diamond Steamship Corp. v. National Labor Relations Board, 94 F. (2d) 875 (C. C. A. 2d);
   Consolidated Edison Co. of New York v. *National Labor Relations Board*, 95 F. (2d) 390 (C. C. A. 2d); *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 95 F. (2d) 390 (C. C. A. 2d);
   National Labor Relations Board v. *Millfay Mfg. Co.*, 97 F. (2d) 1009 (C. C. A. 2d);
   Jeffery DeWitt Insulator Co. v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th);
   National Labor Relations Board v. *J. Freezer & Son*, 95 F. (2d) 840 (C. C. A. 4th);
   National Labor Relations Board v. *Wallace Mfg. Co., Inc.*, 95 F. (2d) 818 (C. C. A. 4th);
   National Labor Relations Board v. *Bell Oil & Gas Co.*, 91 F. (2d) 509 (C. C. A. 5th);
   Memphis Furniture Mfg. Co. v. *National Labor Relations Board*, 96 F. (2d) 1018 (C. C. A. 6th);

Clover Fork Coal Co. v. *National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th);
National Labor Relations Board v. *Kentucky Firebrick Company*, 99 F. (2d) 89 (C. C. A. 6th);
National Labor Relations Board v. *American Potash & Chemical Corp.*, 98 F. (2d) 488 (C. C. A. 9th);
National Labor Relations Board v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th);
National Labor Relations Board v. *Oregon Worsted Co.* (two cases), 96 F. (2d) 193 (C. C. A. 9th);
National Labor Relations Board v. *Star Publishing Co.*, 97 F. (2d) 465 (C. C. A. 9th);
National Labor Relations Board v. *Willard, Inc.*, 98 F. (2d) 244 (CA–DC).

(*b*) Board order enforced as modified by court decision:
National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d);
Mooresville Cotton Mills v. *National Labor Relations Board*, 94 F. (2d) 61 (C. C. A. 4th), rehearing granted April 5, 1938.

2. Circuit Court decisions denying enforcement of Board orders.
National Labor Relations Board v. *Lion Shoe Co.*, 97 F. (2d) 448 (C. C. A. 1st);
Appalachian Electric Power Co. v. *National Labor Relations Board*, 93 F. (2d) 985 (C. C. A. 4th);
Standard Lime & Stone Co. v. *National Labor Relations Board*, 97 F. (2d) 531 (C. C. A. 4th);
National Labor Relations Board v. *Sands Manufacturing Co.*, 96 F. (2d) 721 (C. C. A. 6th), *cert. granted* October 10, 1938;
National Labor Relations Board v. *Thompson Products, Inc.*, 97 F. (2d) 13 (C. C. A. 6th);
National Labor Relations Board v. *Columbian Enameling & Stamping Co.*, 96 F. (2d) 948 (C. C. A. 7th), *cert. granted* October 10, 1938.

B. CONSENT DECREES

National Labor Relations Board v. *Ansin Shoe Mfg. Co.*, 93 F. (2d) 367 (C. C. A. 1st);
National Labor Relations Board v. *Anwelt Shoe Mfg. Co.*, 93 F. (2d) 367 (C. C. A. 1st);
National Labor Relations Board v. *Ralph A. Freundlich, Inc.* (C. C. A. 1st; April 1, 1938);
National Labor Relations Board v. *Federal Bearing Company et al* (C. C. A. 2d; April 28, 1938);
National Labor Relations Board v. *S. L. Allen & Co.* (C. C. A. 3d; January 12, 1938);
Clinton Cotton Mills v. *National Labor Relations Board*, 91 F. (2d) 1008 (C. C. A. 4th);
The Kelly-Springfield Tire Co. v. *National Labor Relations Board*, 97 F. (2d) 1007 (C. C. A. 4th);
National Labor Relations Board v. *Alabama Mills, Inc.* (C. C. A. 5th; March 18, 1938);
Wheeling Steel Corporation v. *National Labor Relations Board*, 94 F. (2d) 1021 (C. C. A. 6th);
National Labor Relations Board v. *Sunshine Hosiery Mills* (C. C. A. 6th; June 29, 1938);
National Labor Relations Board v. *Highway Trailer Company*, 95 F. (2d) 1012 (C. C. A. 7th).

C. CASES WITHDRAWN

National Labor Relations Board v. *Louis Hornick & Company, Inc.* (C. C. A. 2d; December 27, 1937), for settlement;
National Labor Relations Board v. *United Aircraft Manufacturing Corporation* (C. C. A. 2d; January 28, 1938), for settlement;
Seas Shipping Company v. *National Labor Relations Board* (C. C. A. 2d; May 25, 1938), without prejudice;

National Labor Relations Board v. *Consumers' Research, Inc.* (C. C. A. 3d; January 14, 1938), for settlement;
National Labor Relations Board v. *Protective Motor Service Co.* (C. C. A. 3d; June 27, 1938), for further proceedings;
National Labor Relations Board v. *Rocks Express Co.* (C. C. A. 4th; January 6, 1938), for settlement;
International Harvester Company v. *National Labor Relations Board* (C. C. A. 7th; January 5, 1938), for settlement;
Employees of International Harvester Company v. *National Labor Relations Board* (C. C. A. 7th; January 5, 1938), for settlement.

D. CASES PENDING JUNE 30, 1938

National Labor Relations Board v. *Bradford Dyeing Association*, (C. C. A. 1st);
National Labor Relations Board v. *M. Lowenstein & Sons* (C. C. A. 2d);
Omaha Hat Corporation v. *National Labor Relations Board* (C. C. A. 2d);
National Labor Relations Board v. *American Mfg. Co.* (C. C. A. 2d);
Fedders Manufacturing Company, Inc. v. *National Labor Relations Board* (C. C. A. 2d);
National Labor Relations Board v. *National Casket Company* (C. C. A. 2d), awaiting supplemental findings and order of Board to be based on supplemental hearing of April 25, 1938;
National Labor Relations Board v. *Rabhor Company, Inc.* (C. C. A. 2d), awaiting supplemental findings and order of Board to be based on additional evidence taken pursuant to leave granted by Court on December 13, 1937;
National Labor Relations Board v. *Scandore Paper Box Co., Inc.* (C. C. A. 2d);
National Labor Relations Board v. *Timken Silent Automatic Co.* (C. C. A. 2d), remanded to Board for the taking of additional testimony on January 17, 1938;
National Labor Relations Board v. *Elbe File & Binder Co.* (C. C. A. 2d);
Ballston-Stillwater Knitting Company, Inc. v. *National Labor Relations Board* (C. C. A. 2d);
National Labor Relations Board v. *Hopwood Retinning Co., et al* (C. C. A. 2d);
National Electric Products Corp. v. *National Labor Relations Board* (C. C. A. 3d);
National Labor Relations Board v. *Trenton-Philadelphia Coach Co.* (C. C. A. 3d);
McNeely & Price Company v. *National Labor Relations Board* (C. C. A. 3d);
Regal Shirt Co. v. *National Labor Relations Board* (C. C. A. 3d);
National Labor Relations Board v. *Somerset Manufacturing Co. (Fainblatt et al.)* (C. C. A. 3d);
National Labor Relations Board v. *Stackpole Carbon Co.* (C. C. A. 3d);
National Labor Relations Board v. *Stylecraft Leather Goods, Inc.* (C. C. A. 3d), awaiting the taking of additional evidence by the Board pursuant to leave granted by the Court on April 12, 1938;
Titan Metal Manufacturing Company v. *National Labor Relations Board*, (C. C. A. 3d);
Whiterock Quarries, Inc. v. *National Labor Relations Board* (C. C. A. 3d);
National Labor Relations Board v. *Botany Worsted Mills* (C. C. A. 3d);
National Labor Relations Board v. *Fashion Piece Dye Works, Inc.* (C. C. A. 3d);
National Labor Relations Board v. *Griswold Mfg. Co.* (C. C. A. 3d);
Mooresville Cotton Mills v. *National Labor Relations Board* (C. C. A. 4th), awaiting decision after rehearing;
National Labor Relations Board v *The A. S. Abell Co.* (C. C. A. 4th);
National Labor Relations Board v. *General Shoe Corp.* (C. C. A. 5th);
National Labor Relations Board v. *Cherry Cotton Mills* (C. C. A. 5th);
Globe Cotton Mills v. *National Labor Relations Board* (C. C. A. 5th);
The Peninsular & Occidental Steamship Company v. *National Labor Relations Board* (C. C. A. 5th);
Waterman Steamship Corporation v. *National Labor Relations Board* (C. C. A. 5th);

National Labor Relations Board v. *Bell Oil & Gas Co.*, Case No. 8438 (C. C. A. 5th), awaiting decision of the Court in contempt proceeding;
National Labor Relations Board v. *Biles-Coleman Lumber Co.* (C. C. A. 9th);
National Labor Relations Board v. *Louisille Refining Co.* (C. C. A. 6th);
Semet-Solvay Company v. *National Labor Relations Board* (C. C. A. 6th);
Beloit Iron Works v. *National Labor Relations Board* (C. C. A. 7th);
National Labor Relations Board v. *Boss Manufacturing Co.* (C. C. A. 7th), awaiting supplemental findings and order of Board to be based on testimony adduced pursuant to leave granted by Court on January 12, 1938;
National Labor Relations Board v. *Columbian Enameling & Stamping Co.* (C. C. A. 7th), awaiting filing of petition for writ of *certiorari;*
Fansteel Metallurgical Co. v. *National Labor Relations Board* (C. C. A. 7th);
National Labor Relations Board v. *Falk Corporation* (C. C. A. 7th);
Wilson & Co., Inc. v. *National Labor Relations Board* (C. C. A. 8th);
Cudahy Packing Company v. *National Labor Relations Board* (C. C. A. 8th);
Montgomery Ward & Co. v. *National Labor Relations Board* (C. C. A. 8th);
Wm. Randolph Hearst et al v. *National Labor Relations Board* (C. C. A. 9th);
M & M Wood Working Co. v. *National Labor Relations Board* (C. C. A. 9th);
National Labor Relations Board v. *National Motor Bearing Company* (C. C. A. 9th);
National Labor Relations Board v. *Union Pacific Stages, Inc.* (C. C. A. 9th);
National Labor Relations Board v. *Biles-Coleman Lumber Co.* (C. C. A. 9th);
National Labor Relations Board v. *Carlisle Lumber Company* (C. C. A. 9th), awaiting decision of Court on supplemental findings of Board concerning the amount of back pay due employees under Board order previously approved;
National Labor Relations Board v. *Idaho-Maryland Mines Corp.* (C. C. A. 9th);
Swift & Co. v. *National Labor Relations Board* (C. C. A. 10th).

II. Injunction Proceedings

1. Supreme Court cases holding District Courts of the United States may not enjoin Board proceedings:
   Myers et al v. *Bethlehem Shipbuilding Corporation*, 303 U. S. 41;
   Myers et al v. *MacKenzie et al*, 303 U. S. 41;
   Newport News Shipbuilding & Dry Dock Company v. *Schauffler et al*, 303 U. S. 54.
2. Circuit Court cases denying temporary injunctions:
   Cocheco Woolen Mfg. Co. v. *Myers*, 94 F. (2d) 590 (C. C. A. 1st).
3. District Court cases denying temporary injunctions:
   Aircraft Workers Union, Inc. v. *Nylander* (S. D. Calif.);
   H. E. Fletcher Co. v. *Myers* (D. Mass.);
   Surpass Leather Co. v. *Winters* (W. D. N. Y.);
   Northrop Corporation v. *Madden* (S. D. Calif.);
   Washington Shoe Workers Union et al v. *National Labor Relations Board* (U. S. D. C., D. C.).
4. Cases pending June 30, 1938:
   Prettyman v. *Bowen* (Circuit Court for Washtenaw County, Michigan).

III. MISCELLANEOUS PROCEEDINGS

CIRCUIT COURTS OF APPEALS CASES

1. Contempt proceedings initiated by the Board.
   National Labor Relations Board v. *Remington Rand, Inc.*, 97 F. (2d) 195 (C. C. A. 2d), suit dismissed but company directed to comply by July 15, 1938;

National Labor Relations Board v. *Bell Oil & Gas Co. et al* 98 F. (2d) 405 (C. C. A. 5th), suit pending on June 30, 1938.

2. Cases in which Board motions under section 10 (d) to withdraw proceedings and vacate orders for further proceedings before the Board were granted.
   National Labor Relations Board v. *Timken Silent Automatic Company*, Remanded January 17, 1938 (C. C. A. 2);
   H. J. Heinz Company v. *National Labor Relations Board* (C. C. A. 3d) C. C. H. Labor Law Service, Par. 18237;
   National Labor Relations Board v. *Protective Motor Service Company*, Remanded June 27, 1938, (C. C. A. 3d);
   Washington Manufacturing Company v. *National Labor Relations Board*, 97 Fed. (2d) 1010, (C. C. A. 6th);
   National Labor Relations Board v. *Ford Motor Company* and *Ford Motor Company* v. *National Labor Relations Board* (C. C. A. 6th), C. C. H. Labor Law Service, Par. 17005. *Cert. granted* October 10, 1938;
   Inland Steel Company v. *National Labor Relations Board*, 97 Fed. (2d) 1006, (C. C. A. 7th);
   Douglas Aircraft Company v. *National Labor Relations Board*, 96 F. (2d) 1016 (C. C. A. 9th).
   Empire Furniture Corporation v. *Textile Workers Organizing Committee* and *National Labor Relations Board*, 97 Fed. (2d) 1000 (C. C. A. 9th).
   North Whittier Heights Citrus Association v. *National Labor Relations Board*, 97 Fed. (2d) 1010 (C. C. A. 9th).
3. Cases in which suits to review or stay Board action taken pursuant to section 9 (c) were denied.
   United Employees Association v. *National Labor Relations Board*, 96 F. (2d) 875 (C. C. A. 3d);
   Unlicensed Employees Collective Bargaining Agency of the Marine Department of Sabine Transportation Company, Dover, Delaware, Inc., et al., v. *National Labor Relations Board* (C. C. A. 5th), decided November 12, 1937;
   Combustion Engineering Company v. *National Labor Relations Board*, 95 F. (2d) 996 (C. C. A. 6th);
   New York Handkerchief Manufacturing Company v. *National Labor Relations Board*, 97 F. (2d) 1010 (C. C. A. 7th);
   Commercial Telegraphers Union v. *J. Warren Madden et al.* (C. A., D. C.), decided November 18, 1937. Stay also denied by Supreme Court, C. C. H. Labor Law Service, Par. 14108.
4. Cases in which suits to stay the orders of the Board pending review under Section 10 were denied.
   Consolidated Edison Co. et al v. *National Labor Relations Board* (C. C. A. 2d);
   Regal Shirt Company v. *National Labor Relations Board* (C. C. A. 3d);
   White Rock Quarries, Inc. v. *National Labor Relations Board* (C. C. A. 3d);
   McNeeley & Price Company v. *National Labor Relations Board* (C. C. A. 3d);
   National Electrical Products Corporation et al v. *National Labor Relations Board* (C. C. A. 3d);
   Swift & Company v. *National Labor Relations Board* (C. C. A. 10th).
5. Cases in which petitions of Board for order directing respondents to post security for a further hearing before the Board were granted.
   National Labor Relations Board v. *Stylecraft Leather Goods Company, Inc.*, petition granted June 22, 1938 (C. C. A. 3d).

DISTRICT COURT CASES

1. Cases in which Board suits, pursuant to section 11 (2), for the enforcement of subpoenas were granted.
   National Labor Relations Board v. *Dominick Calderazzo et al*, C. C. H. Labor Law Service, Par. 18109 (N. D. N. Y., February 14, 1938);
   National Labor Relations Board v. *United Shipyards, Inc.* (S. D. N. Y. June 1, 1938).
2. Cases in which Board petitions for leave to issue a complaint against a company operating under supervision of the court pursuant to section 77 (b) of the Bankruptcy Law were denied.

In the Matter of Baldwin Locomotive Works, C. C. H. Labor Law Service, Par. 18107 (E. D. Pa.)

3. Cases in which suits for mandatory injunctions to compel the Board to conduct an investigation pursuant to section 9 (c) were denied.
   Metropolitan Employees Association v. *National Labor Relations Board et al*, C. C. A. Labor Law Service, Par. 18075 (S. D. N. Y.).
4. Cases in which suits to enjoin the Board from excluding a former employee from participation in cases before the Board were brought.
   Mueller v. *Madden et al* (W. D. Mo.), suit dismissed April 25, 1938;
   Mueller v. *Madden et al* (W. D. Texas), suit pending on June 30, 1938.
5. Cases in which libel suits against the Board for damages alleged to have occurred as a result of allegations in a Board complaint were dismissed.
   Clover Fork Coal Co. v. *National Labor Relations Board* (E. D. Ky.), case now pending on appeal in Circuit Court of Appeals for Sixth Circuit.

X. TRIAL EXAMINERS' DIVISION

The Trial Examiners' Division, under the direct supervision of the Chief Trial Examiner, holds hearings on behalf of the Board. During a portion of the period covered by this report the Secretary of the Board was also the Chief Trial Examiner, but since the appointment of a Chief Trial Examiner these functions have been separated. While the rules provide that the Board, Chief Trial Examiner, or Regional Director may appoint a trial examiner, in practice the Chief Trial Examiner designates the trial examiner in each case.

Members of the Trial Examiners' Division are assigned to preside over hearings on formal complaints and petitions for certification of representatives. After the evidence has been presented in such cases they prepare findings of fact and recommendations that are submitted to the parties, and, in cases involving certification of representatives, informal reports for submission to the Board.

In the conduct of the hearing the trial examiner is charged with the affirmative duty of inquiring fully into the facts in order that the record may contain all available facts necessary for a determination of the issues in the case. In performing this duty the trial examiner may exercise the power given him by the rules to "call, examine and cross-examine witnesses and to introduce into the record documentary and other evidence." Although the occasion for the exercise of this power may not arise if the attorneys presenting the case are alert to introduce the available and necessary facts, experience has demonstrated the wisdom of the rule, and often instances have arisen where, in the absence of the exercise of such power, it would have been necessary to reopen the record at a later date for further testimony. With a few exceptions, all of the trial examiners are attorneys, most of them having brought with them to the Board a wide experience based on years of practice before the various courts throughout the country. The knowledge gained in the course of conducting many hearings tends rapidly to develop an informed and balanced judgment in the complex field of labor relations, and enables the trial examiner to guide the parties to an adequate and orderly presentation of the material facts.

During the hearing the trial examiner has authority to make rulings on objections and motions. These rulings by the trial examiner are reviewed by the Board upon its review of the entire case. Matters of administrative policy, such as the granting of adjournments for periods that may interfere with previously scheduled cases or of extensions of time for filing of briefs, are referred to the Chief Trial Examiner.

Upon the conclusion of a hearing involving the alleged commission of an unfair labor practice, and when the transcript of the evidence and the exhibits have been received, the trial examiner prepares an intermediate report. This report contains findings of fact, conclu-

sions, and recommendations. Trial examiners ordinarily prepare these reports in Washington. They are then sent to the regional director who serves the reports on the parties. Reports in cases involving petitions for determination of representatives are brief, informal and made only to the Board since its power to act in such cases is exclusive.

Each trial examiner makes his own determination of facts. Trial examiners are, of course, free to consult with the Chief Trial Examiner as to questions of law or questions involving the form or language of their reports.

When, as often occurs, a trial examiner is sent out from Washington and hears three or four cases before returning to Washington he is requested to draft his reports in the field and send them in to the office at Washington for typing. Upon such occasions discussions as to questions of law and the form of reports may be carried on by correspondence.

Until recently the Board had made substantial use of the per diem trial examiner in addition to those on the regular staff. The per diem system was used for two basic reasons:

(1) As a means of trying out applicants for positions, and

(2) In order to carry the very heavy load of cases.

However, it was decided as of August 1, 1938, the Board would no longer employ per diem trial examiners. From among those persons who had been per diem trial examiners a number of individuals were appointed to positions on its regular staff. Some few persons not applicants for regular positions are employed occasionally on a per diem basis when no regular examiners are available.

XI. DIVISION OF ECONOMIC RESEARCH

During the period covered by this report, as in the preceding years, the Division of Economic Research was engaged in research upon economic problems of jurisdiction and labor relations arising in the administration of the Act. This work was of two principal types: (*a*) studies in connection with particular cases on the Board's current docket, and (*b*) research bearing upon a group of cases, or upon general questions of policy and interpretation of the Act, and work of an informational character.

Work of both types was initiated in one of two ways. Requests for information and analyses were received from the Board, Board members, the Legal Division, regional directors and attorneys, and field examiners. These were complied with, first by reference to the files of economic material built up from previous research, and second by such additional research as might be necessary. On other occasions the initiative came from the Economics Division. The Division followed closely the state of cases on the Board docket, as well as the general developments in fields related to the Board's work. Whenever it appeared that a question had arisen, in the solution of which economic material was helpful and available, the Chief Economist made specific recommendations to the Board that appropriate studies be authorized. Upon such authorization, the Division proceeded as in the case of an original request.

CURRENT CASE WORK

Jurisdictional problems.—In the preceding year the process of judicial review had considerably clarified the extent of the Board's jurisdiction. There remained, however, many fields of economic activity in which jurisdiction had not yet been determined. During the fiscal year a number of industries and services appeared for the first time in Board proceedings. For these, the Economics Division made studies of the extent to which their operations were in interstate commerce, and the extent to which the flow of interstate commerce would be affected by industrial strife within them. Among the fields in which such material was prepared and introduced into hearings were shipbuilding, coal mining, metal mining, motion picture production, banking, and the processing and distributing of agricultural products.

In this work, the Division followed the general pattern developed for the press wire service and for the steel, auto trailer, and garment industries in test cases before the Supreme Court.[1] In addition to the study of the respondent's individual operations, researches were made of the nature of the industry's operations, of the geographic

[1] *Associated Press* v. *N. L. R. B.*, 301 U. S. 103 (1937); *N. L. R. B.* v. *Jones & Laughlin Steel Co.*, 301 U. S. 1 (1937); *N. L. R. B.* v. *Fruehauf Trailer Co.*, 301 U. S. 49 (1937); *N. L. R. B.* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58 (1937).

spread of its sources of raw materials and its market for products, of its methods of marketing its products, and of other special characteristics of the industry which would influence the effect of internal labor strife upon interstate commerce. Variations in this pattern were made appropriate to the industry studied.

Illustrative was the evidence gathered for the motion-picture production cases. The Division made an intensive study of the character of the motion picture industry in all aspects relevant to the question of interstate commerce. Over 100 exhibits were prepared by the Division and were introduced into the record. Together with the testimony of the Chief Economist, they indicated: (1) The concentration of American film production in Los Angeles County, Calif.; (2) the nation-wide and world-wide distribution of American films; (3) the high degree of integration in production, distribution, and, to a lesser extent, exhibition, characteristic of the larger units in the industry; (4) the extent to which production involves work in more than one State and in foreign countries; and (5) the effect of a scenario writers' strike upon production as indicated by the strategic position of the writers in the industry.

Similar treatment was given to banking in the *Bank of America* case, in which evidence was prepared and introduced on the following points: (1) The historical evolution of the modern economy based on banking and credit; (2) the functions of banking, including receipt of deposits, the expeditious transfer of funds, the granting of credits, the making of investments, and other auxiliary functions; (3) the instrumentalities of commerce used in the performance of the above functions, such as securities markets, foreign-exchange markets, the 12 Federal Reserve banks and their branches, correspondent banks, and the like; (4) the importance of bank checks in the consummation of commercial transactions; (5) the interdependence of banking and large-scale business and industry in an economy based on specialized production and the division of labor; and (6) the history of office workers' unions, and the effect on commerce of a strike of this class of employees.

As the field of the Board's jurisdiction becomes clearer, more attention is being given in the Division's work to the operations of the respondent itself, and to its place and relative importance within its industry. In an increasing proportion of the cases, jurisdiction in the industry having been previously established, the Division's jurisdictional studies were limited to the respondent. This type of material is as varied as the nature of the enterprises. The more typical kinds of information relate to corporate affiliations, to ownership of properties, conduct of operations, or maintenance of offices in more than one State, and to interstate transportation upon which the respondent depends in the operation of his enterprise. Examples of the many more specialized types of information about the respondent's business are: A newspaper's solicitation of national advertising; the practice of a shipbuilding company of giving its products an interstate "trial run" before delivery; the respondent's own assertion in a proceeding before another governmental body that its operations affect interstate commerce.

Careful study of the nature of the respondent's business is especially important in the service and public utility industries. In these fields, the operations of an individual enterprise, regardless of the

nature of its industry, may substantially affect interstate commerce because of the character of industries or enterprises which lean heavily upon it for its services. In the fiscal year, examples of this kind of relation to interstate commerce appeared in the work of the Division in public utility cases. In a number of these cases the Division was able to show the extent to which electric power created by the respondents, although sold locally, was consumed by plants, railways, and other enterprises engaged in interstate commerce or in the manufacture of commodities for an interstate market. Cessation of the production of power in these cases, by a strike or lockout in the respondents' plants, might be as effective in suspending or curtailing the operation of their industrial and commercial consumers as if the latter had been affected directly.

Although the question of interstate commerce was the chief jurisdictional problem which engaged the Division's attention, it was not the only one. The Division also made reports on such questions as whether employees engaged in the packing and processing of fruits and vegetables were agricultural laborers, and whether workers on a railroad owned by a mining company and used exclusively in its operations, were within the scope of the Act.

Labor relations problems.—In addition to jurisdictional questions, there were a number of problems of policy and interpretation of the Act involving questions of labor relations, toward the determination of which the Division was requested to make studies and reports.

Among these was the question of whether there is a failure to bargain collectively in good faith, when an employer, after negotiating terms of employment with a labor organization, refuses to embody them in a written signed agreement. It was found that the signing of a written agreement after the mutual acceptance of terms was the normal procedure wherever collective bargaining was a well-established course. A study of the nature of modern agreements and of the scope and detail of their provisions indicated the limited use and general impracticability of oral agreements. The data gathered on the processes of collective bargaining indicated also that long-term industrial peace through collective bargaining and responsible performance by labor of its side of the bargain, required a functioning labor organization, recognized by the employer as labor's representative by joining with it in the signing of a written agreement.

Subsequently, a somewhat similar issue was raised by other respondents. It was contended that the employer's unilateral announcement of policy based on terms reached as a result of conferences with the union, was an acceptable substitute for a signed agreement. This issue was treated by the Division in the same manner as the first. Exhibits and oral testimony based upon the Division's research showed that the unilateral announcement was a common device of anti-union employers to avoid giving credit to a union for its part in the improvement of working conditions, thus detracting from its standing with the employees, as well as to avoid the binding effect of a written agreement.

In other cases there was involved a new type of labor organization developed since the *Jones & Laughlin* decision, and popularly termed the "independent union." It was alleged that this organization, in spite of its name and of a number of new features that distinguished it from the traditional "company union," was dominated by the em-

ployer in violation of the Act. The Division gathered and prepared evidence providing the background upon which the nature of the new organization could be evaluated. It described the sudden growth of the "independent union" after the establishment of the Act's constitutionality and traced the pattern of characteristics which it had quite consistently found in a large number of "independents" examined. The analysis of characteristics showed that the new organizations were usually crude adaptations of former employer-dominated company unions, and that there was on the whole no machinery for effective collective bargaining, for stable existence independent of the employer, and for democratic control by the membership.

Similar material was prepared for cases in which there were involved any of a group of organizations which have recently appeared coincidentally with efforts of unions to organize plants. These included Citizens' Committees, vigilante groups, and back-to-work movements. An analysis of the growth and characteristics of a large number of these organizations throughout the country and in previous periods of union activity was made. It revealed a recurring pattern of employer-inspired antiunion activity. This material was submitted as a background against which the nature and activities of particular organizations could be evaluated.

Other problems of labor relations toward the determination of which the Division prepared and submitted economic material included: (1) The status of striking employees after notice of discharge during a strike; (2) the right to reinstatement of illegally discharged employees who have obtained substantially equivalent employment elsewhere; (3) the right of employees to be transferred at the employer's expense, when reinstatement under a Board order involves their transfer to a distant plant; and (4) the significance of union recognition in collective bargaining.

Another type of research in labor relations in which the Division engaged was required in some cases where the significance and extent of the alleged illegal acts of the respondent could be completely ascertained only by reference to the history of the employer's labor policy as shown by its relations with outside labor unions and with its own personnel. A nation-wide case involving the Western Union Telegraph Co. illustrates this type. Among the important issues were the role of the company in establishing the Association of Western Union Employees in 1918, the company's relations with the National War Labor Board, the alleged use of the Association to oppose outside unions, and the extent, if any, to which respondent had assisted, maintained, and dominated the Association since 1918, and especially since the passage of the National Labor Relations Act. The Association contended that certain practices, such as the check-off, preferential treatment to its members, free railroad transportation, and use of company property and bulletin boards, were identical with those which characterized employer relations with the railroad brotherhoods and other unions, and were therefore not an indication of employer support and domination. An exhaustive analysis of the labor policy of the company and of the history of the Association was made by the Division in order to assist in the determination of these and other disputed facts.

Procedure in current case work.—As in previous years, the Division's work on current cases occurred at varying stages of the proceedings.

(1) In some cases, the Division made preliminary investigations of the respondent's business before the issuance of the complaint, and advised on whether there appeared to be jurisdiction.

(2) The Division assisted in the drafting of a number of complaints, particularly on the paragraphs relating to ownership, corporate organization, and description of properties and operations.

(3) Work of the Division at the hearing stage was of five kinds:

(*a*) Preparation of background material. Memoranda were prepared and supplied to the trial attorney giving general background information for use in the conduct of the hearing. This included suggested fields of questioning which might elicit from witnesses information believed to be true but not completely established by the Division's research. For example, the information that other shipbuilding companies subjected their new ships, before delivery, to a trial run along coastal waters of many states and into the high seas, suggested questioning of the respondent's officers which revealed a similar practice in the manufacture of respondent's ships.

(*b*) The preparation of exhibits to be introduced in evidence, usually, on jurisdiction, but often on problems of labor relations. Such exhibits might include: a chart of the respondent's corporate set-up; extracts from official sources or authoritative writings on the economics of respondent's industry or operations; extracts from authoritative writings in the field of labor economics, on a general question of labor relations, such as the significance of union recognition in collective bargaining; authenticated copies of governmental reports on an aspect of respondent's labor relations.

(*c*) The preparation of stipulations of fact for the record. Staff members prepared suggestions of material to be included in stipulations of fact between counsel and were consulted by trial attorneys with regard to the accuracy and completeness of such stipulations. In one case, a staff member participated in the conferences with respondent's attorneys that led to the formulation of a stipulation on the description of respondent's operations and the history of its labor relations.

(*d*) Assistance to trial attorney at the hearing. In a number of cases a staff member attended the hearings and assisted the trial attorney in the handling of economic and statistical material. This included assistance in the presentation of the data, suggestions for questioning and cross-examining, and preparation during the hearing of additional material made necessary by new points raised, or in rebuttal. In one case, staff members also collaborated with the trial attorney in the summarization of the evidence in a brief to the trial examiner.[2]

(*e*) In a number of hearings, the Chief Economist gave expert testimony based upon his research and upon studies conducted by the Division under his direction. His testimony covered problems of labor relations, such as written agreements, independent unions, employer labor policies and activities, and the history of the respondent's

[2] In the Matter of *Western Union Telegraph Co.*, Case No. C–344, Brief in Support of Allegations in the Complaint, August 11, 1938.

labor policy, as well as the identification of exhibits on interstate commerce and labor relations prepared by the Division and introduced into the record. In two cases, other staff members testified.

(4) In the appellate stage of Board proceedings, the Division assisted in the preparation of economic material for the briefs submitted to the Circuit Courts of Appeal and the Supreme Court. Here again factual data from authoritative sources, of a type now well-settled to be within the scope of judicial notice, was required in the discussion of problems of jurisdiction and interpretation. In the *Pennsylvania Greyhound case*,[3] the Division provided material on the significance of union recognition in the practice of collective bargaining. The references to authoritative writings on labor relations, supplied in this connection, were expressly cited in the Supreme Court's decision.

Economic material supplied for inclusion in the brief or as the basis of argument in the brief was of two types: (*a*) Excerpts from authoritative literature of which judicial notice could be taken, on general economic questions; (*b*) Excerpts from official and standard reference sources of which judicial notice could be taken, on particular economic facts about the respondent. Both types appeared in the *Santa Cruz Fruit Packing case*.[4] Material was supplied bearing upon the importance of packing and canning of fruit in the national economy, the dependence of the entire country upon the State of California for that product, the dependence of California upon the entire world as a market for its dried and canned fruit, the subsidiary relationship of the respondent to Stokely Brothers, one of the largest distributors of food products, and the position of the respondent in the industry as well as the importance of its product in the total flow of goods out of California.

In another case, the question before the court was whether or not workers ceased to be "employees" within the meaning of the Act, upon notice of discharge during the course of a strike. The Division examined the works of authorities in industrial relations and found them to be in support of the arguments of the litigation section. It supplied the latter with excerpts from the authorities indicating that dismissal during a strike was a common method of breaking strikes, and that its object and effect was merely to transfor a strike into a lockout.

Much of the material described above in the discussion of the scope of the Division's work was either prepared for appellate briefs or was recast for them, having been introduced into the hearing. Occasionally, it was requested by litigation attorneys for background or for inclusion in oral argument before the courts of review. In some cases litigation attorneys conferred with staff members of the Division of Economic Research on the economic aspects of issues bearing on labor relations or interstate commerce.

WORK NOT IN CONNECTION WITH PARTICULAR CASES

The above discussion relates to the work of the Division on current cases. In addition to such work, the Division was engaged in more general studies on problems of labor relations for future use in case-

[3] *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261 (1938).
[4] *N. L. R. B.* v. *Santa Cruz Fruit Packing Co.*, 303 U. S. 453 (1938).

work, for the determination of general policy, and for the information of the Board and its staff, as well as of other organizations and persons interested in the operation of the Act. The results of this research took the form of inter-office memoranda, mimeographed research outlines and memoranda, and printed bulletins.

During the fiscal year the supply of a previous publication, Bulletin No. 1, "Governmental Protection of Labor's Right to Organize", was exhausted in the stores of both the Board and the Superintendent of Documents. Over 11,000 copies had been distributed, the greater part in response to specific requests, the others to governmental officials and agencies, and to libraries, universities, economists, attorneys, and the press.

The second printed bulletin of the Division was issued as of June 30, 1938. It is entitled "The Effect of Labor Relations in the Bituminous Coal Industry upon Interstate Commerce." [5] Because of its less general scope, distribution will be more limited than that of Bulletin No. 1.

Bulletin No. 2 was the result of the Division's studies on the question of the Board's jurisdiction in coal mining. An investigation was made into the interstate commerce aspects of the bituminous coal industry. The importance to the economic life of the country of the continuous production of coal was considered. Analysis was made of the extent of interstate transportation in the distribution of coal from mine to consumer, and the extent to which instrumentalities of interstate commerce are dependent on an uninterrupted supply of bituminous coal.

Finally, the effect of industrial disputes in the industry upon interstate commerce was inquired into. The bulk of the bulletin deals with this subject. It discusses the long history of disturbed labor relations, the necessity for frequent governmental intervention, the effects of particular strikes and of the fluctuations in union strength, the relation of labor disputes to the shifting location of the industry, and the results of the recent recovery of collective bargaining in the industry.

Work on two other bulletins was approaching completion by the end of the fiscal year. One is a study of the organization of newswriters for collective bargaining and its relations to the flow of interstate commerce. The second is a study of the history and practice of collective bargaining and of the significance of written trade agreements. Each of these is an expansion of the material within its scope prepared for particular cases before the Board. While they were prepared primarily for use in Board work, attention has been given to their general usefulness in the belief that public comprehension of the nature and complexity of the problems of labor relations will create a better understanding of the objectives and the workings of the National Labor Relations Act.

Reference has already been made to the introduction into the record of background material on "independent unions," back-to-work movements, and other phenomena of nationwide appearance, against which particular organizations could be examined to see whether they were threads in these national patterns. Although the preparation

[5] Government Printing Office, Washington, D. C., 1938, 77 pp., charts, 20 cents.

of this material was ordinarily initiated for a particular case, its more general application usually called for the expansion of the original case work into a research memorandum useful in all similar cases. These memoranda were distributed to the staff members of the Board for their information. They are subjected to frequent revision by the inclusion of additional information that comes to the Division's attention.

To facilitate the research of the Division, a reference section was engaged in the development and maintenance of a library and filing system. The major portion of one staff member's time was devoted to following current literature in fields related to the subjects of research, and communication with other governmental agencies, universities, employers' and labor organizations, research groups, and other sources, for copies of their publications and releases. This literature and current newspapers are continually received, examined, filed or clipped, and notations made of their contents. They are circulated among the economic and legal staff members, as required.

The reference section also assisted the research staff in the direct response to a growing number of requests for specific information from the Board staff, from other governmental agencies, and, with appropriate limitation, from the general public.

Typical requests include: an inquiry of a regional attorney on the meaning of a technical term used in processing of wool; an inquiry of a review attorney on the exact name and affiliation of a local union in Wichita identified by a vague description; a request from the Board for an analysis of the relation of the Board's work to fluctuation in the number of industrial disputes, for submission to a Congressional committee; a request of the Publications Division for a statistical analysis of Board certifications, by national affiliation of contesting unions; an inquiry of a graduate student on the meaning of the preferential shop; a request of an economist for a criticism of parts of a proposed book touching on the problems of the Board.

There was a continuing increase in the interest in the Board's work as shown by communication from the public. To an extent determined by the nature of the request and the limitation of personnel, the Divison complied with the many requests for information. In other cases, bibliographies were drawn up indicating the best sources to which the correspondent could directly refer. Among these bibliographies were: *Closed Shop*, *Union-Management Co-operation*, *Compulsory Arbitration*, *Employers Anti-Union Activities*, *Labor Relations*, *Insecurity and Low Wages*, *Lumber Industry*, *Meat Packing Industry*, *The National Labor Relations Board*. Over two thousand copies of the last named bibliography were distributed in response to specific request for material on the Board.

SOURCES OF THE DIVISION'S RESEARCH

The sources upon which the staff relies for its work in the various types of research are of course beyond enumeration, and in each new problem it is the responsibility of the economist in charge to make sure that all available and appropriate sources have been examined. The only general considerations are admissibility in evidence or susceptibility to judicial notice, where the information is required

for these purposes, and, in any case, reliability and authoritativeness in the field of study.

Nonconfidential Government files and publications of governmental bodies have been especially useful. Registration and similar statements, required by law to be filed for public inspection, frequently contain valuable information on respondent's operation and ownership. Among the agencies whose files and publications have been used for this purpose are the Securities and Exchange Commission, Federal Trade Commission, and the Patent Office, for a variety of industries, the Post Office Department for publishers of periodicals, the Food and Drug Administration for manufacturers and canners of food products, Bureau of Animal Industry of the Department of Agriculture for meat packers, Federal Communications Commission for operators of radio stations and telephone and telegraph companies, Bureau of Motor Vehicles of the Interstate Commerce Commission for automotive transportation, Federal Power Commission for public utilities, Prison Industries Reorganization Administration for contractors for prison labor products, Bureau of Air Commerce of the Department of Commerce for aviation manufacturers, Public Works Administration, and Department of Interior for contractors on Federal projects, and the Departments of War, Navy, Treasury, and the Interior, for companies selling products to the Federal Government. For general information on interstate commerce, industry classification, and labor relations, much assistance has been given by the various divisions of the Bureau of Labor Statistics, the United States Employment Service, and other bureaus of the Department of Labor, by the Bureau of Foreign and Domestic Commerce and the Bureau of the Census, both of the Department of Commerce, by the Bureau of Mines of the Department of the Interior, by the National Bituminous Coal Commisison, and by the National Archives, with its vast store of records of present and past governmental bodies.

To these sources must be added the published hearings of Federal and State investigating bodies, the proceedings and publications of labor unions and employer organizations, and the great store of recorded learning on the problems of industrial and labor economics.

Finally, there is the constant stream of periodic publications of general or special scope, including the newspapers, the trade and labor periodicals, the academic journals, the financial and industrial manuals and directories, and the countless pamphlets, leaflets, and items of fugitive material.

Most of these are available in Washington, D. C. Occasionally, however, staff members have been sent to other places to inspect files of libraries, local governmental agencies, or, by consent, private companies for relevant information not obtainable in the Capital. Studies were also made at the offices of respondents or intervenors who consented to the examination of their files and records.

Staff members conferred personally with officials, attorneys, and economists of other agencies on matters falling within the special experience of those bodies. Among them were the Federal Reserve Board, the Treasury Department, the United States Maritime Commission, and the Department of Justice.

XII. PUBLICATIONS DIVISION

A. FUNCTIONS OF THE PUBLICATIONS DIVISION

The publications divison serves as a channel of all Board information.

Administratively its function is to assume responsibility for all materials distributed and all questions answered, and to relieve Board officers and attorneys from the necessity of being interrupted by constant requests for detailed information.

The external function of the division is to aid in providing a clearer public understanding of the policy of the act and the operations of the Board, in order that a new law, operating in a controversial field, may through fuller knowledge of its purposes the more quickly achieve the ends which the Congress intended by its passage.

During the Board's third fiscal year the wholesome effects of a widened public discussion of the act were somewhat impaired by an overemphasis on certain phases of the Board's work and an underemphasis on others. Since both tendencies decrease public acceptance of the principles of the act it is the part of a responsible stewardship to analyze their causes.

The quasi-judicial nature of the Board sets limitations on answering inquiries on matters of policy and of law. A purely administrative agency may explain the reasons for its actions—indeed, may with propriety affirmatively publicize them. A quasi-judicial body, on the other hand, must let its decisions speak for themselves. Each ruling is susceptible to review by a Circuit Court of Appeals, and possibly the United States Supreme Court. For the Board to debate its decisions publicly would affront legal procedure.

The same code precludes Board discussion of cases pending before it. Early in its experience many employers appealed to the Board for advice whether the business was in interstate commerce or whether this or that situation involved a possible unfair labor practice. When the Board properly declined to settle in advance matters which might come before it, the stream of inquiry dried up. Thereafter the only relief for perplexed employers had to be whatever light on their own problems they might gather from seemingly comparable situations covered in formal Board decisions.

This silence of the Board, while inevitable, acted and continues to act as a cloud to public understanding. In their early years other regulatory agencies with quasi-judicial powers, such as the Interstate Commerce Commission and the Federal Trade Commission, found public acceptance of their respective laws delayed through similar inability both to expound and to administrate at one and the same time.

A further influence against current understanding of the National Labor Relations Act lies in the stress placed upon formal Board action against employers, and the underemphasis, amounting almost to secrecy, which hides from the public the vastly greater number of cases which are adjusted amicably in their preliminary stages. Neither the one effect nor the other is the result of any conscious intention. Each stems from normal and explicable circumstances.

The first is the fact that the Board's public statements consist almost exclusively of its intermediate reports and decisions. The great majority of these (in complaint cases) have found employers in violation of unfair labor practice provisions of the act. It therefore appears that the Board, whenever it does speak, uses the occasion primarily to describe at length how employers have discharged employees unfairly, dominated company unions, and refused to bargain with duly elected representatives of their employees. To imagine, however, that the Board's role is solely to find violations of the act would be to suppose from viewing a stable of black horses that all horses are black.

The true relation in the Board's case would only appear if each violation found against an employer were accompanied by reports of 19 other actions disposed of in some other manner. These 95 percent of all closed cases are settled, withdrawn, or dismissed, all without public notice from the Board. The comparatively few cases which do reach the stage of a Board cease and desist order chance to be the only ones formally described for public attention.

An administrative exigency further lays stress on public declaration of employer violations. The publications division, which digests and releases decisions to the press, is stationed in Washington, whereas all the informal settlements, dismissals, and withdrawals of actions occur at 22 regional offices scattered over the entire country. Regional directors themselves are under a Board-imposed ban not to discuss unsubstantiated charges nor to reveal the steps of negotiations looking toward informal compliance with the act. Therefore it is fortuitous, except in the case of publicly held elections, whether actions dismissed, withdrawn, or settled receive local notice. At Washington itself, to which correspondents normally turn for national news, the Board's only picture of its operations as a whole is a monthly statistical summary. It is true that here may be discovered the fact that only 1 in 19 cases goes to formal public hearing, yet these are cold figures which fail to give color and life to activities which, while necessarily expresed in legal terms, actually deal with the problems of workers and employers engaged in a search for personal and industrial security.

The underemphasis on cases disposed of quietly by the Board represents the reverse of the medal. Given the known emotional appeal of the sensational, it is normal that newspaper writers and radio commentators should select for emphasis the declarations by the Board that such and such an employer has been unfair to his workers. By the same token the dismissal, withdrawal, or settlement of an action against an employer, even if the Board chose to make a statement upon each of them, would not in the nature of journalism be worth display.

It is evident that all factors stressing sanctions against employers complement each other. They are the subject matter of Board unfair labor practice decisions. They are the only usable newspaper copy. Thus Board cease and desist orders, which in fact are purely incidental to the long-range industrial peace hopes resting in the act, too often appear to the public mind as ends in themselves.

The problem of the Board's publications division is to give all phases of Board activity such currency as is permissible, in further-

ance of the aforementioned belief that full compliance with the act must eventually rest upon a clear public understanding of its aims and the procedure adopted to achieve them.

B. STAGES AT WHICH INFORMATION IS AVAILABLE

The following describes the progressive stages of Board unfair labor practice and representation cases, and states whether information is available at each stage or why it is withheld:

The fact that charges or petitions have been filed is available upon inquiry, but details of allegations are withheld because charges merely represent unsubstantiated facts and the Board holds it unfair to employers to make them public prior to its investigation.

Formal complaints are issued when investigation reveals a basis for unfair labor practice allegations. Normally, complaints are made public in the regions where they originate. When the Board issues a complaint in its own name the text is released at Washington.

Hearings upon complaints or representation issues are open to the public.

The intermediate reports of trial examiners are made public in complaint cases. They are usually made public both in the field where issued and at Washington. Intermediate reports in representation cases are informal recommendations from the trial examiners to the Board and are not made public.

Cease and desist orders and decisions or certifications in representation cases are made public in Washington when signed by the Board. Digests are simultaneously issued by the publications division. The full text of each decision is available for reference immediately and is printed for general distribution within a short period.

Summaries of the Board's record in the courts are periodically issued. The texts of Circuit Courts of Appeals decisions in Board cases are mimeographed as soon as possible.

C. ACTIVITIES OF PUBLICATIONS DIVISION

The publications division consists of a director, an assistant director, and a secretary. Its duty is to supply or make available information on the status of Board cases, the contents of examiners' reports, the text of Board decisions, and the course of litigation cases. The division prepares for mimeograph release the following type of information:

Digests of Board decisions and intermediate reports.
Digests of Board orders for election.
Digests of complaints when issued by the Board.

During the fiscal year the division prepared 766 releases, a total of 1,915 mimeographed pages and about 700,000 words. There were also released 30 speeches by Board members and officers.

A mailing list is maintained for those who request regular receipt of material issued, including the monthly summary of Board activities. No names are placed on the list except by such specific request. Under these circumstances the list, on June 30, 1938, was as follows:

Receiving releases (includes newspapers, labor organization, trade journals, students, etc.)	3,233
Regional offices	22
Total	3,255

All decisions are printed at the Government Printing Office and may be obtained only through the Superintendent of Documents. A list of all Board publications available at the Government Printing Office is furnished upon request to the Board.

XIII. LIST OF CASES HEARD AND DECISIONS RENDERED

Following is a list of cases originally heard during the fiscal years 1936 and 1937 on which further action was taken during the fiscal year 1938:

Complaint cases

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Aluminum Products Co	Apr. 20, 1936	June 16, 1936	June 28, 1938
American Potash & Chemical Co	May 4, 1936	June 3, 1936	July 28, 1937
Appalachian Electric Power Co	Feb. 25, 1937	Feb. 26, 1937	Aug. 7, 1937
Atlas Mills	May 25, 1936	May 26, 1936	July 14, 1937
Barrett, Frederick R	Apr. 29, 1937	May 8, 1937	Aug. 31, 1937
Bemis Bros. Bag Co	Jan. 24, 1936	Feb. 25, 1936	Aug. 10, 1937
Do	Apr. 17, 1936	Apr. 18, 1936	Do.
Black Diamond Steamship Co	Feb. 23, 1937	Feb. 25, 1937	July 21, 1937
Calvert-Maryland Distilling Co	Jan. 28, 1937	Jan. 29, 1937	Aug. 2, 1937
Canadian Fur Trappers Corporation	June 24, 1937	June 30, 1937	Sept. 9, 1937
Cardinale Trucking Corporation	June 17, 1937	June 18, 1937	Feb. 11, 1938
Central Truck Lines	Feb. 26, 1937	Mar. 2, 1937	Aug. 12, 1937
Cherry Cotton Mills	Mar. 23, 1936	Mar. 26, 1936	Dec. 30, 1937
Dickson-Jenkins Manufacturing Co	June 21, 1937	June 24, 1937	[1] July 16, 1937
Electric Boat Co	May 20, 1937	June 17, 1937	June 1, 1938
Fansteel Metallurgical Co	June 7, 1937	June 25, 1937	Mar. 14, 1938
Federal Bearing Co., Inc	June 3, 1937	June 12, 1937	Dec. 10, 1937
Grower Shipper Vegetable Association of Central California, a corporation	Apr. 12, 1937	May 18, 1937	[2]
Highway Trailer Co	May 6, 1937	May 13, 1937	Sept. 10, 1937
Honolulu Stevedores, Ltd, and Castle & Cook, Ltd	Apr. 5, 1937	Apr. 29, 1937	[2]
Hopwood Retinning Company, Inc	June 7, 1937	June 19, 1937	Jan. 15, 1938
Idaho-Maryland Mining Co	June 21, 1937	June 30, 1937	Jan. 10, 1938
Industrial Rayon Corporation	May 27, 1937	June 10, 1937	June 14, 1938
J. Freezer & Son, Inc	May 7, 1936	May 7, 1936	July 26, 1937
Louisville Refining Co	Apr. 1, 1937	Apr. 8, 1937	Jan. 12, 1938
Mansfield Mills, Inc	June 10, 1937	June 14, 1937	Oct. 30, 1937
Memphis Furniture Mfg. Co	May 21, 1936	May 27, 1936	July 15, 1937
Metropolitan Engineering Co	June 10, 1937	June 17, 1937	Dec. 16, 1937
Oregon Worsted Co	Feb. 8, 1937	Mar. 25, 1937	July 16, 1937
Rocks Express Co	Dec. 21, 1936	Dec. 21, 1936	July 24, 1937
S. Cohen & Sons	Mar. 30, 1936	Mar. 30, 1936	Dec. 29, 1937
Southgate Nelson Corporation	May 13, 1937	May 14, 1937	Sept. 1, 1937
Southgate Nelson Corporation of Norfolk, Va	May 14, 1937	----do----	Do.
Suburban Lumber Co	Feb. 18, 1937	Feb. 19, 1937	Aug. 2, 1937
Thompson Products, Inc	May 24, 1937	May 26, 1937	Aug. 16, 1937
Triplett Electric Instrument Co	June 17, 1937	June 23, 1937	Mar. 7, 1938
United States Stamping Co	May 17, 1937	May 21, 1937	Feb. 10, 1938
Uxbridge Worsted Co	July 9, 1936	Aug. 11, 1936	Apr. 21, 1938
Warfield Co	Mar. 12, 1936	Mar. 14, 1936	Mar. 18, 1938

[1] Additional hearing held May 5, 1938, to May 21, 1938.
[2] Awaiting Board decision.
[3] Settled December 27, 1937.

LIST OF CASES HEARD AND DECISIONS RENDERED—Continued

Following is a list of cases originally heard during the fiscal year 1938:

Complaint cases

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Abrasive Co	Mar. 14, 1938	Mar. 22, 1938	[1]June 14, 1938
Acme Air Appliance Co., Inc	Mar. 10, 1938	Mar. 15, 1938	[2]
Aeolian American Corporation	Jan. 10, 1938	Jan. 14, 1938	[2]
Adolf Goebel, Inc	Aug. 13, 1937	Aug. 17, 1937	[2]
Afro-American Co	Feb. 28, 1938	Mar. 5, 1938	[2]
Aladdin Industries, Inc	Aug. 30, 1937	Oct. 13, 1937	[2]
Alaska Glacier Sea Food Co	Mar. 16, 1938	Mar. 18, 1838	[1]June 6, 1938
Alba Twine Mills, Inc	Feb. 7, 1938	Feb. 8, 1938	[2]
Alexandria, Barcroft & Washington Transit Co	Oct. 28, 1937	Oct. 28, 1937	[3]
Allen Manufacturing Co	Sept. 27, 1937	Oct. 2, 1937	[3]
Altorfer Brothers Co	July 29, 1937	Aug. 21, 1937	Mar. 1, 1938
American Can Co	Jan. 27, 1938	Jan. 27, 1938	[2]
Do	Mar. 1, 1938	Mar. 1, 1938	[4]
American Chain & Cable Co	Apr. 18, 1938	Apr. 21, 1938	[2]
American Cloak Co., Liberty Cloak and Annette Sport Co. (bodies corporate)	Aug. 30, 1937	Aug. 30, 1937	Mar. 5, 1938
American-Hawaiian Steamship Co	Aug. 19, 1937	Aug. 19, 1937	[2]
Do	Aug. 11, 1937	Aug. 12, 1937	Apr. 19, 1938
American Machine & Foundry Co., Inc	Feb. 14, 1938	Feb. 28, 1938	[2]
American Manufacturing Co	Oct. 11, 1937	Oct. 14, 1937	May 23, 1938
Do	Aug. 12, 1937	Aug. 27, 1937	Feb. 18, 1938
American Manufacturing Concern	Dec. 17, 1937	Dec. 22, 1937	June 7, 1938
American Numbering Machine Co	Feb. 3, 1938	Feb. 14, 1938	[2]
American Oil Co. (Curtis Bay plant)	Apr. 14, 1938	Apr. 21, 1938	[2]
American Radiator Co., a corporation	Sept. 20, 1937	Oct. 8, 1937	June 24, 1938
American Rolling Mill Co	June 27, 1938	[5]	
American Scale Co	May 2, 1938	May 5, 1938	[2]
American Smelting & Refining Co	Oct. 7, 1937	Oct. 26, 1937	June 7, 1938
American Paint Works, The (the Glidden Co.)	Feb. 14, 1938	Feb. 22, 1938	[2]
American Petroleum Co	Sept. 13, 1937	Sept. 29, 1937	[2]
Anderson Mattress Co	Apr. 21, 1938	Apr. 27, 1938	[2]
Andrew Jergen's Co. of California	Jan. 11, 1938	Mar. 11, 1938	[2]
Ann Arbor Press, The	May 2, 1938	May 12, 1938	[2]
Ansley Radio Corporation	Jan. 13, 1938	Jan. 26, 1938	[2]
Appalachian Mills	Apr. 25, 1938	May 7, 1938	[2]
Aponaugh Manufacturing Co	July 12, 1937	July 12, 1937	[2]
Arcade-Sunshine Co., Inc	Mar. 22, 1938	Mar. 30, 1938	[2]
Arcadia Hosiery Co	Apr. 11, 1938	Apr. 20, 1938	[2]
Arma Engineering Co	Jan. 31, 1938	Feb. 14, 1938	[2]
Armour & Co	Mar. 31, 1938	Apr. 11, 1938	[2]
Do	Feb. 7, 1938	Feb. 10, 1938	[2]
Do	do	do	[2]
Do	do	do	[2]
Armour Packing Co., The	Feb. 21, 1938	Mar. 10, 1938	[2]
Aronsson Printing Co	Jan. 27, 1938	Feb. 8, 1938	[2]
Art Crayon Co	July 22, 1937	July 27, 1937	May 11, 1938
A. S. Abel Co	Sept. 16, 1937	Sept. 17, 1937	Feb. 25, 1938
Asheville Hosiery Co	Jan. 11, 1938	Jan. 22, 1938	[2]
Associated Press	Dec. 6, 1937	Jan. 8, 1938	Jan. 29, 1938
Athens Stove Works	May 5, 1938	May 6, 1938	[2]
Atlantic Greyhound Corporation	Dec. 6, 1937	Dec. 7, 1937	June 27, 1938
Do	Mar. 10, 1938	Mar. 24, 1938	[2]
Atlas Powder Co	June 23, 1938	June 30, 1938	[2]
Auburn Foundry, Inc	Apr. 7, 1938	Apr. 15, 1938	[2]
Automatic Radio Manufacturing Co., Inc	July 6, 1937	July 21, 1937	[2]
Automotive Maintenance Machinery Co	Feb. 28, 1938	Mar. 9, 1938	[2]

[1] Consent order issued.
[2] Awaiting Board decision.
[3] Settled before decision of Board was issued.
[4] Dismissed before decision of Board was issued.
[5] Hearing still in progress.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
B. A. Corbin & Sons	Feb. 21, 1938	Feb. 21, 1938	[4]
Baer-Wilde Manufacturing Co	Dec. 9, 1937	Dec. 15, 1937	[3]
Ballston-Stillwater Knitting Co	Aug. 19, 1937	Aug. 31, 1937	Apr. 7, 1938
Bank of America, National Trust & Savings Association of California	June 27, 1938	[5]	
Barton Manufacturing Co	Mar. 18, 1938	Mar. 19, 1938	[2]
Beckerman Shoe Corporation	Jan. 3, 1938	Jan. 8, 1938	[3]
Beckerman Shoe Corporation of Boyertown	May 19, 1938	May 23, 1938	[3]
Beckerman Shoe Corporation of Kutztown	do	do	[3]
Beloit Iron Works	Nov. 1, 1937	Nov. 10, 1937	May 16, 19
Bennett-Hubbard Candy Co	Feb. 17, 1938	Feb. 23, 1938	[3]
Bercut-Richards Packing Co	Apr. 11, 1938	[4]	
Berkey & Gay Furniture Co	Jan. 17, 1938	Feb. 11, 1938	[3]
Berkshire Knitting Mills	Nov. 29, 1937	Feb. 1, 1938	[3]
Bethlehem Shipbuilding Co	Mar. 21, 1938	June 3, 1938	[3]
Bethlehem Shipbuilding Corporation, Ltd	do	do	[3]
Biles Coleman Lumber Co	May 17, 1937	July 14, 1937	Dec. 23, 1937
B. Mifflin Hood Co	Feb. 7, 1938	Feb. 18, 1938	[3]
Black Mammoth Consolidated Mining	[6]	[6]	[6] June 27, 1938
Blanton Co	June 26, 1938	June 21, 1938	[3]
Block-Friedman Co	Nov. 1, 1937	Nov. 3, 1937	[3]
B. H. Body Co	Apr. 11, 1938	[4]	
Boldemann Chocolate Co	June 20, 1938	June 22, 1938	[3]
Borden Mills, Inc	Dec. 13, 1937	Jan. 14, 1938	[3]
Boss Manufacturing Co	May 5, 1938	May 12, 1938	[7] Aug. 27, 1937
Botany Worsted Mills, Inc	June 15, 1937	July 16, 1937	Dec. 1, 1937
Boynton & Co	Feb. 8, 1938	Feb. 12, 1938	[3]
Bradford Dyeing Co. Association	July 12, 1937	July 16, 1937	Dec. 22, 1937
Bradley Lumber Co. of Arkansas	Aug. 16, 1937	Aug. 18, 1937	[3]
Brashear Freight Lines, Inc	Jan. 17, 1938	Jan. 20, 1938	[3]
Breeze Corporation, Inc	Mar. 17, 1938	Mar. 23, 1938	[3]
Brown Paper Mill Co., Inc	Feb. 10, 1938	Feb. 25, 1938	[3]
Do	do	do	[3]
Brown Shoe Co	Nov. 29, 1937	Jan. 24, 1938	Feb. 11, 1938
Burgess Battery Co., Inc	Mar. 3, 1938	Mar. 9, 1938	[3]
Burlington Dyeing and Finishing Co	Mar. 17, 1938	Mar. 19, 1938	[3]
Burson Knitting Co., a corporation	Apr. 21, 1938	Apr. 23, 1938	[3]
Burnside Steel Foundry Co	Oct. 14, 1937	Oct. 22, 1937	June 7, 1938
Bussman Manufacturing Co	May 6, 1938	May 13, 1938	[3]
Byron-Jackson Co., a corporation	Oct. 21, 1937	Nov. 23, 1937	[3]
Calco Chemical Co., Inc., and American Cyanamid Co	Sept. 8, 1937	Sept. 30, 1937	Apr. 28, 1938
California & Hawaiian Sugar Refining Corporation, Ltd	May 2, 1938	May 9, 1938	[3]
California Packing Corporation	Apr. 11, 1938	[4]	
California Conserving Co., Inc	do	[5]	
California Packing Corporation	do	[5]	
California Sanitary Canning Co	Feb. 7, 1938	Mar. 8, 1938	[3]
California Walnut Growers Association	Mar. 3, 1938	May 19, 1938	[3]
Call Printing and Publishing Co., The	Apr. 7, 1938	Apr. 14, 1938	[3]
Calmar Steamship (Steamship *Flomar*)	Dec. 6, 1937	Jan. 26, 1938	[3]
Calmar Steamship (Steamship *Losmar*)	do	do	[3]
Calmar Steamship Co	do	do	[3]
Calmar Steamship Corporation	do	do	[3]
Do	do	do	[3]
Do	do	do	[3]
Do	do	do	[3]
Do	do	do	[3]
Calmar Steamship Corporation and A. Kullbarn, master	do	do	[3]
Calmar Steamship Corporation (Steamship *Oakmar*)	do	do	[3]
Calmar Steamship Corporation (Steamship *Portmar*)	do	do	[3]
Caloric Gas Stove Works (Topton Foundry)	July 8, 1937	July 22, 1938	July 31, 1937
Calumet Steel, Division of Borg-Warner Corporation	May 12, 1938	May 13, 1938	[3]
C. A. Lund Co	July 6, 1937	July 9, 1937	Apr. 5, 1938
Carbola Chemical Co., Inc	Oct. 14, 1937	Oct. 14, 1937	Oct. 30, 1937
Carolina Marble & Granite Works	Dec. 15, 1937	Dec. 16, 1937	[3]
Carrollton Metal Products Co	Sept. 2, 1937	Oct. 12, 1937	Apr. 14, 1938
Cating Rope Works	July 29, 1937	Aug. 3, 1937	Jan. 21, 1938
C. D. Johnson Lumber Corporation	Oct. 18, 1937	May 23, 1938	[3]
Do	do	do	[3]
C. G. Lashley, doing business as L. & A. Bus Lines	May 2, 1938	May 4, 1938	[3]

[3] Awaiting Board decision.
[4] Dismissed before decision of Board was issued.
[5] Hearing still in progress.
[6] Consent order issued without a hearing.
[7] Awaiting supplemental decision after further hearing was ordered by the courts.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Charles J. Stein, individually and trading as Capitol Bedding Co	Apr. 1, 1938	Apr. 4, 1938	[2]
C. H. Bacon Co	Jan. 10, 1938	Jan. 21, 1938	[2]
Chesapeake Shoe Manufacturing Co	Mar. 10, 1938	Mar. 15, 1938	[2]
Chic Lingerie Co., Inc	Mar. 21, 1938	Apr. 11, 1938	[2]
Chicago Apparatus Co	Dec. 13, 1937	Dec. 16, 1937	[2]
Christian Board of Publication	Mar. 10, 1938	Mar. 15, 1938	[2]
Centre Brass and Enterprise Novelty, Inc	Jan. 7, 1938	Jan. 13, 1938	[2]
Cincinnati Milling Machine Co	Dec. 9, 1937	Dec. 22, 1937	[2]
Citizens Manufacturing Co. (T. W. Hepler)	Oct. 14, 1937	Oct. 19, 1937	May 19, 1938
Clark Equipment Co	Mar. 1, 1938	Mar. 16, 1938	[2]
Clark Shoe Co	Apr. 12, 1938	Apr. 14, 1938	[2]
Cleveland Cliffs Iron Co	Jan. 24, 1938	Feb. 7, 1938	[2]
Clover Fork Coal Co	Aug. 2, 1937	Aug. 12, 1937	Nov. 27, 1937
Clovis News-Journal, The (R. C. Hoiles et al.)	May 24, 1938	May 25, 1938	[2]
Do	do	do	[2]
C. Nelson Manufacturing Co	June 9, 1938	June 15, 1938	[2]
Cohn Hall Marx and Subsidiaries	Sept. 13, 1937	Sept. 28, 1937	[2]
Colorado Milling & Elevator Co	Feb. 24, 1938	Feb. 26, 1938	[2]
Columbian Steamship Co., Inc	Nov. 29, 1937	Nov. 30, 1937	[2]
Columbia Specialty Co., Inc	Oct. 4, 1937	Oct. 5, 1937	[2]
Commonwealth Telephone Co	Mar. 24, 1938	Mar. 26, 1938	[2]
Condenser Corporation of America	Feb. 15, 1937	Oct. 15, 1937	[2]
Connor Lumber & Land Co	June 9, 1938	[5]	
Consumers Power Co	May 12, 1938	[3]	
Consolidated Cigar Corporation, Inc	June 23, 1938	June 24, 1398	[2]
Consolidated Dressed Beef Co	Nov. 4, 1937	Nov. 5, 1937	[2]
Consolidated Edison Co., Inc	June 3, 1937	July 6, 1937	Nov. 10, 1937
Continental Oil Co	June 13, 1938	June 21, 1938	[2]
Do	Mar. 3, 1938	Mar. 17, 1938	[2]
Cooper-Wells & Co	May 12, 1938	May 26, 1938	[2]
Do	do	do	[2]
Corinth Hosiery Mills	Mar. 28, 1938	Apr. 2, 1938	[2]
Corning Glass Works	Feb. 3, 1938	Feb. 17, 1938	[2]
Cowell Portland Cement Co	Aug. 30, 1937	Oct. 11, 1937	[2]
Crane Creek Lumber Co	Oct. 25, 1937	Oct. 27, 1937	[2]
Crawford Manufacturing Co	Nov. 29, 1937	Nov. 29, 1937	[2]
Cresent Bed Co., Inc	Dec. 18, 1937	Dec. 18, 1937	[2]
Crowe Coal Co	Nov. 29, 1937	Nov. 29, 1937	[2]
Cudahy Packing Co	Aug. 6, 1937	Aug. 11, 1937	Feb. 18, 1938
Cudahy Packing Co., Inc	Feb. 3, 1938	Feb. 17, 1938	[2]
Cullen-Thompson Motor Co., Inc	Jan. 25, 1938	Jan. 26, 1938	[2]
Cullom & Ghertner Co	June 20, 1938	June 23, 1938	[2]
Cummins Engine Co	Mar. 17, 1938	Mar. 17, 1938	[1] Apr. 16, 1938
Cupples Co. (Match Division)	Nov. 29, 1937	Dec. 14, 1937	[2]
Charles Cushman Co	Feb. 21, 1938	Feb. 21, 1938	[2]
Dainty Maid Slippers, Inc	Nov. 1, 1937	Nov. 3, 1938	[2]
Dallas Cartage Co	June 30, 1937	[5]	
Dartmouth Woolen Mills	[6]	[6]	[6] Feb. 28, 1938
David and Hyman Zoslow, trading as Golden Star Shoe Renewing Co., etc	Nov. 4, 1937	Nov. 5, 1937	[1] Jan. 11, 1938
David & Hyman Zoslow	Jan. 13, 1938	Jan. 14, 1938	[2]
David E. Kennedy, Inc	Nov. 18, 1937	Nov. 19, 1937	Apr. 21, 1938
David Strain Manufacturing Co., Inc	Dec. 2, 1937	Dec. 3, 1937	[2]
D. & B. Pump and Supply Co	Mar. 21, 1938	Mar. 23, 1938	[2]
Decatur Newspaper, Inc	Apr. 18, 1938	Apr. 22, 1938	[2]
Delco-Remy Corporation (General Motors Corporation)	Feb. 21, 1938	Mar. 17, 1938	[2]
Denver Automobile Dealers Association et al	Dec. 2, 1937	Jan. 25, 1938	[2]
Denver Automobile Dealers Association	Dec. 27, 1937	do	[2]
Do	Dec. 2, 1937	do	[2]
Derby's Sportswear Co	Sept. 28, 1937	Oct. 5, 1937	[2]
Detroit Gasket & Manufacturing Co	May 26, 1938	June 21, 1938	[2]
Dixie Manufacturing Co., Inc	Apr. 4, 1938	Apr. 8, 1938	[2]
Do	do	do	[2]
Domestic Supply Coal Co	Apr. 11, 1938	May 4, 1938	[2]
Douglas Aircraft Co. (Northrup Division)	Feb. 9, 1938	Feb. 25, 1938	[2]
Douglas Aircraft Co., Inc	June 7, 1937	Aug. 20, 1937	[8] Apr. 20, 1938
Do	do	do	Do.
Dow Chemical Co	Mar. 24, 1938	Apr. 12, 1938	[2]

[1] Consent order issued.
[2] Awaiting Board decision.
[3] Settled before decision of Board was issued.
[4] Hearing still in progress.
[5] Consent order issued without a hearing.
[6] Order issued setting aside decision on May 16, 1938
[9] Case closed by compliance with intermediate report.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Dritz-Traum Co., Inc,. and Heirloom Needlework Guild, Inc.	Mar. 12, 1938	Mar. 12, 1938	[3]
Dunbar Glass Co.	Nov. 18, 1937	Nov. 23, 1937	Apr. 23, 1938
Eagle Manufacturing Co.	Nov. 13, 1937	Nov. 15, 1937	Apr. 7, 1938
Eagle Pencil Co., Inc.	Oct. 1, 1937	Dec. 29, 1937	[3]
Eagle & Phenix Mills.	June 6, 1938	June 21, 1938	[3]
Eagle-Picher Mining & Smelting.	Dec. 6, 1937	Apr. 29, 1938	[3]
Eastern States Petroleum Co., Inc.	May 2, 1938	June 28, 1938	[3]
Easton Made Underwear Co., Inc.	Jan. 31, 1938	Feb. 7, 1938	[3]
Eavenson & Levering Co.	May 23, 1938	June 7, 1938	[3]
Ed. Friedrick, Inc.	Nov. 15, 1937	Nov. 19, 1937	[3]
Edward J. Ramsey.	Feb. 21, 1938	Feb. 23, 1938	[3]
Egry Register Co., The.	May 5, 1938	May 9, 1938	[1]May 23, 1938
E. Hubschman and Sons, Inc.	Dec. 15, 1937	Dec. 15, 1937	[3]
Electric Auto-Lite Co. (Bay Manufacturing Division)	Nov. 18, 1937	Nov. 22, 1937	June 27, 1938
Elkland Leather Co., Inc.	Sept. 24, 1937	Oct. 27, 1937	[3]
Elmhurst Packers, Inc.	Apr. 11, 1938	[5]	
Em-Bee Hat Manufacturing Co., Inc.	Nov. 4, 1937	Nov. 5, 1937	[3]
Emerson Electric Manufacturing Co.	May 23, 1938	May 27, 1938	[3]
Empire District Electric Co.	May 26, 1938	June 7, 1938	[3]
Empire Furniture Corporation, The.	Nov. 4, 1937	Nov. 6, 1937	[3]
Empire Worsted Mills of Jamestown, N. Y.	Sept. 2, 1937	Sept. 9, 1937	Apr. 8, 1938
Empire Worsted Mills, Inc.	Mar. 14, 1938	Mar. 21, 1938	[3]
Enterprise Manufacturing Co.	Oct. 4, 1937	Oct. 4, 1937	[3]
Erskine Baking Co.	Apr. 20, 1938	Apr. 22, 1938	[3]
Esterlite Fixture Co.	Aug. 19, 1937	Aug. 20, 1937	Apr. 4, 1938
E. T. Fraim Lock Co.	Aug. 26, 1937	Aug. 26, 1937	Sept. 3, 1938
Eugene Dietzgen & Co., Inc.	Jan. 4, 1938	Jan. 5, 1938	[3]
Ex-Lax, Inc.	Mar. 29, 1938	May 23, 1938	[3]
Expert Dress Co. et al.	Sept. 23, 1937	Sept. 25, 1937	[3]
Export Steamship Corporation.	Jan. 11, 1938	Feb. 19, 1938	[3]
Express Publishing Co.	Nov. 22, 1937	Nov. 23, 1937	[3]
Fairchild Clay Products Co.	Jan. 6, 1938	Jan. 7, 1938	[3]
Falk Corporation, The.	Aug. 16, 1937	Aug. 25, 1937	Apr. 18, 1938
Farmco Package Corporation.	Nov. 18, 1937	Nov. 19, 1937	Apr. 14, 1938
Fanny Farmer Candy Shops, Inc.	Jan. 6, 1938	Jan. 8, 1938	[3]
Fanny Farmer, Inc.	Oct. 4, 1937	Oct. 6, 1937	[3]
Fedders Manufacturing Co., Inc.	Apr. 20, 1938	Apr. 20, 1938	June 9, 1938
Federal Carton Co.	Aug. 17, 1937	Aug. 20, 1937	Mar. 8, 1938
Federal Mining & Smelting Co.	June 6, 1938	June 14, 1938	[3]
Ferguson Bros. Manufacturing Co.	Jan. 20, 1938	Jan. 29, 1938	[3]
F. G. Vogt & Sons, Inc.	Apr. 25, 1938	Apr. 28, 1938	[3]
Fibre Board Container Co.	Nov. 11, 1937	Nov. 11, 1937	[3]
Filice & Perrilli Canning Co., Inc.	Apr. 11, 1938	[5]	
Filtrol Corporation.	Dec. 13, 1937	Dec. 13, 1937	[4]
Firestone Tire & Rubber Co. of California.	Jan. 4, 1938	Mar. 11, 1938	[3]
F. M. Ball. & Co.	Apr. 11, 1938	[5]	
Foote Brothers Gear & Machine Corporation.	Jan. 10, 1938	Feb. 4, 1938	[3]
Do.	Jan. 31, 1938	do.	[3]
Ford Motor Co.	July 6, 1937	July 30, 1937	Dec. 22, 1937
Do.	Jan. 11, 1938	Feb. 4, 1938	[3]
Do.	Dec. 16, 1937	Apr. 9, 1938	[3]
Do.	Feb. 14, 1938	[5]	
Do.	Sept. 13, 1937	Sept. 20, 1937	[3]
Ford Motor Co., a corporation.	June 20, 1938	[5]	
Ford Motor Co.	Mar. 24, 1938	May 16, 1938	[3]
Do.	June 6, 1938	June 16, 1938	[3]
Fort Wayne Corrugated Paper Co.	Apr. 14, 1938	Apr. 15, 1938	[3]
Fox Brothers Manufacturing Co.	May 5, 1938	May 9, 1938	[3]
Fox-Coffey-Edge Millinery Co., Inc.	Sept. 30, 1937	Oct. 13, 1937	[3]
F. S. Elam Shoe Co.	Apr. 26, 1938	Apr. 27, 1938	[3]
F. W. Kurtz & Co., Inc.	June 6, 1938	June 8, 1938	[3]
F. W. Woolworth Co., Inc.	Apr. 11, 1938	Apr. 26, 1938	[3]
Gallun & Sons Corporation, A. F.	Dec. 20, 1937	Jan. 5, 1938	[3]
Gamble Robinson Co. and Pacific Fruit & Produce Co., Inc.	June 9, 1938	June 10, 1938	[3]
Garden State Hosiery Co.	Oct. 8, 1937	Oct. 12, 1937	[3]
Garden State Lines, Inc.	Mar. 14, 1938	Mar. 26, 1938	[3]
Garfield Machine Works, Inc.	Aug. 2, 1937	Aug. 3, 1937	[3]
General Chemical Co.	Oct. 14, 1937	Oct. 19, 1937	[3]

[1] Consent order issued.
[2] Awaiting Board decision.
[3] Settled before decision of Board was issued.
[4] Dismissed before decision of Board was issued.
[5] Hearing still in progress.
[6] Case closed by compliance with intermediate report.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
General Furniture Manufacturing Co	June 30, 1938	[5]	
General Shoe Co	July 29, 1937	Aug. 6, 1937	Mar. 15, 1938
Georgia Granite Co	Oct. 21, 1937	Oct. 26, 1937	[3]
Gerling Furniture Manufacturing Co., Inc., The	June 2, 1938	June 8, 1938	[3]
Glidden Co	Apr. 16, 1938	Apr. 16, 1938	[3]
Globe Cotton Mill, The	Nov. 22, 1937	Nov. 22, 1937	Apr. 6, 1938
Godchaux Sugars, Inc	Jan. 24, 1938	Feb. 5, 1938	[3]
Gold Claire Hat Mfg. Co	Sept. 30, 1937	Oct. 13, 1937	[3]
Goldstein Hat Co	Oct. 14, 1937	Oct. 21, 1937	[3]
Good Coal Co	Dec. 3, 1937	Dec. 7, 1937	[3]
Goodyear Tire & Rubber Co. of Alabama	Aug. 19, 1937	Dec. 1, 1937	[3]
Goshen Rubber and Manufacturing Co	Feb. 24, 1938	Feb. 26, 1938	[3]
Gotham Shoe Manufacturing Co., Inc	Feb. 18, 1938	Feb. 23, 1938	[3]
Gould and Rosenberg	Jan. 24, 1938	Jan. 24, 1938	[3]
Grace Co., The	Oct. 12, 1937	Oct. 16, 1937	June 8, 1938
Grace Line	Aug. 19, 1937	Aug. 19, 1937	[3]
Grant Sportswear	July 6, 1937	July 7, 1937	[3]
Grapevine Coal Co	Sept. 13, 1937	Sept. 22, 1937	[3]
Green Silvers Coal Co	Oct. 22, 1937	Oct. 25, 1937	[3]
Greer Steel Co., The	Nov. 11, 1937	Nov. 12, 1937	[1] Dec. 3, 1937
Griess-Pfleger Tanning Co	Nov. 9, 1937	Dec. 6, 1937	[3]
Griswold Manufacturing Co	Sept. 27, 1937	Oct. 1, 1937	Mar. 30, 1938
Hamilton-Brown Shoe	July 8, 1937	July 29, 1937	[3]
Hammond-Redwood Co	Feb. 10, 1938	Feb. 17, 1938	[3]
Hanna Ore Mining Co., M. A	June 2, 1938	June 8, 1938	[3]
Hanson-Whitney Machine Co	Jan. 4, 1938	Jan. 5, 1938	[3]
Harlan Central Coal Co., The	Apr. 21, 1938	May 6, 1938	[3]
Harlan Fuel Co	Oct. 11, 1937	Oct. 16, 1937	[3]
Harnischfeger Corporation	Aug. 12, 1937	Sept. 2, 1937	[3]
Harrisburg Children's Dress Co	May 9, 1938	May 12, 1938	[3]
Harris Structural Steel Co	Nov. 15, 1937	Nov. 16, 1937	[3]
Harry Schwartz Yarn Co	Oct. 7, 1937	Nov. 1, 1937	[3]
Harter Corporation	do	Oct. 16, 1937	[3]
Hawkeye Pearl Button Co	[6]	[6]	[6] May 27, 1938
Heald Division-Meade Corporation, John	Dec. 2, 1937	Dec. 2, 1937	[3]
Hearst Consolidated Publications, Inc	Feb. 17, 1938	Feb. 18, 1938	[3]
H. E. Fletcher Granite Co	Oct. 18, 1937	Oct. 19, 1937	Mar. 2, 1938
H. J. Heinz Company	Nov. 15, 1937	Nov. 26, 1937	Apr. 9, 1938
H. J. Heinz Corporation	Apr. 11, 1938	[5]	
Heller Brothers Co	Dec. 6, 1937	Dec. 10, 1937	June 4, 1938
Hemp & Co	Dec. 9, 1937	Dec. 21, 1937	[3]
Hercules-Campbell Book Co., Inc	Dec. 18, 1937	do	[2] May 25, 1938
Hershey Chocolate Corporation	Apr. 23, 1938	Apr. 23, 1938	[1] May 5, 1938
Hewitt Soap Co., The	[6]	[6]	[6] Apr. 21, 1938
Heyward Granite Co	Mar. 7, 1938	Mar. 14, 1938	[3]
Do	May 9, 1938	May 11, 1938	[3]
Highland Park Manufacturing Co	Dec. 9, 1937	Dec. 11, 1937	[3]
Highland Shoe, Inc	Apr. 1, 1938	Apr. 4, 1938	[3]
Hilgartner Marble Co	Apr. 18, 1938	Apr. 19, 1938	[3]
Hood Rubber Co., Inc	Apr. 14, 1938	Apr. 21, 1938	[3]
Hoover Co., The	Oct. 18, 1937	Oct. 22, 1937	Apr. 21, 1938
Do	Apr. 14, 1938	Apr. 16, 1938	[3]
Hope Webbing Co	Jan. 31, 1938	Feb. 17, 1938	[3]
Howry-Berg, Inc	Jan. 24, 1938	Jan. 24, 1938	[3]
H. T. Poindexter & Sons	Sept. 23, 1937	Sept. 29, 1937	[3]
Huck Leather Co	Jan. 13, 1938	Jan. 18, 1938	[3]
Humble Oil & Refining Co	Mar. 7, 1938	Apr. 2, 1938	[3]
Do	do	do	[3]
Hunt Brothers Packing Co	Apr. 11, 1938	[5]	
H. Zirkin and Sons, Inc	Jan. 27, 1938	Jan. 27, 1938	[3]
Ideal Foundry and Machinery Co	Apr. 9, 1938	Apr. 9, 1938	[3]
I. Libowitz	Dec. 9, 1937	Dec. 9, 1937	[1] Apr. 29, 1938
Independent Pneumatic Tool Co	May 12, 1938	May 13, 1938	[3]
Indiana Cash Drawer Co	May 26, 1938	May 26, 1938	[3]
Indianapolis Glove Co	Aug. 5, 1937	Aug. 9, 1937	Feb. 11, 1938
Ingram Manufacturing Co	Nov. 10, 1937	Nov. 11, 1937	Mar. 11, 1938
Inland Lime & Stone Co. and Inland Steel Co	Sept. 27, 1937	Oct. 5, 1937	[4]

[1] Consent order issued.
[2] Awaiting Board decision.
[3] Settled before decision of Board was issued.
[4] Hearing still in progress.
[5] Consent order issued without a hearing.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Inland Steel Co	June 28, 1937	Oct. 13, 1937	[10] Apr. 5, 1938
International Agricultural Corporation	May 26, 1938	June 1, 1938	[2]
International Agricultural Corporation (of Mt. Pleasant, Tenn., plant)	do	do	[2]
International Shoe Co	Feb. 23, 1938	Feb. 24, 1938	[11]
Do	Mar. 7, 1938	May 7, 1938	[2]
International Ticket Co	Jan. 24, 1938	Jan. 24, 1938	[4]
Interstate Aircraft & Engine Corporation	Apr. 18, 1938	Apr. 25, 1938	[2]
Interstate Granite Corporation	Dec. 13, 1937	Dec. 15, 1937	[2]
Isthmian Steamship Co	Dec. 21, 1937	June 10, 1938	[2]
Iowa Packing Co	Feb. 25, 1938	Mar. 2, 1938	[2]
Jac Feinberg Hosiery Mills, Inc	Jan. 17, 1938	Jan. 22, 1938	[2]
Jacob A. Hunkele, trading as Tri-State Towel Service of Independent Towel Supply Co	Nov. 26, 1937	Nov. 26, 1937	June 29, 1938
Do	do	do	Do.
J. Greenbaum Tanning Co	Feb. 19, 1938	Feb. 24, 1938	[2]
J. Klotz & Co	Dec. 10, 1937	Mar. 14, 1938	[2]
Jackson Daily News, Inc	Dec. 9, 1937	Dec. 10, 1937	[2]
James F. Kane Co	Aug. 23, 1937	Aug. 25, 1937	[2]
Jamestown Veneer & Plywood Corporation	Nov. 8, 1937	Nov. 8, 1937	[2]
Jacobs Brothers Co., Inc	July 29, 1937	Aug. 13, 1937	Feb. 25, 1938
Jefferson Electric Co	Oct. 21, 1937	Oct. 26, 1937	[2]
J. Chesler & Sons Co	May 16, 1938	May 18, 1938	[2]
Jefferson Lake Oil Co., Inc	Apr. 18, 1938	Apr. 26, 1938	[2]
John Lucas & Co., Inc	Oct. 11, 1937	Oct. 15, 1937	[2]
John Minder & Son, Inc	Aug. 25, 1937	Aug. 31, 1937	Apr. 22, 1938
Joliet Wrought Washer Co	Apr. 7, 1938	Apr. 13, 1938	[2]
Joseph Birnbaum & Lewmac Furs, Inc	June 20, 1938	June 23, 1938	[2]
Joseph H. Meyer & Bros	Apr. 13, 1938	May 18, 1938	[2]
J. W. Beasley	Dec. 16, 1937	Dec. 16, 1937	June 23, 1938
Julius Breckwoldt & Son, Inc	Dec. 14, 1937	Dec. 18, 1937	[2]
J. Wiss and Sons Co	Mar. 21, 1938	Mar. 25, 1938	[2]
Kansas City Power & Light Co	Jan. 6, 1938	Jan. 28, 1938	[2]
Kansas City Structural Steel	June 27, 1938	[5]	
Kelly-Springfield Tire Co	Aug. 12, 1937	Aug. 16, 1937	Mar. 31, 1938
Kessner & Rabinowitz, Inc	Mar. 24, 1938	Mar. 25, 1938	[2]
Keystone Manufacturing Co	Nov. 15, 1937	Nov. 24, 1937	[9]
Kiddie-Kover Manufacturing Co. (Arthur J. Colten and Abe J. Colman)	Oct. 4, 1937	Oct. 7, 1937	Mar. 31, 1938
Killark Electric Manufacturing Co	[6]	[6]	[5] June 24, 1938
Killefer Manufacturing Corporation, Limited	Apr. 28, 1938	June 7, 1938	[2]
Kingan and Co., Inc	Mar. 24, 1938	Mar. 24, 1938	[2]
Kingsbury Manufacturing Co	Nov. 8, 1937	Nov. 10, 1937	[2]
Knickerbocker Broadcasting Co., Inc	Apr. 20, 1938	Apr. 27, 1938	[2]
Knoxville Glove Co	July 29, 1937	July 31, 1937	Feb. 21, 1938
Knoxville Publishing Co	Feb. 3, 1938	Feb. 16, 1938	[2]
Kokomo Sanitary Pottery Corporation	Dec. 13, 1937	Dec. 17, 1937	[2]
Koss Shoe Co., Inc	Feb. 21, 1938	Feb. 21, 1938	[2]
Kuehne Furniture Co	Aug. 3, 1937	Aug. 13, 1937	May 20, 1938
K. V. O. S., Inc	Apr. 22, 1938	Apr. 23, 1938	[2]
L. A. Brick & Clay Products Co	Dec. 16, 1937	Jan. 10, 1938	[2]
La Crosse Garment Industries	Nov. 16, 1937	Nov. 16, 1937	Feb. 7, 1938
Lady Ester Lingerie Corporation	Oct. 14, 1937	Oct. 26, 1937	[2]
Lafayette Hotel	Mar. 21, 1938	Mar. 24, 1938	[2]
Laird, Schober Co., Inc	June 2, 1938	June 7, 1938	[2]
Lamb Glass Co	July 29, 1937	July 29, 1937	Oct. 26, 1937
Lane Cotton Mills Co	Oct. 18, 1937	Oct. 26, 1937	June 13, 1938
Lancaster Iron Works	Jan. 17, 1938	Feb. 8, 1938	[2]
Lane Cotton Mills	July 20, 1937	July 23, 1937	June 13, 1938
Lansing Co	June 30, 1938	[5]	
Larson-Nash Motors Co	Dec. 3, 1937	Dec. 7, 1937	[2]
L. C. Phenix Co	Dec. 10, 1937	June 22, 1938	[2]
L. C. Smith & Corona Typewriters, Inc	June 23, 1938	June 24, 1938	[1]
Do	Feb. 7, 1938	Feb. 7, 1938	[4]
Lee Clay Products Co	[12]	[12]	[13] Oct. 8, 1937
Lengel-Fencil Co	Nov. 29, 1937	Dec. 4, 1937	[2]

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[4] Dismissed before decision of Board was issued.
[5] Hearing still in progress.
[6] Consent order issued without a hearing.
[9] Case closed by compliance with intermediate report.
[10] Order issued on May 10, 1938, setting aside decision.
[11] Withdrawn before Board decision.
[13] Decision issued without a hearing.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Lenox Shoe Co.	July 26, 1937	July 28, 1937	Dec. 3, 1937
Lewis-Chambers Construction Co.	Mar. 14, 1938	Mar. 17, 1938	[2]
Do.	----do----	----do----	[2]
Do.	----do----	----do----	[2]
Leviton Manufacturing Co.	Aug. 23, 1937	Aug. 23, 1937	[2]
L. Grief & Bros., Inc.	Sept. 20, 1937	Sept. 21, 1937	[2]
Libby, McNeill & Libby	Apr. 11, 1938	[5]	
Lightner Publisher Corporation of Illinois	Apr. 14, 1938	Apr. 14, 1938	[2]
Lindeman Power & Equipment Co.	Nov. 26, 1937	Nov. 30, 1937	[2]
Link Belt Co.	Mar. 14, 1938	Mar. 23, 1938	[2]
Lipscomb Seed & Grain Co.	May 23, 1938	June 1, 1938	[2]
Lone Star Bag & Bagging Co.	Aug. 26, 1937	Sept. 13, 1937	[2]
Lone Star Gas Co.	Nov. 11, 1937	Dec. 3, 1937	[2]
Loose Wiles Biscuit Co.	Feb. 10, 1938	Feb. 10, 1938	[1] Apr. 5, 1938
Lown Shoe Co.	Feb. 21, 1938	Feb. 21, 1938	[2]
Luckenbach Steamship Co., Inc.	Feb. 7, 1938	Feb. 8, 1938	[2]
Do.	Jan. 10, 1938	Jan. 14, 1938	[2]
Lumbard Shoe Co.	Feb. 21, 1938	Feb. 21, 1938	[2]
Lynn Coal Co. (Wolfe & Koeing)	Apr. 11, 1938	May 4, 1938	[2]
McBee Co., The	Jan. 14, 1938	Feb. 2, 1938	[2]
McCormick Steamship Co.	Aug. 19, 1937	Aug. 19, 1937	[2]
McKaig-Hatch, Inc.	Dec. 2, 1937	Dec. 10, 1937	[2]
McKesson & Robbins, Inc.	Nov. 8, 1937	Nov. 8, 1937	[2]
McGoldrick Lumber Co.	Oct. 18, 1937	May 23, 1938	[2]
McNeeley & Price Co.	Nov. 17, 1937	Dec. 2, 1937	Apr. 23, 1938
M. Bierner & Son	Nov. 6, 1937	Nov. 13, 1937	[2]
M. & J. Tracy, Inc.	Feb. 21, 1938	Mar. 11, 1938	[2]
M. & M. Wood Working Co.	Jan. 4, 1938	Jan. 8, 1938	Apr. 1, 1938
M. Trelles & Co.	Apr. 28, 1938	May 3, 1938	[2]
Mackay Radio Corporation of Delaware	Sept. 29, 1937	Oct. 2, 1937	[2]
Magnolia Petroleum Co.	May 9, 1938	June 14, 1938	[2]
Maine Shoes Inc.	Feb. 21, 1938	Feb. 21, 1938	[2]
Majestic Flour Mills	June 3, 1938	[5]	
Marathon Rubber Products Co.	Dec. 9, 1937	Dec. 11, 1937	[2]
Do.	----do----	----do----	[2]
Marcus Motors, Inc.	Dec. 10, 1937	Dec. 13, 1937	[2]
Marks Bros. Co.	Nov. 26, 1937	Nov. 27, 1937	May 13, 1938
Marlin-Rockwell Corporation	July 2, 1937	July 2, 1937	[3]
Maryland Bolt & Nut Co.	June 2, 1938	June 7, 1938	[2]
Mason Manufacturing Co.	May 26, 1938	----do----	[2]
Massachusetts Knitting Mills	Apr. 14, 1938	Apr. 16, 1938	[2]
Mathieson Alkali Works, Inc.	June 6, 1938	June 24, 1938	[2]
Matson Navigation Co.	Aug. 19, 1937	Aug. 19, 1937	[2]
Meadow Valley Lumber Co.	Oct. 18, 1937	Oct. 21, 1937	[1] June 6, 1938
Medley Manufacturing Co.	June 2, 1938	June 3, 1938	[2]
Merchant's Delivery Co.	Dec. 2, 1937	Dec. 9, 1937	[2]
Merchants Transfer & Storage Co.	Apr. 25, 1938	Apr. 25, 1938	[2]
Merry Shoe Co.	Apr. 14, 1938	Apr. 15, 1938	[2]
Mexia Textile Mills	May 2, 1938	May 5, 1938	[2]
Micamold Condenser Co.	Oct. 28, 1937	Nov. 6, 1937	[3]
Midland Steel Products Co.	Feb. 24, 1938	Mar. 2, 1938	[2]
Midwest Metal Stamping Co.	June 23, 1938	June 24, 1938	[2]
Mid States Gummed Paper Co.	May 5, 1938	May 6, 1938	[2]
Milne Chair Co.	Apr. 28, 1938	----do----	[2]
Miller Bros. Co., Inc.	June 23, 1938	June 29, 1938	[2]
Miller Corsets, Inc.	Dec. 2, 1937	Dec. 3, 1937	[2]
Minneapolis-Moline Power Implement Co.	Mar. 24, 1938	Mar. 26, 1938	[2]
Mission Hosiery Mills	June 6, 1938	June 10, 1938	[2]
Missouri, Arkansas Coach Line, Inc.	July 29, 1937	Aug. 3, 1937	May 14, 1938
Do.	Apr. 21, 1938	Apr. 21, 1938	[2]
Missouri, Kansas & Oklahoma Coach Lines	Sept. 7, 1937	Sept. 9, 1937	[2]
Do.	----do----	----do----	[2]
M. Lowenstein and Sons, Inc.	Sept. 23, 1937	Oct. 7, 1937	Mar. 26, 1938
Do.	----do----	----do----	Do.
Mock-Judson-Voehringer Co. of North Carolina, Inc.	Dec. 6, 1937	Dec. 8, 1937	[2]

[1] Consent order issued.
[2] Awaiting Board decision.
[3] Settled before decision of the Board was issued.
[5] Hearing still in progress.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Mohawk Carpet Mills, Inc.	Apr. 21, 1938	May 20, 1938	(1)
Moline Iron Works	Mar. 21, 1938	Mar. 23, 1938	(1)
Moltrup Steel Products Co.	Feb. 7, 1938	Mar. 30, 1938	(1)
Mor-Pak Preserving Corporation	Apr. 11, 1938	(2)	
Morgan Packing Co.	Oct. 7, 1937	Oct. 16, 1937	(1)
Do.	do.	do.	(1)
Morse Brothers Machinery Co., a corporation	May 20, 1938	May 21, 1938	(1)
Montgomery, Ward & Co., Inc.	June 24, 1937	July 9, 1937	Jan. 26, 1938
Mountain Motors Co.	Dec. 8, 1937	Dec. 9, 1937	(1)
Mount Vernon Car Manufacturing Co.	Oct. 18, 1937	Dec. 18, 1937	(1)
Munson Steamship Line and Antonio Outeoa	Apr. 29, 1938	May 2, 1938	(1)
Muskin Shoe Co.	Nov. 22, 1937	Nov. 23, 1937	(1)
Mutual-Sunset Lamp Mfg. Co.	July 19, 1937	July 19, 1937	Aug. 27, 1937
N. Kiamie	Oct. 11, 1937	Oct. 11, 1937	Jan. 10, 1938
Nashville Bridge Co.	Mar. 3, 1938	Mar. 4, 1938	(2)
National Electric Products	Aug. 2, 1937	Aug. 7, 1937	Aug. 30, 1937
National Licorice Co.	Oct. 13, 1937	Oct. 20, 1937	May 31, 1938
National Meter Co.	May 23, 1938	May 26, 1938	(1)
National Motor Bearing Co.	June 15, 1937	July 2, 1937	Feb. 18, 1938
National Rivet and Manufacturing Co.	Sept. 17, 1937	Sept. 20, 1937	(1)
National Shoe Corporation	June 13, 1938	June 20, 1938	(1)
National Supply Co.	Apr. 14, 1938	Apr. 26, 1938	(1)
National Vulcanized Fibre Co.	Mar. 10, 1938	Mar. 11, 1938	(1)
Do.	do.	do.	(1)
Do.	do.	do.	(1)
National Weaving Co.	Nov. 29, 1937	Nov. 29, 1937	June 7, 1938
Nebel Knitting Co., Inc.	Aug. 19, 1937	Aug. 19, 1937	Mar. 30, 1938
Nebraska Power Co.	June 16, 1938	(2)	
Nekoosa Edwards Paper Co.	Feb. 10, 1938	Feb. 17, 1938	(1)
Do.	do.	do.	(1)
Do.	do.	do.	(1)
Do.	do.	do.	(1)
Nevada Consolidated Copper Corporation	May 2, 1938	June 13, 1938	(1)
Newark Rivet Works	Nov. 28, 1937	Jan. 18, 1938	(1)
New Idea, Inc.	Nov. 15, 1937	Nov. 17, 1937	Feb. 18, 1938
Newport News Shipbuilding & Drydock Co.	Aug. 30, 1937	Sept. 8, 1937	(1)
Newton Carton Co.	Apr. 11, 1938	Apr. 12, 1938	(1)
N. Y. Butchers Meat Co.	May 19, 1938	May 19, 1938	(1)
New York Handkerchief Co.	June 30, 1938	(2)	
Niagara Box Factory, Inc.	Oct. 1, 1937	Dec. 29, 1937	(1)
Norfolk Shipbuilding & Drydock Corporation	Apr. 7, 1938	Apr. 8, 1938	(1)
Northwestern Manufacturing Co.	Apr. 4, 1938	Apr. 6, 1938	(1)
North Whittier Heights Citrus Association	Sept. 21, 1937	Nov. 26, 1937	Mar. 21, 1938
Northland Ski Manufacturing Co.	July 6, 1937	July 9, 1937	Apr. 5, 1938
North River Yarn Dyers	Nov. 18, 1937	Nov. 18, 1937	(2)
North Shore Dye House, Inc.	Jan. 6, 1938	Jan. 15, 1938	(2)
Oberman & Co., Inc.	Oct. 18, 1937	Oct. 22, 1937	(2)
Oceanic & Oriental Navigation Co.	Aug. 11, 1937	Aug. 12, 1937	Apr. 19, 1938
Ohio Brass Co.	June 27, 1938	June 29, 1938	(1)
Ohio Fuel Gas Co., a corporation	Apr. 12, 1937	July 13, 1937	(1)
Ohio Power Co.	Dec. 28, 1937	Jan. 22, 1938	(1)
Oil Well Manufacturing Corporation	Nov. 8, 1937	Nov. 12, 1937	(1)
Okey Hosiery Co.	June 27, 1938	June 29, 1938	(1)
Omaha Hat Corporation	Sept. 8, 1937	Sept. 14, 1937	Jan. 12, 1938
Ore Steamship Corporation (S. S. *Steelore*)	Apr. 28, 1938	(3)	
Ore Steamship Corporation (S. S. *Firmore*)	do.	(3)	
Ore Steamship Corporation (S. S. *Chilore*)	do.	(3)	
Ore Steamship Corporation (S. S. *Manigore*)	do.	(3)	
Ore Steamship Corporation	do.	(3)	
Ore Steamship Co.	do.	(3)	
Ore Steamship Corporation (S. S. *Cubore*)	do.	(3)	
Ore Steamship Corporation	do.	(3)	
Do.	do.	(3)	
Do.	do.	(3)	
Do.	do.	(3)	
Do.	do.	(3)	
Do.	do.	(3)	
Do.	do.	(3)	
Ourisman Chevrolet Sales Co.	Feb. 14, 1938	Feb. 19, 1938	(1)
Owens-Illinois Glass Co.	Feb. 17, 1938	Mar. 5, 1938	(1)
Padre Vineyard Co.	Jan. 13, 1938	Feb. 1, 1938	(1)

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
P. Lorillard Co., Inc.	Apr. 21, 1938	Apr. 21, 1938	[2]
Do	Apr. 23, 1938	Apr. 23, 1938	[2]
Panther-Panco Rubber Co	Feb. 24, 1938	Mar. 5, 1938	[2]
Patriarca Store Fixtures, Inc.	Jan. 13, 1938	Jan. 14, 1938	[2]
Pearlstone Printing and Stationery Co.	Mar. 31, 1938	Mar. 31, 1938	[2]
Peerless Woolen Mills	Apr. 11, 1938	Apr. 15, 1938	[2]
Peninsular & Occidental Steamship Co	Nov. 11, 1937	Nov. 20, 1937	Mar. 15, 1938
Pennsylvania Furnace & Iron Co.	Jan. 4, 1938	Jan. 6, 1938	[2]
Pennsylvania Manufacturing Co.	Jan. 20, 1938	Jan. 20, 1938	[4]
Peoria Cordage Co.	Sept. 29, 1937	Oct. 1, 1937	[2]
Phelps-Dodge Corporation	Jan. 27, 1938	Feb. 3, 1938	[2]
Phillips Granite Co.	Feb. 27, 1938	Mar. 3, 1938	[2]
Phillips-Jones Corporation	Nov. 15, 1937	Nov. 15, 1937	[2]
Phillips Packing Co.	Aug. 25, 1937	Aug. 26, 1937	Feb. 12, 1938
Phillips Packing Co. and Phillips Can Co.	do	do	Do.
Phillips Petroleum Co.	Aug. 5, 1937	Aug. 10, 1937	[2]
Picker X-Ray Corporation	Mar. 21, 1938	Mar. 31, 1938	[2]
Pilot Radio Corporation	Nov. 8, 1937	Dec. 4, 1937	[2]
Piqua Munising Wood Products Co.	Oct. 7, 1937	Oct. 13, 1937	June 9, 1938
Pittsburgh Standard Envelope Co.	June 6, 1938	June 17, 1938	[2]
Planters Manufacturing Co.	Nov. 23, 1937	Dec. 4, 1937	[2]
Pohlig Bros.	Nov. 11, 1937	Nov. 11, 1937	[4]
Potlatch Forests, Inc., et al.	Oct. 18, 1937	May 23, 1938	[2]
Precision Casting Co.	Nov. 29, 1937	Dec. 1, 1937	[2]
Press Co., Inc., and The Gannet Co., Inc.	Oct. 25, 1937	Jan. 21, 1938	[2]
Producers Mines, Inc.	Jan. 24, 1938	Jan. 25, 1938	[2]
Proximity Print Works of Proximity Manufacturing Co.	Dec. 16, 1937	Dec. 17, 1937	June 9, 1938
Pulaski Veneer Corporation	Feb. 3, 1938	Feb. 12, 1938	[2]
Pure Oil Co.	Jan. 13, 1938	Jan. 19, 1938	[2]
Do	Nov. 29, 1937	Dec. 7, 1937	[2]
Pure Oil Co. (Smith's Bluff plant)	Jan. 31, 1938	Feb. 1, 1938	[1] Apr. 23, 1938
Purity Biscuit Co., a corporation	Apr. 22, 1938	Apr. 27, 1938	[2]
Quality Art Novelty Co.	May 19, 1938	June 17, 1938	[2]
Quality Shirt Manufacturing Co.	Mar. 28, 1938	Mar. 31, 1938	[2]
R. Boehes-L. E. Rusch	Feb. 21, 1938	Feb. 24, 1938	[2]
R. & G. Knitting Mills, Inc.	Sept. 30, 1937	Oct. 8, 1937	[1] May 28, 1938
R. R. Hall, Inc.	Dec. 20, 1937	Dec. 22, 1937	[2]
R. Wolfenden & Sons	May 13, 1938	May 14, 1938	[2]
Rath Packing Co.	Apr. 25, 1938	Apr. 27, 1938	[1]
Ray Nichols, Inc.	June 27, 1938	June 29, 1938	[2]
Reading Batteries, Inc.	Apr. 28, 1938	May 5, 1938	[2]
Reed & Prince Manufacturing Co.	Dec. 6, 1937	Jan. 18, 1938	[2]
Regal Shirt Co.	July 22, 1937	July 22, 1937	Dec. 16, 1937
Reinecke Coal Co.	Sept. 13, 1937	Sept. 22, 1937	[2]
Reliance Manufacturing Co.	Dec. 11, 1937	Dec. 15, 1937	[2]
Do	Nov. 18, 1937	[5]	
Do	Apr. 18, 1938	[5]	
Do	do	[5]	
Do	do	[5]	
Republic Creosoting Co. and Reilly Tar & Chemical Corporation	Aug. 26, 1937	Sept. 4, 1937	[2]
Republic Steel	July 21, 1937	Sept. 27, 1937	[12] Apr. 8, 1938
Republic Steel Corporation & Subsidiaries, Hibbing Division	Nov. 8, 1937	Nov. 12, 1937	[2]
Revlon Nail Enamel Corporation	Jan. 18, 1938	Jan. 18, 1938	[2]
Revolution Cotton Mills Co.	Dec. 9, 1937	Dec. 15, 1937	[2]
Rex Manufacturing Co.	Nov. 22, 1937	Dec. 7, 1937	[2]
Richmond-Chase Co., California Processors and Growers, Inc.	Apr. 11, 1938	[3]	
Roberti Bros., Inc.	Dec. 2, 1937	Dec. 28, 1937	[2]
Robinson, E. J.-L. E. Rusch	Feb. 21, 1938	Feb. 24, 1938	[2]
Rockton & Rion R. R.	May 9, 1938	May 11, 1938	[2]
Roemer Bros. Trucking Co.	Mar. 31, 1938	Apr. 2, 1938	[2]
Ronni Parfums, Inc., and Ey-Teb Sales Corporation	Dec. 6, 1937	Dec. 7, 1937	[2]
Ross Packing Co.	Feb. 28, 1938	Mar. 8, 1938	[2]
Rueping Leather Co., Fred	Mar. 31, 1938	Apr. 29, 1938	[2]
S. B. Penick Drug Co.	Feb. 7, 1938	Feb. 23, 1938	[2]
S. Blechman & Sons, Inc.	Aug. 2, 1937	Aug. 3, 1937	Nov. 4, 1937
Sager Lock Works	June 23, 1938	June 30, 1938	[2]
San Diego Ice & Cold Storage Co.	Nov. 17, 1937	Dec. 13, 1937	[2]

[1] Consent order issued.
[2] Awaiting Board decision.
[3] Settled before decision of Board was issued.
[4] Dismissed before decision of Board was issued.
[5] Hearing still in progress.
[12] Board decision vacated on June 14, 1938.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Sanitary Refrigerator Co	May 5, 1938	June 11, 1938	[3]
Santa Cruz Fruit Packing Co., California Processors and Growers, Inc	Apr. 11, 1938	[5]	
Schacht Rubber Co., Inc	Apr. 1, 1938	Apr. 2, 1938	[3]
Schacht Rubber Manufacturing Co	Mar. 31, 1938	Apr. 1, 1938	[3]
Schwab & Schwab	Dec. 6, 1937	Dec. 10, 1937	[3]
Schwarze Electric Co	Dec. 2, 1937	Dec. 9, 1937	[3]
Scandore Paper Box Co. and Continental Container Corp	July 8, 1937	July 9, 1937	Jan. 14, 1938
Scobey Fireproof Storage Co	Apr. 28, 1938	Apr. 30, 1938	[3]
Seas Shipping Co	Aug. 5, 1937	Aug. 5, 1937	[13] Jan. 4, 1938
Seattle Post Intelligencer Department of Hearst Publications, Inc	Mar. 10, 1938	Apr. 1, 1938	[3]
Semet-Solvay Co	July 6, 1937	July 24, 1937	May 28, 1938
Do	Jan. 12, 1938	Feb. 24, 1938	[3]
Serrick Corporation	Oct. 18, 1937	Nov. 15, 1937	[3]
Servel, Inc	Dec. 13, 1937	Jan. 18, 1938	[3]
Seymour Woolen Mills	June 13, 1938	June 14, 1938	[3]
Do	do	do	[3]
Sheba Ann Frocks, Inc	Nov. 17, 1937	Nov. 18, 1937	[14] Feb. 1, 1938
Shell Petroleum Corporation	Nov. 4, 1937	Nov. 13, 1937	[3]
Shellabarger Grain Products	do	do	[3]
Shelby Shops, Inc	May 16, 1938	May 26, 1938	[3]
Shenandoah-Dives Mining Co	Apr. 7, 1938	Apr. 9, 1938	[3]
Shuron Optical Co., Inc	Mar. 2, 1938	Mar. 2, 1938	[3]
Simplex Wire & Cable Co	Nov. 1, 1937	Nov. 6, 1937	Mar. 29, 1938
Simplicity Pattern Co	Oct. 18, 1937	Nov. 10, 1937	[3]
Do	do	do	[3]
Singer Manufacturing Co	May 23, 1938	May 25, 1938	[2] May 25, 1938
Singer Sewing Machine Co	Mar. 28, 1938	Mar. 28, 1938	[3]
Sixth Vein Coal Corporation	Sept. 13, 1937	Sept. 22, 1937	[3]
Skinner & Kennedy Stationery Co	June 6, 1938	June 10, 1938	[3]
Smith, Manufacturing Co., A. P	Dec. 2, 1937	Dec. 11, 1937	[3]
Smith Woods Products Co	Apr. 25, 1938	Apr. 27, 1938	[3]
Smith Wood Products, Inc	Feb. 2, 1938	Feb. 3, 1938	June 16, 1938
Do	do	Feb. 5, 1938	[3]
Solvay Process Co	Aug. 26, 1937	Aug. 31, 1937	Feb. 16, 1938
Somerset Shoe Co	Aug. 23, 1937	Aug. 24, 1937	Feb. 19, 1938
Do	Feb. 21, 1938	Feb. 21, 1938	[3]
Sommers & Co., G	July 28, 1937	July 30, 1937	Mar. 15, 1938
South Atlantic Steamship Co. of Delaware	Mar. 24, 1938	Mar. 29, 1938	[3]
Southern Colorado Power Co	June 2, 1938	June 6, 1938	[3]
Southern Lumber Co	July 19, 1937	July 19, 1937	Aug. 27, 1937
Southern Oxygen Co., Inc	Feb. 21, 1938	Feb. 21, 1938	[3]
Southern Pacific Steamship Co	Jan. 20, 1938	Apr. 30, 1938	[3]
Southern Steamship Co	Apr. 11, 1938	Apr. 11, 1938	[3]
Soutport Petroleum Co	Dec. 13, 1937	Dec. 17, 1937	[3]
Southwestern Gas & Electric Co	Jan. 20, 1938	Jan. 22, 1938	[3]
Southwestern Greyhound Lines, Inc	Apr. 4, 1938	[5]	
Spartan Mills	Jan. 4, 1938	Feb. 18, 1938	[3]
Spaulding Bakeries, Inc	Apr. 5, 1938	Apr. 6, 1938	[11]
Davidow Sportswear	May 31, 1938	June 1, 1938	[3]
Spotless Stores, Inc	Oct. 18, 1937	Jan. 6, 1938	[3]
St. Paul Garment Co	Oct. 25, 1937	Oct. 25, 1937	[3]
Stackpole Carbon Co	July 2, 1937	July 23, 1937	Mar. 25, 1938
Standard Lime & Stone Co	Aug. 12, 1937	Aug. 12, 1937	Feb. 4, 1938
Standard Oil Co	Jan. 24, 1938	Feb. 18, 1938	[3]
Standard Steel Works	May 17, 1938	June 1, 1938	[3]
Standolind Oil & Gas Co	Jan. 24, 1938	Feb. 17, 1938	[3]
Star Publishing Co	July 27, 1937	July 30, 1937	Dec. 11, 1937
Do	Nov. 29, 1937	Nov. 30, 1937	[3]
Stearns Coal & Lumber Co	Mar. 3, 1938	Apr. 18, 1938	[3]
Stehli & Co., Inc	Nov. 1, 1937	Dec. 15, 1937	[3]
Sterling Co	Apr. 18, 1938	[5]	
Do	do	[5]	
Sterling Corset Co., Inc	Oct. 15, 1937	Dec. 4, 1937	[3]
Sterling Electric Motors, Inc	Oct. 18, 1937	Oct. 20, 1937	[3]
Stewart Die Casting Corporation	Jan. 20, 1938	June 24, 1938	[3]
Do	June 21, 1938	do	[3]
Stockholders Publishing Co	Apr. 4, 1938	Apr. 9, 1938	[3]

[2] Awaiting Board decision.
[3] Settled before decision of Board was issued.
[5] Hearing still in progress.
[13] Order issued vacating Board decision on April 30, 1938.
[14] Hearing previously held from May 27, 1937, to May 31, 1937.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Stockton Food Products, Inc., California Processors & Growers, Inc	Apr. 11, 1938	(8)	
Stolle Corporation	Nov. 22, 1937	Dec. 3, 1937	(2)
Stoneville Furniture Co	Sept. 30, 1937	Sept. 30, 1937	(2)
Stover Bedding Co	Apr. 7, 1938	Apr. 8, 1938	(2)
Stromberg Carlson Telephone Manufacturing Co	Feb. 10, 1938	Apr. 7, 1938	(2)
Stylecraft Leather Goods Co	July 6, 1937	July 6, 1937	Oct. 27, 1937
Sudden & Christenson	Aug. 19, 1937	Aug. 19, 1937	(2)
Sunshine Mining Co	Sept. 13, 1937	Oct. 15, 1937	June 29, 1938
Superior Tanning Co	Feb. 14, 1938	Feb. 17, 1938	(2)
Surpass Leather Co	June 16, 1938	June 23, 1938	(2)
Swayne & Hoyt, Ltd	Feb. 3, 1938	Feb. 4, 1938	(2)
Swift & Co	Nov. 8, 1937	Nov. 12, 1937	May 20, 1938
Do	Feb. 17, 1938	Mar. 11, 1938	(2)
Do	June 6, 1938	June 8, 1938	(2)
Do	Sept. 27, 1937	Oct. 7, 1937	May 20, 1938
S. Y. W. Hosiery Mills, Inc	May 27, 1938	May 27, 1938	(2)
T. A. Allen Construction Co	Feb. 23, 1938	Mar. 23, 1938	(2)
Do	do	do	(2)
Talladega Cotton Mills	Nov. 26, 1937	Nov. 30, 1937	(2)
Tapered Roller Bearing Co	July 8, 1937	July 8, 1937	Oct. 30, 1937
Tascarella Bros	Oct. 11, 1937	Oct. 11, 1937	(11)
Taylor Trunk Co	Aug. 9, 1937	Aug. 24, 1937	Mar. 17, 1938
Tennessee Coal, Iron & R. R. Co., a corporation	Nov. 8, 1937	June 2, 1938	(2)
Tennessee Products Corporation	Mar. 10, 1938	Mar. 11, 1938	(2)
The Monarch Co	June 6, 1938	June 11, 1938	(2)
The N. & G. Taylor Co	Nov. 15, 1937	Nov. 18, 1937	(2)
The Niles Fire Brick Co	Mar. 10, 1938	Mar. 17, 1938	(2)
The Operators Association	Sept. 13, 1937	Sept. 22, 1937	(2)
The Packwell Corporation, California Processors & Growers, Inc	Apr. 11, 1938	(8)	
The Raleigh Hotel Co	Mar. 24, 1938	Apr. 2, 1938	(2)
The M. H. Ritzwoller Co	Mar. 14, 1938	Mar. 22, 1938	(2)
The Texas Co	May 16, 1938	May 28, 1938	(2)
Do	do	do	(2)
The Timken-Detroit Axle Co. (Wisconsin Axle Division)	Mar. 17, 1938	Mar. 18, 1938	(2)
The Van Iderstine Co	Mar. 31, 1938	Apr. 6, 1938	(2)
Texas Corrugated Box Co	June 23, 1938	June 23, 1938	(2)
Texas Mining & Smelting Co	Feb. 14, 1938	Feb. 25, 1938	(2)
Theurer Wagon Works, Inc	Jan. 27, 1938	Jan. 28, 1938	(2)
Thompson Cabinet Co	Mar. 10, 1938	Mar. 12, 1938	(2)
Tidewater Iron & Steel Co., Inc	Jan. 27, 1938	Feb. 2, 1938	(2)
Times Publishing Co	May 2, 1938	May 6, 1938	(2)
Tiny Town Togs Co., Inc	Oct. 27, 1937	Nov. 4, 1937	May 9, 1938
Tip Top Creamery Co	Nov. 8, 1937	Nov. 8, 1937	[1]Dec. 4, 1937
Titan Metal Manufacturing Co	June 17, 1937	July 7, 1937	Feb. 23, 1938
Titmus Optical Co., Inc	Jan. 6, 1938	Jan. 8, 1938	(2)
Todd Shipyards Corporation	July 19, 1937	Aug. 3, 1937	Feb. 1, 1938
Toledo Steel Products Co	Sept. 16, 1937	Sept. 16, 1937	(4)
Tovrea Packing Co	Mar. 14, 1938	Mar. 18, 1938	(2)
Towne & James	Nov. 22, 1937	Nov. 22, 1937	(4)
Trenton Garment Co	July 12, 1937	July 20, 1937	Jan. 28, 1938
Trenton-Philadelphia Coach Co	July 29, 1937	July 31, 1937	Mar. 22, 1938
The Triplex Screw Co	Apr. 15, 1938	Apr. 23, 1938	(2)
Truitt Bros. Shoe Co	Feb. 28, 1938	Mar. 2, 1938	(2)
Tulsa Boiler & Machinery Co	June 2, 1938	June 9, 1938	(2)
Tupelo Garment Co	July 6, 1937	July 7, 1937	May 24, 1938
U. S. Potash Co	Feb. 21, 1938	Mar. 1, 1938	(2)
Do	do	do	(2)
U. S. Sanitary Manufacturing Co	Apr. 14, 1938	Apr. 14, 1938	(2)
U. S. Smelting, Refining & Mining Co	Mar. 10, 1938	Mar. 14, 1938	(2)
U. S. Truck Co., Inc	Jan. 24, 1938	Feb. 16, 1938	(2)
Union Die Cast Co., Ltd	Nov. 5, 1937	Nov. 6, 1937	June 11, 1938
Union Envelope Co	Oct. 7, 1937	Oct. 12, 1937	(2)
Do	do	do	(2)
Do	do	do	(2)
Union Drawn Steel Co	Dec. 2, 1937	Dec. 14, 1937	(2)
Union Stock Yards Co	June 20, 1938	June 22, 1938	(2)
Union-Tribune Publishing Co	Nov. 29, 1937	Dec. 8, 1937	(9)

[1] Consent order issued.
[2] Awaiting Board decision.
[3] Settled before decision of Board was issued.
[4] Dismissed before decision of Board was issued.
[8] Hearing still in progress.
[11] Withdrawn before Board decision.

Complaint cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
United Carbon Co	Nov. 22, 1937	Dec. 2, 1937	June 1, 1938
United Fruit Co	June 27, 1938	[3]	[3]
Universal Clothing Co., Inc	Sept. 30, 1937	Sept. 30, 1937	[3]
Universal Film Exchange, Inc	May 26, 1938	May 27, 1938	[3]
Universal Match Co	June 16, 1938	[8]	
Up-To-Date Candy Manufacturing Co	Apr. 4, 1938	Apr. 8, 1938	[10]
Utah Copper Co.-Kennecott Copper Corporation	Aug. 30, 1937	Sept. 4, 1937	[3]
Do	do	do	June 16, 1938
Vail-Ballou Press, Inc	May 23, 1938	May 27, 1938	[3]
Venus Shoe Co	Feb. 21, 1938	Feb. 21, 1938	[3]
Viking Pump Co	Apr. 28, 1938	May 4, 1938	[3]
Do	do	do	[3]
Virginia Electric & Power Co	May 19, 1938	June 18, 1938	[3]
Do	do	do	[3]
Do	do	do	[3]
Virginia Ferries Co	Nov. 22, 1937	Nov. 26, 1937	[3]
Do	do	do	[3]
W. F. & John Barnes Co	June 13, 1938	June 14, 1938	[3]
W. W. Kimball Co	Aug. 9, 1937	Aug. 10, 1937	[3]
Waggoner Refining Co	July 12, 1937	July 21, 1937	Apr. 21, 1938
Walla Walla Meat & Cold Storage Co	Jan. 24, 1938	Jan. 27, 1938	[3]
Walworth Co., Inc. (Kewanee Plant)	June 13, 1938	June 23, 1938	[3]
Ward Baking Co	Oct. 11, 1937	Oct. 12, 1937	[3]
Do	Jan. 24, 1938	Jan. 24, 1938	[3]
Ware Shoals Manufacturing Co	Nov. 18, 1937	Nov. 19, 1937	[3]
Warshaw Manufacturing Co., Inc	Dec. 20, 1937	Dec. 23, 1937	[3]
Washburn Wire Co., Inc	Feb. 15, 1938	Apr. 1, 1938	[3]
Washington Dehydrated Food Co., a corporation	Feb. 23, 1938	Feb. 25, 1938	[3]
Washington Manufacturing Co	June 21, 1937	June 30, 1937	Jan. 19, 1938
Washougal Woolen Mills	Feb. 21, 1938	Mar. 2, 1938	[3]
Waterman Steamship Co	Nov. 1, 1937	Nov. 5, 1937	May 18, 1938
Watson Bros. Transportation Co	May 2, 1938	May 3, 1938	[3]
Waumbeck Mills, Inc.-Pacific Mills	June 27, 1938	June 27, 1938	[3]
Weber Dental Manufacturing Co	Dec. 13, 1937	Dec. 14, 1937	[3]
Weinberger Banana Co., Inc	Feb. 21, 1938	Mar. 8, 1938	[3]
Weirton Steel Co	Aug. 16, 1937	[5]	
Weiss & Klau Co	Sept. 3, 1936	July 16, 1937	[4]
Werthan Bag Co	July 2, 1937	July 2, 1937	[3]
Werthan Bag Corporation	do	do	[3]
West Kentucky Coal Co	Dec. 17, 1937	Jan. 11, 1938	[3]
West Oregon Lumber Co	May 26, 1938	June 30, 1938	[3]
Western Felt Works	Dec. 22, 1937	Jan. 21, 1938	[3]
Western Garment Manufacturing Co	Mar. 21, 1938	Mar. 23, 1938	[3]
Western Union Telegraph Co	June 1, 1938	[5]	
Do	Mar. 28, 1938	Mar. 28, 1938	[1] June 18, 1938
Do	Aug. 9, 1937	Aug. 14, 1937	Aug. 25, 1937
Westinghouse Electric & Manufacturing Co	May 5, 1938	May 13, 1938	[3]
Wilkes-Barre Record Co	Apr. 18, 1938	Apr. 20, 1938	[3]
William Shoe Co., Inc. & Wingate, Inc	Sept. 30, 1937	Sept. 30, 1937	Apr. 13, 1938
Williams Coal Co	Sept. 13, 1937	Sept. 22, 1937	[3]
Williams Manufacturing Co	Sept. 23, 1937	Sept. 28, 1937	Mar. 24, 1938
Ault Williamson Shoe Co	Feb. 21, 1938	Feb. 21, 1938	[3]
Wilson & Co	July 19, 1937	July 27, 1937	June 20, 1938
Wilson & Co., Inc	May 23, 1938	June 3, 1938	[3]
Winnsboro Granite Corporation	May 9, 1938	May 11, 1938	[3]
Do	Feb. 24, 1938	Mar. 14, 1938	[3]
Wirz, Inc., A. H	Jan. 31, 1938	Feb. 4, 1938	[3]
Wisconsin Bell Telephone Co	Feb. 7, 1938	Feb. 22, 1938	[3]
Do	do	do	[3]
Do	do	do	[3]
Do	do	do	[3]
Woodside Cotton Mills	Oct. 4, 1937	Oct. 5, 1937	[1] Apr. 6, 1938
Woolrich Woolen Mills	[6]	[6]	Dec. 3, 1937
Yale & Towne Manufacturing Co	July 22, 1937	Aug. 17, 1937	[3]
Yates American Machine Co	Nov. 11, 1937	Nov. 12, 1937	June 2, 1938
Zenite Metal Corporation	July 2, 1937	July 14, 1937	Feb. 19, 1938

[1] Consent order issued.
[3] Awaiting Board decision.
[5] Settled before decision of Board was issued.
[4] Dismissed before decision of Board was issued.
[8] Hearing still in progress.
[6] Consent order issued without a hearing.
[10] Case adjusted on Aug. 11, 1938.

LIST OF CASES HEARD AND DECISIONS RENDERED—Continued

Following is a list of cases originally heard during the fiscal years 1936 and 1937 on which further action was taken during the fiscal year 1938:

Representation cases

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
A. H. Bull S. S. Co.	June 21, 1937	June 21, 1937	July 16, 1937
American Caribbean Line, Inc.	do	do	Do.
American Diamond Lines, Inc.	do	do	Do.
American Export Lines	do	do	Do.
American Foreign S. S. Corporation	do	do	Sept. 17, 1937
American France Line	do	do	July 16, 1937
American-Hawaiian S. S. Co.	June 24, 1937	June 24, 1937	(1)
American Scantic Line	June 21, 1937	June 21, 1937	July 16, 1937
American S. S. Co.	do	do	Do.
American South African Line, Inc.	do	do	Do.
American Sugar Transit Corporation	do	do	Do.
American Tankers Corporation	do	do	Sept. 17, 1937
American West African Line, Inc.	do	do	July 16, 1937
Anchor Lines, Limited	do	do	Do.
Argonaut Lines, Inc.	do	do	Do.
Atlantic Gulf & West Indies S. S. Lines	do	do	Do.
Atlantic Refining Co.	do	do	Do.
Ault-Williamson Shoe Co.	May 24, 1937	June 15, 1937	Aug. 30, 1937
B. A. Corbin & Son	do	do	Do.
Baltimore and Carolina Line, Inc.	June 21, 1937	June 21, 1937	July 16, 1937
Baltimore Insular Co.	do	do	Do.
Baltimore Mail S. S. Co.	do	do	Do.
Baltimore Steam Packet Co.	do	do	Sept. 17, 1937
Barbour S. S. Lines, Inc.	do	do	July 16, 1937
Boss Manufacturing Co.	Apr. 30, 1936	May 1, 1936	Aug. 27, 1937
Calmar S. S. Co.	June 21, 1937	June 21, 1937	July 16, 1937
C. H. Sprague & Son, Inc.	do	do	Sept. 17, 1937
Charles Cushman Shoe Co.	May 24, 1937	June 15, 1937	Aug. 30, 1937
Cities Service Oil Co.	June 21, 1937	June 21, 1937	July 16, 1937
Clyde Mallory Lines	do	do	Sept. 17, 1937
Colonial Navigation Co.	do	do	July 16, 1937
Continental S. S. Co.	do	do	Do.
Cosmopolitan Shipping Co.	do	do	Sept. 17, 1937
C. V. Watson Co.	May 24, 1937	June 15, 1937	Aug. 30, 1937
Eastern S. S. Line	June 21, 1937	June 21, 1937	July 16, 1937
Electric Vacuum Cleaner Co.	June 10, 1937	June 18, 1937	(2)
Fleischer Studios, Inc.	June 16, 1937	June 17, 1937	Aug. 3, 1937
Grace Line, Inc.	June 21, 1937	June 21, 1937	July 16, 1937
Gulf Oil Co.	do	do	Do.
Holmes-Bohr Co.	May 24, 1937	June 15, 1937	Aug. 30, 1937
Honolulu Stevedores, Inc. (Castle & Cook, Limited)	Apr. 5, 1937	Apr. 29, 1937	(3)
Hunter Packing Co.	June 14, 1937	June 15, 1937	July 23, 1937
Huth & James Shoe Manufacturing Co.	June 21, 1937	June 21, 1937	Aug. 3, 1937
Industrial Rayon Corporation	June 18, 1937	June 19, 1937	June 14, 1938
Isthmian S. S. Co.	June 21, 1937	June 21, 1937	July 16, 1937
Kellogg S. S. Corporation	do	do	Do.
Koss Shoe Co., Inc.	May 24, 1937	June 15, 1937	Aug. 30, 1937
Lown Shoe Co.	do	do	Do.
Lumbard Shoe Co.	do	do	Do.
Lykes Brothers Ripley S. S. Co., Inc.	June 21, 1937	June 21, 1937	July 16, 1937
McCabe Hamilton & Renny, Ltd.	May 20, 1937	May 20, 1937	Sept. 2, 1937
Maine Shoes, Inc.	May 24, 1937	June 15, 1937	Aug. 30, 1937
Mascott Shoe Co., Inc.	do	do	Do.
Memphis Furniture Manufacturing	May 21, 1936	May 27, 1936	(4)
Merchant & Miners Transportation Co.	June 21, 1937	June 21, 1937	July 16, 1937
Mississippi Shipping Co.	do	do	Do.
Moore & McCormack Co., Inc.	do	do	Do.
Mooremack Gulf Lines, Inc.	do	do	Do.
Munson S. S. Co.	do	do	Do.
Newtex S. S. Corporation	do	do	Do.

[1] Order permitting withdrawal of petition issued on July 12, 1937.
[2] Decision issued July 7, 1938.
[3] Dismissed by Board order on May 27, 1938, before decision was issued.
[4] Petition withdrawn July 13, 1937, before decision was issued.

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Newton Packing Co. (Swift & Co.)	May 10, 1937	May 22, 1937	[5]
New York and Cuba Mail S. S. Co	June 21, 1937	June 21, 1937	July 16, 1937
New York & Porto Rico S. S. Co	do	do	Do.
Northrup Corporation	June 15, 1937	June 19, 1937	Oct. 6, 1937
Ocean S. S. Co. of Savannah	June 21, 1937	June 21, 1937	Sept. 17, 1937
Old Dominion S. S. Line	do	do	July 16, 1937
Ore Steamship Corporation	do	do	Do.
Panama Railroad Co. S. S. Line	do	do	Do.
Pennsylvania Shipping Co	do	do	Do.
Petroleum Navigation Co	do	do	Do.
Porto Rico Line	do	do	Do.
Pure Oil Co	do	do	Do.
Red "D" Line of Steamships	do	do	Do.
Richfield Oil Co	do	do	Do.
Sabine Transportation Co	do	do	Sept. 17, 1937
Savannah Line	do	do	July 16, 1937
Seas Shipping Co., Inc	do	do	Do.
Seatrain Line, Inc	do	do	Do.
Sheba Ann Frocks, Inc	May 27, 1937	May 31, 1937	July 23, 1937
Shepard S. S. Co	June 21, 1937	June 21, 1937	July 16, 1937
Sinclair Navigation Co	do	do	Do.
Socony Vacuum Oil Co	do	do	Do.
Somerset Shoe Co	May 24, 1937	June 15, 1937	Aug. 30, 1937
South Atlantic S. S. Line	June 21, 1937	June 21, 1937	July 16, 1937
Southern Pacific Co	do	do	Do.
Southern S. S. Co	do	do	Do.
Southgate Nelson Co	do	do	Do.
Standard Fruit & S. S. Co	do	do	Do.
Standard Navigation Co	do	do	Sept. 17, 1937
Standard Oil Co. of N. J	do	do	July 16, 1937
Sun Oil Co	do	do	Do.
Sword S. S. Line, Inc	do	do	Do.
Tampa Inter Ocean S. S. Co	do	do	Do.
Tankers Corporation	do	do	Do.
Tennessee Products Corporation	Mar. 10, 1937	Mar. 11, 1937	[6]
The Atlantic & Caribbean Steam Navigation Co	June 21, 1937	June 21, 1937	July 16, 1937
The Export S. S. Corporation	do	do	Do.
The Globe Machine & Stamping Co	June 24, 1937	June 25, 1937	Aug. 11, 1937
Do	do	do	Do.
Do	do	do	Do.
The Texas Co	June 21, 1937	June 21, 1937	Sept. 17, 1937
Tidewater Associated Oil Co	do	do	July 16, 1937
Triplett Electrical Instrument Co	June 17, 1937	June 23, 1937	Mar. 7, 1938
United Fruit Co	June 21, 1937	June 21, 1937	July 16, 1937
Venus Shoe Co	May 24, 1937	June 15, 1937	Aug. 30, 1937
Ward Furniture Manufacturing Co	June 24, 1937	June 25, 1937	[7]
Waterman S. S. Corporation	June 21, 1937	June 21, 1937	July 16, 1937
Westinghouse Electric & Manufacturing Co	June 11, 1937	June 11, 1937	July 9, 1937

[5] Awaiting Board decision.
[6] Settled Apr. 11, 1938, before decision of Board was issued.
[7] Settled July 1, 1937, before decision of Board was issued.

LIST OF CASES HEARD AND DECISIONS RENDERED—Continued

Following is a list of cases originally heard during the fiscal year 1938:

Representation cases •

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
A. Arena Co.	Mar. 29, 1938	Mar. 30, 1938	(1)
Acme Air Appliance Co., Inc.	Mar. 10, 1938	Mar. 15, 1938	(1)
Acme Scaling Co., Inc.	Aug. 5, 1937	Aug. 6, 1937	Sept. 25, 1937
Admiar Rubber Co.	June 15, 1938	June 18, 1938	(1)
Adolf Gobel, Inc.	Aug. 13, 1937	Aug. 17, 1937	(1)
A. F. Gallun & Sons Corporation	Dec. 20, 1937	Jan. 5, 1938	(1)
A. J. Harper Co.	Oct. 26, 1937	Oct. 26, 1937	Dec. 3, 1937
Do.	do.	do.	Do.
A. K. Miller Co., Inc.	June 20, 1938	(2)	
Alabama Drydock & Shipbuilding Co.	Nov. 26, 1937	Nov. 26, 1937	Feb. 8, 1938
Do.	do.	do.	Do.
Alaska Packers Association	Apr. 22, 1938	Apr. 25, 1938	May 11, 1938
Alaska Salmon Co.	do.	do.	Do.
Alfred LeBlanc, Inc.	June 20, 1938	(2)	
Alma Mills	Apr. 8, 1938	Apr. 8, 1938	May 25, 1938
Allis-Chalmers Manufacturing Co.	July 12, 1937	July 28, 1937	Nov. 20, 1937
Do.	Dec. 11, 1937	Dec. 11, 1937	Jan. 10, 1938
Aluminum Co. of America	Mar. 7, 1938	Mar. 7, 1938	Apr. 6, 1938
Do.	do.	do.	Do.
Do.	Mar. 14, 1938	Mar. 14, 1938	Apr. 11, 1938
Do.	Mar. 18, 1938	Mar. 19, 1938	(1)
Aluminum Line	June 20, 1938	(2)	
American Baltic Chartering & Ship	do.	(2)	
American Cyanamid Co., Inc.	Sept. 8, 1937	Sept. 30, 1937	June 23, 1938
American Enamel Magnet Wire Co.	June 30, 1938	(2)	
Do.	do.	(2)	
American Fruit Growers, Inc.	Mar. 29, 1938	Mar. 30, 1938	(1)
American Furniture Co.	Oct. 4, 1937	Oct. 4, 1937	Dec. 23, 1937
American Hair & Felt Co.	Mar. 4, 1938	Mar. 5, 1938	Apr. 16, 1938
American Hardware Corporation	Aug. 9, 1937	Aug. 9, 1937	Dec. 4, 1937
American Machine & Foundry Co., Inc.	Feb. 14, 1938	Feb. 28, 1938	(1)
American Newspapers, Inc.	May 26, 1938	June 15, 1938	(1)
American Oil Co., Inc.	Apr. 14, 1938	Apr. 21, 1938	(1)
American Oil Co., et al.	Mar. 12, 1938	Mar. 12, 1938	May 14, 1938
American Petroleum Co.	Dec. 9, 1937	Dec. 9, 1937	(1)
American Pioneer Line	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
American Pioneer Line (Roos. S. S. Co.)	Sept. 20, 1937	Sept. 20, 1937	(1)
American Radiator Co. (Bond Plant)	Mar. 14, 1938	Mar. 14, 1938	May 25, 1938
American Radiator Co. (Terminal Plant)	do.	do.	Do.
American Range Lines	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
American Steel & Wire Co.	Jan. 10, 1938	Jan. 10, 1938	Mar. 8, 1938
American South African Line, Inc.	June 20, 1938	(2)	
American Sugar Refining Co.	Oct. 25, 1937	Oct. 25, 1937	Jan. 13, 1938
Do.	do.	do.	Do.
American West African Line	Aug. 5, 1937	Aug. 5, 1937	Jan. 20, 1938
American Woolen Co.	Nov. 18, 1937	Nov. 18, 1937	Feb. 8, 1938
Anchor Line	June 20, 1938	(2)	
Anderson Mattress Co.	Apr. 21, 1938	Apr. 27, 1938	(1)
Andrew Jergen's Co. of California	Jan. 11, 1938	Mar. 11, 1938	(1)
Ansley Radio Corporation	Jan. 13, 1938	Jan. 26, 1938	(1)
Apache Distributors, Inc.	Mar. 29, 1938	Mar. 30, 1938	(1)
Arbuckle Brothers	June 7, 1938	June 7, 1938	June 28, 1938
Ardmore S. S. Co., Inc.	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
Arizona Vegetable Distributors, Inc.	Mar. 29, 1938	Mar. 30, 1938	(1)
Arma Engineering Co.	Jan. 31, 1938	Feb. 14, 1938	(1)
Armco Finishing Corporation Inc.	Mar. 17, 1938	Mar. 17, 1938	May 21, 1938
Armour & Co.	Feb. 7, 1938	Feb. 10, 1938	(1)
Do.	June 27, 1938	June 30, 1938	(1)
Do.	Dec. 16, 1937	Dec. 17, 1937	Mar. 15, 1938
Do.	July 19, 1937	July 22, 1937	(1)

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Armour & Co	June 16, 1938	June 16, 1938	(1)
Do	Dec. 9, 1937	Dec. 10, 1937	Feb. 21, 1938
Do	Sept. 13, 1937	Sept. 13, 1937	Oct. 26, 1937
Do	Apr. 7, 1938	Apr. 7, 1938	June 6, 1938
Do	Jan. 20, 1938	Apr. 11, 1938	(1)
Do	Feb. 17, 1938	Feb. 17, 1938	Apr. 15, 1938
Do	Nov. 17, 1937	Nov. 23, 1937	Jan. 18, 1938
Do	do	do	Do.
Do	do	do	Do.
Do	do	do	Do.
Do	do	do	Do.
Armour & Co. (Brooks Ave. Market)	Nov. 22, 2937	do	Do.
Armour & Co. (Ft. Green Pl.)	Nov. 17, 1937	do	Do.
Armour & Co. (Jamaica Market)	do	do	Do.
Armour & Co. (West St. Market)	do	do	Do.
Armour & Co. (Wmsburgh. Market)	do	do	Do.
Art Crayon Co., Inc., et al	July 22, 1937	July 27, 1937	May 11, 1938
Atlantic Basin Iron Works	Dec. 15, 1937	Dec. 20, 1937	Feb. 18, 1938
Atlantic Footwear Co., Inc	Dec. 10, 1937	Dec. 23, 1937	Feb. 12, 1938
Atlantic Greyhound Lines	July 1, 1937	July 26, 1937	Sept. 14, 1937
Do	do	do	Do.
Atlantic Gulf Stevedores, Inc	June 20, 1938	(4)	
Atlantic Transport Co	Oct. 26, 1937	Oct. 26, 1937	Dec. 3, 1937
Do	do	do	Do.
Atolia Mining Co	Dec. 28, 1937	Jan. 1, 1938	(4)
Do	May 12, 1938	May 13, 1938	June 18, 1938
Auburn Foundry, Inc	Apr. 7, 1938	Apr. 15, 1938	(1)
A. Zerega's Sons, Inc	Dec. 11, 1937	Dec. 11, 1937	Feb. 19, 1938
Baker, Whitley Co	Oct. 26, 1937	Oct. 26, 1937	Dec. 3, 1937
Do	do	do	Do.
Bamberger Reinthal Co	July 15, 1937	July 17, 1937	Aug. 7, 1937
Barton Mfg. Co	Mar. 18, 1938	Mar. 19, 1938	(3)
Beaumont Mfg. Co	Jan. 11, 1938	Jan. 11, 1938	Feb. 4, 1938
Beckerman Shoe Co	Jan. 3, 1938	Jan. 8, 1938	(1)
Beloit Iron Works	Nov. 1, 1937	Nov. 10, 1937	May 16, 1938
Bemis Bros. Bag Co	Nov. 18, 1937	Nov. 22, 1937	Feb. 4, 1938
Bethlehem Shipbuilding Corporation, Ltd	Mar. 21, 1938	June 3, 1938	(1)
Do	do	do	(1)
Bethlehem Steel Corporation & Bethlehem Steel Co	Sept. 8, 1937	(4)	
Bendix Prod. Corp	Aug. 2, 1937	Aug. 4, 1937	Sept. 16, 1937
B. F. Goodrich Co	do	Aug. 2, 1937	Oct. 8, 1937
B. F. Johnson Lumber Co	Sept. 20, 1937	Sept. 22, 1937	Oct. 21, 1937
B. F. Sturtevant Co	May 19, 1938	May 24, 1938	(1)
B. G. Hoadley Quarries, Inc	Mar. 10, 1938	Mar. 12, 1938	(1)
Bingham & Taylor Corporation	Aug. 30, 1937	Aug. 31, 1937	Dec. 3, 1937
Binnings, E. S	June 20, 1938	(3)	
Bishop & Co., Inc	Nov. 1, 1937	Nov. 1, 1937	Dec. 15, 1937
Blackstone Manufacturing Co., Inc	May 13, 1938	May 20, 1938	June 24, 1938
Blake, Moffitt and Towne	Nov. 4, 1937	Nov. 10, 1937	Jan. 17, 1938
Bloedel-Donovan Lumber Mills & Columbia Valley Lumber Co	Apr. 4, 1938	Apr. 7, 1938	(1)
Bloomington Limestone Corp	Mar. 10, 1938	Mar. 12, 1938	(1)
Boat Owning & Operating Co	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
Boorum & Pease Co	Mar. 29, 1938	Mar. 29, 1938	May 26, 1938
B. P. Schulberg Pictures, Inc	Sept. 30, 1937	Oct. 21, 1937	June 4, 1938
Borden Mills, Inc	Dec. 13, 1937	Jan. 14, 1938	(1)
Boston Daily Record	Apr. 5, 1938	Apr. 6, 1938	(1)
Boston Evening American & Sunday Advertiser	do	do	(1)
Bradley Lumber Co. of Arkansas	Aug. 16, 1937	Aug. 18, 1937	Sept. 25, 1937
Bradley Mfg. Co	Nov. 26, 1937	Nov. 26, 1937	Jan. 21, 1938
Brand-Hagen	Mar. 29, 1938	Mar. 30, 1938	(1)
Brasilero, Lloyd	June 20, 1938	(3)	
Breeze Corporation, Inc	Mar. 17, 1938	Mar. 23, 1938	(1)
Brooklyn Beef & Provisions Co	Nov. 17, 1937	Nov. 23, 1937	Jan. 18, 1938
Brown-Saltman Furniture Co	May 23, 1938	May 24, 1938	June 25, 1938
Brown Shoe Co	Nov. 29, 1938	Jan. 24, 1938	Feb. 11, 1938
Burlington Dyeing & Finishing Co	Mar. 17, 1938	Mar. 19, 1938	(1)
Burrel Collins	Mar. 29, 1938	Mar. 30, 1938	(1)
Byco Distributors, Inc	do	do	(1)

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.
[4] Withdrawn before Board decision.

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
C. A. Lund Co. and Northland Ski Co	July 6, 1937	July 9, 1937	Apr. 5, 1938
Calco Chemical Co., Inc	Sept. 8, 1937	Sept. 30, 1937	June 23, 1938
California Walnut Growers' Association	Mar. 3, 1938	Mar. 14, 1938	[3]
California Woodturning Co	June 9, 1938	June 16, 1938	[1]
California Wool Scouring Co	Nov. 4, 1937	Nov. 6, 1937	Mar. 4, 1938
Calumet Steel Division of Borg-Warner Corp	Sept. 15, 1937	Sept. 16, 1937	May 21, 1938
Canadian Fur Trappers of N. J., Inc	Nov. 1, 1937	Nov. 3, 1937	Jan. 13, 1938
Capitol Greyhound Lines	July 1, 1937	July 26, 1937	Sept. 14, 1937
Carl Furst Stone Co	Mar. 10, 1938	Mar. 12, 1938	[1]
Carrollton Metal Products Co	Sept. 2, 1937	Sept. 2, 1937	[4]
Carolina Marble & Granite Works	Dec. 15, 1937	Dec. 16, 1937	[1]
C. D. Mallory & Co	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
Celanese Corporation of America	July 6, 1937	July 6, 1937	[1]
Do	do	do	[1]
Central Greyhound Lines, Inc	July 1, 1937	July 26, 1937	Sept. 24, 1937
Central Truck Lines, Inc	Feb. 26, 1937	Mar. 2, 1937	Aug. 12, 1937
Centre Brass Co., Inc., & Enterprise Novelty Co	Jan. 7, 1938	Jan. 13, 1938	[1]
Century Mills, Inc	Dec. 20, 1937	Dec. 21, 1937	Mar. 5, 1938
Century Woven Label Co	Mar. 28, 1938	Apr. 9, 1938	[1]
Charles R. McCormick Lumber Co	do	Mar. 29, 1938	May 5, 1938
Chase Brass & Copper Co., Inc	Sept. 30, 1937	Sept. 30, 1937	Nov. 8, 1937
Chesapeake Lighterage Co	Oct. 26, 1937	Oct. 26, 1937	Dec. 3, 1937
Do	do	do	Do.
Chicago Apparatus Co	Dec. 13, 1937	Dec. 16, 1937	[1]
Chicopee Manufacturing Corporation	Sept. 27, 1937	Sept. 27, 1937	Dec. 8, 1937
City Auto Stamping Co	July 9, 1937	July 9, 1937	Aug. 11, 1937
Clark Equipment Co	Mar. 1, 1938	Mar. 16, 1938	[1]
Clark & Wilson Lumber Co	Sept. 20, 1937	Sept. 22, 1937	Oct. 21, 1937
Cleveland Cliffs Iron Co	Jan. 24, 1938	Feb. 7, 1938	[1]
Cleveland Equipment Works	Mar. 10, 1938	Mar. 10, 1938	Apr. 22, 1938
Cleveland Worsted Mills Co	Aug. 10, 1937	Aug. 10, 1937	[4]
Clinton Garment Co	May 26, 1938	May 26, 1938	[1]
Clyde-Mallory Lines	Jan. 11, 1938	Jan. 12, 1938	Feb. 19, 1938
C. O. Bartlett & Snow Co	Sept. 16, 1937	Sept. 16, 1937	Nov. 11, 1937
Do	do	do	Do.
Coastal Freight Handlers, Inc	June 30, 1938	[3]	
Cohn, Hall, Marx & Subsidiaries & United Merchants & Manufacturers, Inc	Sept. 13, 1937	Sept. 28, 1937	[1]
Columbia Broadcasting System, Inc	Sept. 28, 1937	Oct. 2, 1937	Mar. 25, 1938
Do	May 26, 1938	May 26, 1938	[1]
Columbian Line	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
Combustion Engineering Co	Aug. 12, 1937	Aug. 14, 1937	Feb. 16, 1938
Condenser Corporation of America	Sept. 2, 1937	Oct. 15, 1937	[1]
Connor Lumber & Land Co	June 9, 1938	[3]	
Consolidated Aircraft Corporation	May 10, 1938	May 12, 1938	June 22, 1938
Continental Oil Co	Mar. 3, 1938	Mar. 18, 1938	[1]
Cornell Dubilier Corporation	Sept. 2, 1937	Oct. 30, 1937	[1]
Cosmolite Corporation	Apr. 7, 1938	Apr. 8, 1938	[4]
Cote Baking Co., Inc	Mar. 7, 1938	Mar. 8, 1938	May 9, 1938
Cottman Co	Oct. 26, 1937	Oct. 26, 1937	Dec. 3, 1937
Do	do	do	Do.
Cudahy Bros. Packing Co	Dec. 6, 1937	Dec. 6, 1937	Jan. 27, 1938
Cudahy Packing Co	Oct. 4, 1937	Oct. 4, 1937	Dec. 30, 1937
Do	July 19, 1937	July 22, 1937	[1]
Do	May 12, 1938	June 29, 1938	[1]
Cunard White Star Lines	June 20, 1938	[2]	
Cupples Match Co	Nov. 29, 1937	Dec. 14, 1937	[1]
Do	do	do	[1]
Curtis Bay Towing Co	Oct. 26, 1937	Oct. 26, 1937	Dec. 3, 1937
Do	do	do	Do.
Cutler-Hammer, Inc	Apr. 11, 1938	Apr. 14, 1938	May 25, 1938
Daily Mirror, Inc	Dec. 4, 1937	Dec. 13, 1937	Feb. 17, 1938
Danahy Packing Co	Aug. 12, 1937	Aug. 12, 1937	Sept. 17, 1937
David and Hyman Zoslow	Jan. 13, 1938	Jan. 14, 1938	[2]
Davis Packing Co	Mar. 29, 1938	Mar. 30, 1938	[1]
Delta Line	June 20, 1938	[2]	
Des Moines Steel Co	Mar. 8, 1938	Mar. 9, 1938	Apr. 8, 1938
Detroit Gasket and Manufacturing Co	May 26, 1938	June 21, 1938	[1]
Diamond Iron Works	Feb. 15, 1938	Feb. 15, 1938	Mar. 21, 1938
Dickson-Jenkins Manufacturing Co	May 5, 1938	May 21, 1938	[1]
Donaldson Atlantic Line	June 20, 1938	[2]	
Donaldson Towing & Lighterage Co	Oct. 26, 1937	Oct. 26, 1937	Dec. 3, 1937

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.
[4] Withdrawn before Board decision.
[5] Additional hearing held May 5 to May 19, 1938.

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Eagle Manufacturing Co	Nov. 13, 1937	Nov. 15, 1937	Apr. 7, 1938
Eagle Pencil Co	Oct. 1, 1937	Dec. 29, 1937	(1)
Eagle Phenix Mills	Nov. 26, 1937	Nov. 26, 1937	Jan. 18, 1938
Eagle Picher Mining & Smelting Co	June 2, 1938	June 3, 1938	(1)
East Gulf Stevedoring Co	June 20, 1938	(2)	
Eastern States Petroleum Co	May 2, 1938	June 28, 1938	(1)
Eastern & Western Lumber Co	Sept. 20, 1937	Sept. 22, 1937	Oct. 21, 1937
Eaton Fruit Co	Mar. 29, 1938	Mar. 30, 1938	(1)
Edna Cotton Mills Corporation	Dec. 17, 1937	Dec. 17, 1937	Mar. 1, 1938
Electric Auto Lite Co	Mar. 7, 1938	Mar. 18, 1938	(1)
El Paso Electric Co	Sept. 14, 1937	Sept. 17, 1937	(1)
Elliott Bay Lumber Co., Inc	Mar. 7, 1938	Mar. 7, 1938	(1)
Empire Furniture Co	Nov. 4, 1937	Nov. 6, 1937	Apr. 26, 1938
Empire Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Erwin Cotton Mills Co	Jan. 10, 1938	Jan. 10, 1938	Apr. 14, 1938
Do	do	do	Do.
Do	(6)	(6)	4 Do.
Essex Cigar Co	Nov. 18, 1937	Nov. 26, 1937	Mar. 18, 1938
Exchange Lumber & Manufacturing Co	(7)	(7)	7 Feb. 24, 1938
Fairbanks, Morse & Co	Apr. 4, 1938	Apr. 4, 1938	May 16, 1938
Fairchild Clay Products Co	Jan. 6, 1938	Jan. 7, 1938	(1)
Farmco Package Corporation	Nov. 18, 1937	Nov. 19, 1937	Apr. 14, 1938
Farmers Distribution Co	Mar. 29, 1938	Mar. 30, 1938	(1)
Federal Knitting Mills	July 15, 1937	July 17, 1937	Aug. 7, 1937
Fedders Manufacturing Co	Aug. 30, 1937	Aug. 30, 1937	Oct. 15, 1937
Fitzgerald Cotton Mills	Dec. 10, 1937	Dec. 10, 1937	Jan. 21, 1938
Flexo Products Corporation	Apr. 21, 1938	Apr. 21, 1938	June 24, 1938
Foote Bros. Gear & Machine Corporation	Jan. 10, 1938	Feb. 4, 1938	(5)
Ford Motor Co	Dec. 16, 1937	Apr. 9, 1938	(1)
Do	June 20, 1938	(3)	
Do	June 6, 1938	June 16, 1938	(1)
Fox-Coffey-Edge Millinery Co	Sept. 30, 1937	Nov. 16, 1937	(1)
Fred G. Hilvert Co	Mar. 29, 1938	Mar. 30, 1938	(1)
Freedman, Chas	do	do	(1)
French Line	June 20, 1938	(3)	
French Maid Inc	Oct. 7, 1937	Oct. 7, 1937	Feb. 16, 1938
Friedman Blau Farber Co	Aug. 23, 1937	Aug. 25, 1937	Nov. 19, 1937
Fried-Ostermann Co	Jan. 27, 1938	Jan. 31, 1938	June 23, 1938
Furniture Guild of California	June 9, 1938	June 16, 1938	(1)
F. W. Woolworth Co. of France, Inc	Apr. 11, 1938	Apr. 26, 1938	(1)
Gaffney Manufacturing Co	Apr. 7, 1938	Apr. 7, 1938	(2)
Garfield Machine Works, Inc	Aug. 2, 1937	Aug. 3, 1937	(2)
Gates Rubber Co	Mar. 28, 1938	Mar. 29, 1938	(1)
Do	do	do	(1)
General Cigar Co., Inc	Nov. 18, 1937	Nov. 26, 1937	Mar. 18, 1938
General Electric Co	Aug. 26, 1937	Aug. 27, 1937	Nov. 19, 1937
Do	do	do	(1)
General Foods Corporation—Post Products Division	Apr. 7, 1938	Apr. 7, 1938	(4)
General Foods Sales Co. (Diamond Crystal Salt Division)	Mar. 31, 1938	Mar. 31, 1938	May 31, 1938
General Leather Products Inc	Sept. 24, 1937	Sept. 24, 1937	Feb. 23, 1938
General Mills, Inc. (Washburn Crosby Co.)	Aug. 23, 1937	Aug. 24, 1937	Oct. 22, 1937
General Motor Corporation	Mar. 28, 1938	Mar. 30, 1938	June 23, 1938
General Motors Corporation (Fisher Body, Oakland Div.)	do	do	Do.
General Petroleum Corporation of California	Dec. 9, 1937	Dec. 10, 1937	Mar. 9, 1938
Do	Dec. 21, 1937	Dec. 21, 1937	Mar. 15, 1938
Do	do	do	Do.
Do	Dec. 22, 1937	Dec. 22, 1937	Mar. 14, 1938
Do	Dec. 21, 1937	Dec. 21, 1937	Mar. 15, 1938
General Steel Castings Corporation (Commonwealth Division)	July 2, 1937	July 7, 1937	Oct. 4, 1937
Do	do	do	Do.
Do	do	do	Do.
Do	do	do	Do.
George H. Kent & Sons, Inc	June 20, 1938	(3)	
Georgia Duck & Cordage Mill	Aug. 10, 1937	Aug. 10, 1937	Nov. 1, 1937
Globe Cotton Mills	Nov. 22, 1937	Nov. 22, 1937	Apr. 6, 1938
Godchaux Sugars, Inc	Jan. 24, 1938	Feb. 5, 1938	(1)
Goldstein Hat Manufacturing Co	Sept. 30, 1937	Nov. 16, 1937	Dec. 23, 1937
Goodyear Tire & Rubber Co. of California	July 22, 1937	July 22, 1937	(8)
Do	July 28, 1937	July 28, 1937	Oct. 7, 1937

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.
[4] Withdrawn before Board decision.
[5] Case transferred to Board by Board Order on basis of hearings held in V-R-139 and V-R-140.
[7] Decision issued without a hearing.
[8] Dismissed before decision of Board was issued.

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Gould & Rosenberg	Jan. 24, 1938	Jan. 24, 1938	(2)
Gowanus Towing Co., Inc	Mar. 14, 1938	Mar. 15, 1938	(1)
Grace Line	Aug. 5, 1937	Aug. 6, 1937	Sept. 25, 1937
Do	June 20, 1938	(4)	
Grand National Films & M. P. P. A	Sept. 30, 1937	Oct. 21, 1937	June 4, 1938
Granite Finishing Works of Proximity Manufacturing Co	Mar. 17, 1938	Mar. 17, 1938	May 21, 1938
Great Lakes Engineering Corporation	July 26, 1937	July 27, 1937	Oct. 15, 1937
Great Lakes Engineering Works	Dec. 2, 1937	Dec. 3, 1937	Mar. 4, 1938
Greer Steel Co	Nov. 11, 1937	Nov. 12, 1937	Dec. 3, 1937
Do	May 19, 1938	May 20, 1938	(1)
Greiss-Pfleger Tanning Co	Nov. 9, 1937	Dec. 6, 1937	(1)
Gulf Oil Corporation	Aug. 5, 1937	Aug. 7, 1937	Nov. 16, 1937
Gulf Pacific Lines, Ltd	June 20, 1938	(3)	
Gulf Ports Service Corporation	June 30, 1938	(3)	
Gulf Shipping Co	June 20, 1938	(3)	
Haas Baruch & Co	Oct. 13, 1937	Oct. 13, 1937	(4)
Hamburg-American Line	June 20, 1938	(3)	
Hamrick Mills	Apr. 8, 1938	Apr. 8, 1938	May 25, 1938
Hanson-Whitney Machine Co	Jan. 4, 1938	Jan. 5, 1938	(1)
Harnischfeger Corporation	Aug. 12, 1937	Sept. 2, 1937	(1)
Harter Corporation	Oct. 7, 1937	Oct. 16, 1937	(1)
Harris Structural Steel Co	Nov. 15, 1937	Nov. 16, 1937	(4)
Hat Corporation of America	Sept. 8, 1938	Sept. 8, 1937	Oct. 27, 1937
H. E. Fletcher Co	Oct. 18, 1937	Oct. 19, 1937	Mar. 2, 1938
Hillcone Steamship Co	Dec. 21, 1937	Dec. 21, 1937	Mar. 15, 1938
Do	Dec. 9, 1937	Dec. 10, 1937	Mar. 9, 1938
Do	Dec. 21, 1937	Dec. 21, 1937	Mar. 15, 1938
Do	do	do	Do.
Hillcone Steamship Co., Ltd	Dec. 22, 1937	Dec. 22, 1937	Mar. 14, 1938
Heltonville Limestone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Heller Bros. Co	Dec. 6, 1937	Dec. 10, 1937	June 4, 1938
Henry Glass Co	Apr. 29, 1938	Apr. 29, 1938	(1)
Highland Park Manufacturing Co	Dec. 9, 1937	Dec. 11, 1937	(1)
H. Margolin & Co., Inc	Nov. 12, 1937	Nov. 30, 1937	(1)
H. Neuer Glass Co	Aug. 9, 1937	Aug. 9, 1937	Nov. 10, 1937
Hoadley Bros. Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Hoffman Beverage Co	July 26, 1937	July 31, 1937	Sept. 9, 1937
Holland American Line	June 20, 1938	(3)	
Holland Reiger Division of Apex Electric Co	Jan. 28, 1938	Jan. 28, 1938	Mar. 24, 1938
Hollywood Citizen News	Mar. 7, 1938	Mar. 28, 1938	(1)
Hood Rubber Co., Inc	Oct. 25, 1937	Oct. 26, 1937	(1)
Hood Rubber Co., Inc. (Arrow Battery Products Division)	Jan. 6, 1938	Jan. 6, 1938	Feb. 9, 1938
Horace G. Prettyman and Arthur J. Wiltse	May 2, 1938	May 12, 1938	(1)
Horton Manufacturing Co	Feb. 21, 1938	Feb. 21, 1938	May 31, 1938
H. R. Webb Neckwear Manufacturing Co	May 5, 1938	May 5, 1938	(1)
Hubinger Co	Aug. 30, 1937	Aug. 31, 1937	Dec. 4, 1937
Hudson Motor Car Co	June 27, 1938	June 30, 1938	(1)
Hudson-Terraplane Sales Corporation	May 25, 1938	May 25, 1938	(1)
Hunter Bros. Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Ideal Novelty & Toy Co., Inc	June 15, 1938	June 18, 1938	(1)
Independent Limestone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Indiana Limestone Corporation	do	do	(1)
Indiana R. R. & Bowman Elder, receiver	Nov. 8, 1937	Nov. 9, 1937	(1)
Ingalls Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Ingram Manufacturing Co	Aug. 12, 1937	Aug. 13, 1937	Mar. 11, 1938
Inman-Poulsen Lumber Co	Sept. 20, 1937	Sept. 22, 1937	Oct. 21, 1937
Interlake Iron Corporation	Sept. 24, 1937	Sept. 25, 1937	Apr. 23, 1938
International Freighting Corporation, et al	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
International Harvester Co	Mar. 2, 1938	Mar. 2, 1938	Apr. 11, 1938
International Harvester Co. (Tractor Works)	Dec. 16, 1937	Dec. 17, 1937	Feb. 10, 1938
International Harvester Co. (operator of Wisconsin Steel Mines)	July 12, 1937	July 12, 1938	(3)
International Mercantile Marine Co	Aug. 5, 1937	Aug. 6, 1937	Sept. 25, 1937
Interstate Granite Corporation	Dec. 13, 1937	Dec. 15, 1937	(1)
Ira S. Bushey & Sons, Inc	Dec. 15, 1937	Dec. 22, 1937	Jan. 28, 1938
Isthmian Steamship Co	June 17, 1938	June 17, 1938	(1)
Isthmian Steamship Co	June 20, 1938	(3)	
J. G. McDonald Chocolate Co	Dec. 17, 1937	Dec. 17, 1937	Feb. 21, 1938
J. J. Little & Ives Co	Mar. 1, 1938	Mar. 1, 1938	Apr. 4, 1938
J. P. Florio & Co	June 20, 1938	(3)	
Jac Feinberg Hosiery Mills, Inc	Jan. 17, 1938	Jan. 22, 1938	(1)
Jackson Daily News, Inc	Dec. 9, 1937	Dec. 10, 1937	(1)
Jacob Dold Packing Co	Aug. 12, 1937	Aug. 12, 1937	Sept. 17, 1937
James McWilliams Blue Line, Inc	Apr. 30, 1938	Apr. 30, 1938	June 15, 1938
John B. Honor & Co., Inc	June 20, 1938	(3)	

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.
[4] Withdrawn before Board decision.

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
John Jacobs Farms	Mar. 29, 1938	Mar. 30, 1938	(1)
John Morrell & Co	Sept. 16, 1937	Sept. 17, 1937	Dec. 6, 1937
Johns-Manville Corporation	Apr. 12, 1938	Apr. 14, 1938	June 22, 1938
Do	do	do	Do.
Johns Manville Products Corporation	Nov. 4, 1937	Nov. 4, 1937	(2)
Joliet Wrought Washer Co	Apr. 7, 1938	Apr. 13, 1938	(1)
Jones Lumber Co	Sept. 20, 1937	Sept. 22, 1937	Oct. 21, 1937
Jos. S. Finch & Co., Inc	Sept. 13, 1937	Sept. 14, 1937	May 2, 1938
Do	do	do	Do.
Journal American	June 22, 1938	(3)	
Karastan Rug Mills	Dec. 17, 1937	Dec. 17, 1937	Feb. 18, 1938
Kay Musical Co	Nov. 23, 1937	Nov. 23, 1937	Jan. 20, 1938
K. C. Power & Light Co	Sept. 24, 1937	Sept. 25, 1937	(1)
Keystone Manufacturing Co	Nov. 15, 1937	Nov. 24, 1937	May 13, 1938
Killefer Manufacturing Corporation, Ltd	Apr. 28, 1938	June 7, 1938	(1)
Kimberly-Clark Corporation	June 20, 1938	June 20, 1938	(1)
Kinnear Manufacturing Co	Nov. 3, 1937	Nov. 3, 1937	Jan. 10, 1938
Klinck Packing Co., Inc	Aug. 12, 1937	Aug. 12, 1937	Sept. 17, 1937
Kling Factories	May 13, 1938	May 20, 1938	(1)
LaCrosse Garment Industries	Nov. 16, 1937	Nov. 16, 1937	Feb. 7, 1938
Lane Cotton Mills Co	July 20, 1937	July 23, 1937	Aug. 24, 1937
L. A. Nut House	Oct. 13, 1937	Oct. 21, 1937	Mar. 5, 1938
Lenox Shoe Co	July 26, 1937	July 28, 1937	Dec. 3, 1937
Lidz Bros	Oct. 25, 1937	Oct. 25, 1937	Mar. 3, 1938
Limestone Mills	Apr. 8, 1938	Apr. 8, 1938	May 25, 1938
Loew's, Inc	Sept. 30, 1937	Oct. 21, 1937	June 4, 1938
Lone Star Bag & Bagging Co	Aug. 26, 1937	Sept. 13, 1937	(1)
Loose-Wiles Biscuit Co	Oct. 25, 1937	Oct. 26, 1937	Feb. 4, 1938
Los Angeles Broadcasting Co., Inc	Oct. 12, 1937	Oct. 12, 1937	Dec. 6, 1937
Louisiana Terminal Co	July 20, 1937	July 22, 1937	Sept. 7, 1937
L. Salenfriend	Oct. 6, 1937	Dec. 9, 1937	(4)
Lucerne Valley Engineering Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Luckenbach Gulf Steamship Co., Inc	June 20, 1938	(3)	
Luckenbach Steamship Co., Inc	Feb. 7, 1938	Feb. 8, 1938	(1)
Lukenheimer Co	Nov. 2, 1937	Nov. 2, 1937	Jan. 24, 1938
Lykes Bros. Ripley Steamship Co	June 20, 1938	(3)	
Lykes Bros. Steamship Co	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
McKaig Hatch, Inc	Dec. 2, 1937	Dec. 10, 1937	(1)
McKell Coal & Coke Co	Nov. 1, 1937	Nov. 1, 1937	Dec. 15, 1937
McKesson & Robbins, Inc	Nov. 8, 1937	Nov. 8, 1937	(5)
Do	do	do	(5)
Do	Nov. 18, 1937	Nov. 22, 1937	Feb. 4, 1938
Do	do	do	Do.
McNeeley & Price Co	Nov. 17, 1937	Dec. 2, 1937	Apr. 23, 1938
Mackay Radio & Telegraph Co	Sept. 29, 1937	Oct. 2, 1937	(1)
Do	do	do	Feb. 26, 1938
Do	do	do	Do.
Do	do	do	(1)
Magnolia Petroleum Co	May 9, 1938	June 14, 1938	(1)
Major Pictures Corporation	Sept. 30, 1937	Oct. 21, 1937	June 4, 1938
Malston Co., Inc	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
Mann Edge Tool Co	June 9, 1938	June 9, 1938	(1)
Marcus Loew Booking Agency	July 2, 1937	July 6, 1937	Aug. 25, 1937
Marks Bros. Co	Nov. 26, 1937	Nov. 27, 1937	May 13, 1938
Marlin Rockwell Corporation	Oct. 18, 1937	Oct. 19, 1937	Feb. 11, 1938
Marshall Field Blanket Mill	Dec. 17, 1937	Dec. 17, 1937	Feb. 18, 1938
Marshall Field Sheeting Mill	do	do	Do.
Martin Bros. Box Co	Dec. 16, 1937	Dec. 16, 1937	May 10, 1938
Maryland Bolt & Nut Co	June 2, 1938	June 7, 1938	(1)
Merchants Transfer & Storage Co	Apr. 25, 1938	Apr. 25, 1938	(1)
Mergenthaler Linotype Co	July 9, 1937	July 9, 1937	Sept. 1, 1937
Do	Sept. 13, 1937	Sept. 14, 1937	Apr. 18, 1938
Metropolitan Device Corporation	June 3, 1938	June 3, 1938	(1)
Metropolitan Stevedoring Co., Inc	June 20, 1938	(3)	
M. H. Birge & Sons Co	Nov. 22, 1937	Nov. 22, 1937	Feb. 15, 1938
Micamold Radio Condenser Corporation	Oct. 28, 1937	Nov. 6, 1937	(2)
Micamold Radio Corporation	June 24, 1938	June 24, 1938	(1)
Michaels Stern & Co	Nov. 23, 1937	Nov. 24, 1937	(4)
Mid-States Gumner Paper Co	Dec. 2, 1937	Dec. 2, 1937	Feb. 1, 1938
Miller-Johns Co	Mar. 29, 1938	Mar. 30, 1938	(1)
Mine B. Coal Co	Oct. 25, 1937	Oct. 27, 1937	Dec. 2, 1937
Minneapolis-Moline Power Implement Co	Mar. 21, 1938	Mar. 22, 1938	June 10, 1938
Minnesota Broadcasting Co	Mar. 17, 1938	Mar. 18, 1938	June 13, 1938
Mississippi Shipping Co., Inc	June 20, 1938	(3)	
M. & J. Tracy	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.
[4] Withdrawn before Board decision was issued.
[5] Dismissed before decision of Board was issued.

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
M. & J. Tracy Co	Mar. 14, 1938	Apr. 12, 1938	(1)
M. Lowenstein & Sons, Inc	Sept. 23, 1937	Oct. 7, 1937	Mar. 26, 1938
Do	do	do	Do.
Missouri, Kansas & Oklahoma Coach Lines	Sept. 9, 1937	Oct. 1, 1937	(1)
Do	Sept. 7, 1937	Sept. 9, 1937	Oct. 23, 1937
Do	do	Oct. 1, 1937	(1)
M. O. Best	Mar. 29, 1938	Mar. 30, 1938	(1)
Model Blouse Co	May 19, 1938	May 23, 1938	(1)
Monogram Productions, Inc	Sept. 30, 1937	Oct. 21, 1937	June 4, 1938
Monon Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Mooremack Gulf Lines, Inc	June 30, 1938	(2)	
Morgan Packing Co	Oct. 7, 1937	Oct. 16, 1937	(1)
Morgan Packing Co. (teamsters)	do	do	(1)
Morris & Co. (Williamsburgh branch)	Nov. 17, 1937	Nov. 23, 1937	Jan. 18, 1938
Mosaic Tile Co	Nov. 10, 1937	Nov. 10, 1937	Feb. 7, 1938
Munson Steamship Lines	Sept. 20, 1937	Sept. 20, 1937	(2)
Munson Steamship Line	June 20, 1938	(3)	
Murray Shipping Co	do	(3)	
Mutual-Sunset Lamp Manufacturing Co	July 19, 1937	July 19, 1937	Aug. 27, 1937
Mystic Steamship Co	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
National Candy Co., Inc. (Veribrite Factory)	May 14, 1938	May 14, 1938	June 27, 1938
National Distillers Production Co	Jan. 24, 1938	Jan. 24, 1938	Mar. 7, 1938
National Electric Products Corporation	Aug. 2, 1937	Aug. 7, 1937	Aug. 30, 1937
National Refining Co	Jan. 25, 1938	Jan. 25, 1938	Mar. 4, 1938
National Sewing Machine Co	Dec. 9, 1937	Dec. 9, 1937	Feb. 17, 1938
National Sugar Refining Co. of New Jersey	Sept. 27, 1937	Oct. 8, 1937	Nov. 30, 1937
National Weaving Co	Apr. 25, 1938	Apr. 25, 1938	June 14, 1938
New England Newspaper Publishing Co	Apr. 5, 1938	Apr. 6, 1938	(1)
New England Steamship Co	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
New England & Southern Steamship Co	do	do	Do.
New Idea, Inc	Nov. 15, 1937	Nov. 17, 1937	Feb. 18, 1938
New Orleans Steamship Association	June 24, 1938	(3)	
New Orleans Stevedoring Co	June 20, 1938	(3)	
N. Y. Handkerchief Co	Jan. 28, 1938	Jan. 28, 1938	Feb. 28, 1938
New York & Porto Rico Steamship Co	Dec. 21, 1937	Dec. 21, 1937	(1)
New York Evening Journal, Inc	Apr. 13, 1938	Apr. 26, 1938	(4)
New York Mail & Newspaper Transporation Co	Nov. 26, 1937	Nov. 26, 1937	Jan. 19, 1938
New York & Porto Rico Steamship Co	June 20, 1938	(3)	
Newark Rivet Works	Nov. 26, 1937	Jan. 18, 1938	(1)
News Syndicate Co., Inc	do	Nov. 27, 1937	Jan. 19, 1938
Newtex Steamship Corporation	Sept. 20, 1937	Sept. 20, 1937	(2)
Niagara Box Factory	Oct. 1, 1937	Dec. 29, 1937	(1)
Niles Fire Brick Co	Nov. 1, 1937	Nov. 2, 1937	(1)
Nippon Yusen Kaisha Line	June 20, 1938	(3)	
North River Coal & Wharf Co	May 2, 1938	May 2, 1938	(1)
North Star Specialty Co	Dec. 11, 1937	Dec. 11, 1937	Mar. 3, 1938
Norton Lilly & Co	June 20, 1938	(3)	
Novelty Slipper Co., Inc	Dec. 10, 1937	Dec. 11, 1937	Feb. 12, 1938
Novelty Steam Boiler Works	Sept. 20, 1937	Sept. 20, 1937	June 17, 1938
Oceanic Stevedoring Co. of Louisiana, Inc	June 20, 1938	(3)	
Ohio Greyhound	July 1, 1937	July 26, 1937	Sept. 14, 1937
Ohio Steel Foundry Co	Jan. 24, 1938	Jan. 24, 1938	Mar. 22, 1938
Oil Transfer Corporation	May 20, 1938	May 20, 1938	(4)
Omaha Hat Co	Sept. 8, 1937	Sept. 14, 1937	Jan. 12, 1938
Ontario Knife Co	Aug. 26, 1937	Aug. 26, 1937	Nov. 4, 1937
Ordway W. Rickard t/a Rickard & Davis	Apr. 11, 1938	Apr. 11, 1938	(1)
Osgood Co	Sept. 23, 1937	Sept. 23, 1937	Dec. 2, 1937
Ostler Candy Co., a corporation	Dec. 17, 1937	Dec. 17, 1937	Feb. 21, 1938
Ourisman Chevrolet Sales Co	Feb. 14, 1938	Feb. 19, 1938	(1)
Overhead Door Corporation	May 6, 1938	May 9, 1938	(2)
Pacific Gas & Electric Co	July 22, 1937	July 28, 1937	Oct. 16, 1937
Pacific Greyhound Lines	June 23, 1938	June 27, 1938	(1)
Do	July 12, 1937	July 13, 1937	Dec. 16, 1937
Do	June 23, 1938	June 27, 1938	(1)
Pacific Lumber Inspection Bureau	Apr. 11, 1938	Apr. 11, 1938	May 28, 1938
Pacific Manifold Book Co	July 8, 1937	July 9, 1937	Sept. 2, 1937
Pacific Mills	Jan. 15, 1938	Jan. 15, 1938	(1)
Padre Vineyard Co	Jan. 13, 1938	Feb. 1, 1938	(1)
Page L'Hote Co., Ltd	June 20, 1938	(3)	
Pan-Atlantic Steamship Corporation	do	(3)	
Do	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
Panama Mail Steamship Co. (Grace Line, Inc.)	do	Aug. 28, 1937	Do.
Panther Panco Rubber Co	Feb. 24, 1938	Mar. 5, 1938	(1)
Paper, Calmenson & Co	Jan. 17, 1938	Jan. 17, 1938	(4)
Paragon Rubber Co., Inc., & American Character Doll Co., Inc	do	Jan. 18 1938	Mar. 17, 1938

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.
[4] Withdrawn before Board decision.
[5] Additional hearing held June 22 to July 1, 1938

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Paragon Slipper Co	May 12, 1938	May 13, 1938	June 27, 1938
Paramount Pictures, Inc	Apr. 27, 1938	Apr. 27, 1938	June 23, 1938
Peninsular & Occidental Steamship Co	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
Pennsylvania Greyhound Lines, Inc	July 1, 1937	July 26, 1937	Sept. 24, 1937
Do	Nov. 26, 1937	Nov. 27, 1937	Mar. 31, 1938
Pennsylvania Salt Manufacturing Co	Sept. 2, 1937	Sept. 2, 1937	Sept. 24, 1937
Pennsylvania Shipyards Inc	Nov., 4, 1937	Nov. 5, 1937	Feb. 3, 1938
Petroleum Iron Works Co	Nov. 8, 1937	Nov. 8, 1937	Jan. 18, 1938
Do	Aug. 30, 1937	Aug. 30, 1937	Sept. 29, 1937
Petroleum Iron Works Co. of Texas	Nov. 8, 1937	Nov. 8, 1937	Jan. 18, 1938
Phelps Dodge Corporation (United Verde Branch)	Jan. 10, 1938	Jan. 11, 1938	Apr. 15, 1938
Do	do	do	Do.
Do	do	do	Do.
Do	do	do	Do.
Pier Machine Works, Inc	Apr. 5, 1938	Apr. 5, 1938	May 23, 1938
Pilot Radio Corporation	Nov. 8, 1937	Dec. 4, 1937	(1)
Pioneer Gravel Equipment Manufacturing Co	Feb. 14, 1938	Feb. 14, 1938	(2)
P. Lorillard Co., Inc	July 15, 1937	July 15, 1937	Sept. 1, 1937
P. Lorillard Tobacco Co	do	do	Do.
Plankinton Packing Co	Feb. 2, 1938	Feb. 2, 1938	Mar. 5, 1938
Plant Line Stevedoring Co., Inc	June 20, 1938	(3)	(1)
Planters Manufacturing Co	Nov. 23, 1937	Dec. 4, 1937	(1)
Pocahontas Steamship Co	Aug. 23, 1937	Aug. 24, 1937	Sept 17, 1937
Portland Lumber Mills	Sept. 20, 1937	Sept. 22, 1937	Oct. 21, 1937
Postal Telegraph-Cable Co., et al	Dec. 22, 1937	Dec. 28, 1937	Feb. 12, 1938
Postal Telegraph-Cable Co	do	do	[10] Do.
Do	do	do	[10] Do.
Do	do	do	[10] Do.
Do	Mar. 24, 1938	Mar. 24, 1938	May 25, 1938
Pressed Steel Car Co., Inc	Apr. 7, 1938	Apr. 8, 1938	June 23, 1938
Proximity Print Works	Dec. 16, 1937	Dec. 17, 1937	June 9, 1938
Pulaski Veneer Corporation	Feb. 3, 1938	Feb. 12, 1938	(1)
Pure Oil Co	Jan. 13, 1938	Jan. 19, 1938	(2)
Do	Nov. 29, 1937	Dec. 7, 1937	(1)
Quality Art Novelty Co	May 19, 1938	June 17, 1938	(1)
Quality Furniture Mfg. Co	June 9, 1938	June 16, 1938	(1)
R. C. A. Communications, Inc	May 16, 1938	May 20, 1938	(1)
Do	do	do	(1)
R. C. Mahon Co	Dec. 13, 1937	Dec. 13, 1937	Feb. 12, 1938
Reading Batteries, Inc	Apr. 28, 1938	May 5, 1938	(1)
Reading Transportation Co	June 29, 1938	June 30, 1938	(1)
Red River Lumber Co	Aug. 5, 1937	Aug. 7, 1937	Feb. 26, 1938
Red Salmon Canning Co	Apr. 22, 1938	Apr. 25, 1938	May 11, 1938
Reed-Powers Cut Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Richard Meyer Co	June 20, 1938	(3)	
Richardson Co	Nov. 2, 1937	Nov. 3, 1937	Jan. 11, 1938
Do	May 9, 1938	May 9, 1938	June 23, 1938
Richfield Oil Co	Dec. 21, 1937	Dec. 21, 1937	Mar. 15, 1938
Richfield Oil Co. of California	Dec. 9, 1937	Dec. 10, 1937	Mar. 9, 1938
Do	Dec. 21, 1937	Dec. 21, 1937	Mar. 15, 1938
Do	do	do	Do.
Richfield Oil Corporation	Apr. 11, 1938	Apr. 11, 1938	June 2, 1938
Richmond Greyhound Lines, Inc	July 1, 1937	July 26, 1937	Sept. 14, 1937
Richmond and Samuels, Inc	Mar. 29, 1938	Mar. 30, 1938	(1)
Ritz Distributing Co	do	do	(1)
Roberti Brothers	Dec. 2, 1937	Dec. 28, 1937	(1)
Robins Dry Dock & Repair Co	July 19, 1937	Aug. 3, 1937	(1)
Robbins & Myers Co	May 19, 1938	May 19, 1938	June 23, 1938
Do	do	do	Do.
Do	do	do	Do.
Roma Wine Co	Mar. 24, 1938	Mar. 24, 1938	May 11, 1938
Ross & Heyn, Inc	June 20, 1938	(3)	
Rossie Velvet Co	Aug. 23, 1937	Aug. 24, 1937	Oct. 7, 1937
Do	do	do	Do.
Royal Warehouse Corporation and Royal Glass Works Corporation	June 14, 1938	June 14, 1938	(1)
Ryan Stevedoring Co	June 20, 1938	(3)	
S. A. Gerrard Co	Mar. 29, 1938	Mar. 30, 1938	(1)
Salinas Valley Vegetable Exchange	do	do	(1)
San Diego Ice & Cold Storage Co	Nov. 17, 1937	Dec. 13, 1937	(1)
San Diego Marine Construction Co	Aug. 20, 1937	Aug. 20, 1937	Oct. 25, 1937
Do	do	do	Do.
Do	do	do	Do.

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.
[10] Decision withdrawn by Board order and petition dismissed on Mar. 1, 1938.

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Santa Fe Trails Transportation Co	Apr. 4, 1938	Apr. 4, 1938	May 21, 1938
Sare-Hoadley Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
S. B. Penick & Co	Feb. 7, 1938	Feb. 23, 1938	(1)
S. Blechman & Sons, Inc	July 2, 1937	July 3, 1937	Nov. 4, 1937
Scandinavian-American Line	June 20, 1938	(2)	
Schick Dry Shaver Co	Aug. 26, 1937	Aug. 26, 1937	Nov. 29, 1937
Schick Dry Shaver, Inc	do	do	Do.
Schwartz-Bernard Cigar Co	Nov. 18, 1937	Nov. 26, 1937	Mar. 18, 1938
Scottdale Mill	Aug. 10, 1937	Aug. 10, 1937	Nov. 1, 1937
Seas Shipping Co	Apr. 28, 1938	Apr. 29, 1938	June 13, 1938
Seattle Post Intelligencer Department of Hearst Publications, Inc	Mar. 10, 1938	Apr. 1, 1938	(1)
Seiss Mfg. Co	Mar. 9, 1938	Mar. 9, 1938	May 26, 1938
Semet-Solvay Co	July 6, 1937	July 24, 1937	May 28, 1938
Seminole Steamship Co., Inc	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
Shawnee Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Shelby Shops, Inc	May 16, 1938	May 26, 1938	(1)
Shell Chemical Co	Sept. 20, 1937	Sept. 20, 1937	Nov. 29, 1937
Shell Oil Co	Nov. 22, 1937	Dec. 23, 1937	May 25, 1938
Shell Petroleum Corporation	Mar. 4, 1938	Mar. 12, 1938	(1)
Shipowners Association of Pacific Coast	Feb. 14, 1938	Mar. 26, 1938	June 21, 1938
Showers Bros. Furniture Co	Oct. 14, 1937	Oct. 15, 1937	Dec. 17, 1937
Sierra Madre Lamanda Citrus Association	Sept. 23, 1937	Sept. 23, 1937	(4)
Silver Lake Co	Aug. 9, 1937	Aug. 9, 1937	Oct. 25, 1937
Simmons Co	Feb. 10, 1938	Feb. 10, 1938	Mar. 26, 1938
Simplex Wire & Cable Co	Nov. 1, 1937	Nov. 6, 1937	Mar. 29, 1938
Do	do	Nov. 1, 1937	Do.
Singer Sewing Machine Co	Mar. 28, 1938	Mar. 28, 1938	(1)
Smith, E. G	Mar. 29, 1938	Mar. 30, 1938	(1)
Smith-Thornburg, Inc	do	do	(1)
Solomon Manufacturing Co	Sept. 2, 1937	Sept. 2, 1937	Oct. 27, 1937
Somerset Shoe Co., factory No. 1	Aug. 23, 1937	Aug. 24, 1937	Feb. 19, 1938
Somerset Shoe Co., factory No. 2	do	do	Do.
Sound Timber Co	June 23, 1938	June 23, 1938	(1)
Southeastern Greyhound Lines	July 1, 1937	July 26, 1937	Sept. 14, 1937
Southern California Gas Co	June 2, 1938	June 27, 1938	(1)
Southern Chemical Cotton Co	Aug. 16, 1937	Aug. 18, 1937	Oct. 23, 1937
Southern Lumber Co	July 19, 1937	July 19, 1937	(3)
Southern Pacific Steamship Co., Morgan Line	Jan. 20, 1938	Feb. 1, 1938	(4)
Southern Pacific Steamship Lines, Morgan Lines	June 30, 1938	June 30, 1938	(1)
Southern Stevedoring Co	June 20, 1938	(2)	(1)
Southgate Nelson Corporation	Oct. 11, 1937	Oct. 11, 1937	Dec. 2, 1937
Do	do	do	(5)
Do	do	do	(5)
Southport Petroleum Co	Dec. 13, 1937	Dec. 17, 1937	(1)
Southwestern Greyhound Lines	July 1, 1937	July 26, 1937	Sept. 14, 1937
Do	do	do	Do.
Spotless Stores, Inc	Oct. 18, 1937	Jan. 6, 1938	(1)
Spray Woolen Mill, Division of Marshall Field & Co	Dec. 17, 1937	Dec. 17, 1937	Feb. 18, 1938
Stafford Milling & Warehouse Co	Oct. 15, 1937	Oct. 16, 1937	(4)
Standard Cap & Seal Co	June 16, 1938	June 16, 1938	(1)
Standard Fruit & Steamship Co	June 30, 1938	(3)	
Standard Oil Co	Aug. 30, 1937	Sept. 2, 1937	Mar. 3, 1938
Standard Oil Co. (Indiana)	Jan. 24, 1938	Feb. 18, 1938	(1)
Standard Oil Co. of N. J	June 6, 1938	June 6, 1938	(1)
Do	do	do	(1)
Standard Oil Co. of N. J. (Marine Department)	do	do	(1)
Do	do	(3)	
Standard Oil Co. of N. J	June 28, 1938	(3)	
Do	June 6, 1938	June 6, 1938	(1)
Stanley Fruit Co	Mar. 29, 1938	Mar. 30, 1938	(1)
Stanolind Oil & Gas Co	Jan. 24, 1938	Feb. 18, 1938	(1)
Stehli & Co., Inc	Nov. 1, 1937	Dec. 15, 1937	(1)
Stephen Ranson, Inc	Dec. 15, 1937	Dec. 22, 1937	Feb. 28, 1938
Stone Knitting Mills	July 15, 1937	July 17, 1937	Aug. 7, 1937
Strachan Shipping Co	June 20, 1938	(3)	
Strain Manufacturing Co	Dec. 13, 1937	Dec. 13, 1937	Feb. 15, 1938
Sunlight Electric Co	Jan. 10, 1938	Jan. 10, 1938	Mar. 29, 1938
Sun Ship Building & Dry Dock Co	June 23, 1938	June 24, 1938	(1)
Superior Electric Products Co	Jan. 21, 1938	Jan. 25, 1938	Mar. 17, 1938
Supplee-Wills-Jones Milk Co	May 9, 1938	May 10, 1938	(3)
Swayne & Hoyt, Ltd	June 20, 1938	(3)	
Sweet Candy Co., a corporation	Dec. 17, 1937	Dec. 17, 1937	Feb. 21, 1938
Swift & Co	Nov. 18, 1937	Nov. 18, 1937	Jan. 10, 1938
Do	Nov. 8, 1937	Nov. 20, 1937	May 20, 1938

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.
[4] Withdrawn before Board decision was issued.
[5] Dismissed before decision of Board was issued.

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Swift Manufacturing Co	Nov. 26, 1937	Nov. 26, 1937	Jan. 26, 1938
Swift Spinning Mills	Nov. 27, 1937	Nov. 27, 1937	Do
Talladega Cotton Mills	Nov. 26, 1937	Nov. 30, 1937	(1)
Tampa Inter-Ocean Steamship Co	Aug. 23, 1937	Aug. 24, 1937	(5)
Do	June 20, 1938	(2)	
Tegge-Jackman Cigar Co	Nov. 18, 1937	Nov. 26, 1937	Mar. 18, 1938
Tennessee Copper Co	Jan. 13, 1938	Jan. 14, 1938	Mar. 3, 1938
Tennessee Electric Power Co	Feb. 3, 1938	Feb. 4, 1938	May 5, 1938
Tennessee Schuylkill Corporation	Nov. 29, 1937	Nov. 29, 1937	Feb. 4, 1938
Terminal Flour Mills Co	Jan. 19, 1938	Feb. 14, 1938	(1)
Texas Corrugated Box Co	June 23, 1938	June 23, 1938	(1)
Texas Mining & Smelting Co	Feb. 14, 1938	Feb. 25, 1938	(1)
Texla Stevedoring Co	June 20, 1938	(4)	
Texas Transport & Terminal Co	do	(3)	
The American Boston Mining Co. et al	June 2, 1938	June 8, 1938	(1)
The American Brass Co	Nov. 8, 1937	Nov. 8, 1937	Apr. 21, 1938
The American Paint Works (Glidden Co.)	Feb. 14, 1938	Feb. 22, 1938	(1)
The Associated Press	Dec. 6, 1937	Jan. 8, 1938	(1)
Do	Jan. 5, 1938	Jan. 6, 1938	Feb. 2, 1938
The Babcock & Wilcox Co	June 16, 1938	June 16, 1938	(1)
The Campbell Machine Co	Aug. 18, 1937	Aug. 18, 1937	Oct. 4, 1937
Do	do	do	Do.
Do	do	do	Do.
The Carrollton Metal Products Co	Sept. 2, 1937	Jan. 27, 1938	Apr. 14, 1938
The DeVilbiss Co	Mar. 9, 1938	Mar. 9, 1938	Mar. 16, 1938
The Falk Corporation	Aug. 16, 1937	Aug. 25, 1937	Apr. 18, 1937
The Indianapolis Times	June 27, 1938	June 28, 1938	(1)
The International Nickel Co	Mar. 24, 1938	Mar. 24, 1938	May 6, 1938
The Kirsch Co	Oct. 13, 1937	Oct. 13, 1937	(4)
The N. & G. Taylor Co	Sept. 9, 1937	Sept. 20, 1937	(1)
The Ohio Foundry Co., plant 1	July 6, 1937	July 7, 1937	Sept. 21, 1937
The Ohio Foundry Co., plants 1, 2, and 3	do	do	Do.
The Perry-Fay Co	Nov. 22, 1937	Nov. 22, 1937	Dec. 16, 1937
The Pittsburgh Plate Glass Co	Aug. 5, 1937	Aug. 5, 1937	Nov. 22, 1937
The Raleigh Hotel Co	Mar. 24, 1938	Apr. 2, 1938	May 21, 1938
The Rex Manufacturing Co	Nov. 22, 1937	Dec. 7, 1937	May 10, 1938
The Sandusky Metal Products Co	Jan. 28, 1938	Jan. 28, 1938	Mar. 16, 1938
The Serrick Corporation	Oct. 18, 1937	Nov. 15, 1937	(1)
The Sorg Paper Co	Mar. 18, 1938	Mar. 18, 1938	(1)
The Texas Co	Mar. 17, 1938	Mar. 22, 1938	May 13, 1938
Do	May 16, 1938	May 28, 1938	(1)
The Texas Co. (Refining Department)	Sept. 16, 1937	Sept. 17, 1937	Nov. 20, 1937
The Toledo Steel Tube Co	Mar. 8, 1938	Mar. 8, 1938	(1)
The Walworth Co	Mar. 18, 1938	Mar. 19, 1938	(1)
Do	do	do	(1)
The Waterbury Clock Co	Sept. 30, 1937	Sept. 30, 1937	(4)
Thomas Paper Stock Co	Jan. 6, 1938	Jan. 8, 1938	(5)
Tidewater Associated Oil Co	Dec. 9, 1937	Dec. 10, 1937	Mar. 9, 1938
Do	Dec. 21, 1937	Dec. 21, 1937	Mar. 15, 1938
Do	do	do	Do.
Do	do	do	Do.
Do	Dec. 22, 1937	Dec. 22, 1937	Mar. 14, 1938
Do	Jan. 4, 1938	May 20, 1938	(1)
Do	do	do	(1)
Do	do	May 20, 1938	(1)
Do	May 19, 1938	do	(1)
Tidewater Association Oil Co	Jan. 4, 1938	Jan. 4, 1938	(4)
Times Publishing Co	May 2, 1938	May 6, 1938	(1)
Todd-Johnson Dry Docks, Inc	May 5, 1938	May 13, 1938	(1)
Tolby Bros	Mar. 29, 1938	Mar. 30, 1938	(1)
Towns & James	Nov. 22, 1937	Nov. 22, 1937	(4)
Tracy-Holmes Fruit Co	Mar. 29, 1938	Mar. 30, 1938	(1)
Trem Carr, Inc	Sept. 30, 1937	Oct. 21, 1937	June 4, 1938
T. Smith & Son, Inc	June 20, 1938	(2)	
Union-Buffalo Mills Co	Jan. 13, 1938	Jan. 13, 1938	Feb. 18, 1938
Do	do	do	Do.
Union Bus Co., Inc	July 1, 1937	July 26, 1937	Sept. 14, 1937
Union Lumber Co	Mar. 21, 1938	Mar. 21, 1938	June 23, 1938
Union Oil Co	Dec. 9, 1937	Dec. 10, 1937	Mar. 9, 1938
Do	Dec. 21, 1937	Dec. 21, 1937	Mar. 15, 1938
Do	do	do	Do.
Union Oil Co. of California	Dec. 22, 1937	Dec. 22, 1937	Mar. 14, 1938
Do	Dec. 21, 1937	Dec. 21, 1937	Mar. 15, 1938

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.
[4] Withdrawn before Board decision was issued.
[5] Dismissed before decision of Board was issued.

Representation cases—Continued

Name of case	Date hearing held		Date decision issued
	Date opened	Date closed	
Union Premier Food Stores, Inc	June 16, 1938	June 21, 1938	(1)
Union Stockyard Co. of Fargo	Dec. 17, 1937	Dec. 17, 1937	(4)
Union-Tribune Publishing Co	Nov. 29, 1937	Dec. 8, 1937	(1)
United Carbon Co	Nov. 22, 1937	Dec. 2, 1937	June 1, 1938
Unit Cast Corporation	Mar. 7, 1938	Mar. 10, 1938	May 11, 1938
United Fruit Co	Feb. 9, 1938	Feb. 10, 1938	(1)
Do	June 30, 1938	(3)	
United Press Associations	July 8, 1937	July 8, 1937	Aug. 20, 1937
United Shipyards, Inc	Dec. 20, 1937	Jan. 22, 1938	Mar. 2, 1938
United States Lines	Sept. 27, 1937	Sept. 27, 1937	(2)
United States Lines Co	Sept. 20, 1937	Sept. 20, 1937	(2)
Universal Film Exchange, Inc	May 26, 1938	May 27, 1938	(1)
U. S. Coal & Coke Co	July 26, 1937	July 27, 1937	(4)
Do	do	July 26, 1937	(1)
U. S. Tank Ship Corporation	Aug. 23, 1937	Aug. 24, 1937	Sept. 17, 1937
U. S. Sanitary Manufacturing Co	Apr. 14, 1938	Apr. 14, 1938	(2)
U. S. Testing Co., Inc	Jan. 12, 1938	Jan. 15, 1938	Feb. 28, 1938
Utah Copper Co., a corporation, & Kennecott Copper Corporation	Aug. 30, 1937	Sept. 4, 1937	June 16, 1938
Vail-Ballou Press, Inc	May 23, 1938	May 27, 1938	(1)
Do	do	do	(1)
Valley Mould & Iron Corporation	Jan. 6, 1938	Jan. 6, 1938	Feb. 4, 1938
Van Arnan Manufacturing Co	Feb. 28, 1938	Feb. 28, 1938	Apr. 7, 1938
Vesta Underwear Co	June 2, 1938	June 2, 1938	(1)
Vicksburgh Garment Co	Dec. 23, 1937	Dec. 23, 1937	Feb. 14, 1938
Victor Oolitic Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Vogemann-Goudriaan Co., Inc	June 20, 1938	(3)	
Vultee Aircraft Division, Aviation Manufacturing Corporation	Apr. 28, 1938	Apr. 28, 1938	(1)
Wadsworth Watch Case Co	Sept. 7, 1937	Sept. 8, 1937	Dec. 10, 1937
Waggoner Refining Co., Inc., et al	July 12, 1937	July 21, 1937	Apr. 21, 1938
Waggoner Refining Co., Inc., and W. T. Waggoner Estate	do	July 21, 1937	Do.
Walker Vehicle Co., et al	Sept. 17, 1937	Sept. 18, 1937	June 10, 1938
Walt Disney Productions, Ltd	Sept. 30, 1937	Oct. 21, 1937	June 4, 1938
Walter Wanger Productions, Inc	do	do	Do.
Wallis Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Ward Baking Co., a corporation	Oct. 11, 1937	Oct. 12, 1937	(1)
Washburn Wire Co	Feb. 15, 1938	Apr. 1, 1938	(1)
Waterbury Clock Co	Sept. 30, 1937	Sept. 30, 1937	Nov. 11, 1937
Waterbury Manufacturing Co	do	do	Feb. 14, 1938
Waterfront Employers Association of Southern California	Dec. 13, 1937	Mar. 26, 1938	June 21, 1938
Waterman Steamship Corporation	June 20, 1938	(3)	
Wearwell Bedspread Mills (Division of Marshall Field Co.)	Dec. 17, 1937	Dec. 17, 1937	Feb. 18, 1938
Webster Cigar Co	Nov. 18, 1937	Nov. 26, 1937	Mar. 18, 1938
Weekly Publications, Inc	May 13, 1938	May 18, 1938	(1)
Weinberger Banana Co., Inc	Feb. 21, 1938	Mar. 8, 1938	(1)
Weirton Steel Co	Aug. 16, 1937	(3)	
West Coast Kalsomine Co	Nov. 18, 1937	Nov. 22, 1937	Feb. 4, 1938
West Coast Wholesale Drug Co	do	do	Do.
West Oregon Lumber Co	Sept. 20, 1937	Sept. 22, 1937	Oct. 21, 1937
West Virginia Pulp & Paper Co	Aug. 16, 1937	Aug. 16, 1937	Sept. 15, 1937
Do	Nov. 11, 1937	Nov. 11, 1937	Dec. 1, 1937
Do	Nov. 15, 1937	Nov. 15, 1937	Dec. 4, 1937
Western Union Telegraph Co	Aug. 9, 1937	Aug. 14, 1937	Aug. 25, 1937
Western Vegetable Distributors	Mar. 29, 1938	Mar. 30, 1938	(1)
Westinghouse Airbrake Co	Sept. 9, 1937	Sept. 9, 1937	Dec. 4, 1937
Wheeling Steel Corporation	May 2, 1938	May 2, 1938	(1)
Whittier Mills	Aug. 9, 1937	Aug. 10, 1937	Oct. 25, 1937
Wilmington Transportation Co	Nov. 4, 1937	Nov. 4, 1937	Dec. 31, 1937
William Manufacturing Co	Sept. 23, 1937	Sept. 28, 1937	Mar. 24, 1938
Willys-Overland Motors, Inc	June 2, 1938	June 7, 1938	(1)
Wisconsin Bell Telephone	Feb. 7, 1938	Feb. 22, 1938	(1)
Wisconsin Power & Light Co	Feb. 3, 1938	Feb. 3, 1938	Mar. 31, 1938
Wisconsin Bell Telephone Co	Feb. 7, 1938	Feb. 22, 1938	(1)
Do	do	do	(1)
Do	do	do	(1)
Woodside Cotton Mills Co	May 9, 1938	May 9, 1938	June 16, 1938
Woodville Lime Products Co	Mar. 8, 1938	Mar. 25, 1938	May 23, 1938
Woolery Bros. Stone Co	Mar. 10, 1938	Mar. 12, 1938	(1)
Worthington Pump & Machinery Corporation	Sept. 23, 1937	Sept. 23, 1937	Dec. 7, 1937
Zellerbach Paper Co	Oct. 12, 1937	Oct. 21, 1937	Dec. 3, 1937
Zenite Metal Corporation	July 2, 1937	July 14, 1937	Feb. 19, 1938

[1] Awaiting Board decision.
[2] Settled before decision of Board was issued.
[3] Hearing still in progress.
[4] Withdrawn before Board decision was issued.

XIV. FISCAL STATEMENT

The expenditures and obligations for fiscal year ended June 30, 1938, are as follows:

Salaries	$1,574,339
Travel expense	324,045
Communications	68,907
Reporting	136,116
Rentals	124,813
Furniture and equipment	68,012
Supplies and materials	34,930
Special and miscellaneous	7,377
Transportation of things	2,950
Total salaries and expenses	2,341,489
Printing and binding	115,395
Grand total expenditures and obligations	2,456,884

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APPENDIX A

TABLE I.—*Comparison of number of cases brought before the National Labor Relations Board and number of strikes, beginning in each month for all causes, and for organization, October 1935–June 1938*

Year and month	Number of cases brought before Board (1)	Number of strikes[1]		Ratio of Board cases to strikes	
		For all causes (2)	For organization (3)	Percent for all causes [(1) over (2)]	Percent for organization [(1) over (3)]
1935					
October	203	169	79	120	257
November	153	119	48	129	319
December	110	80	34	138	324
1936					
Total	1,301	1,951	971	67	134
January	110	138	62	80	177
February	66	132	69	50	96
March	90	168	82	54	110
April	142	158	73	90	195
May	108	188	89	57	121
June	86	168	87	51	99
July	74	144	65	51	114
August	112	211	120	53	93
September	150	209	95	72	158
October	147	175	90	84	163
November	88	131	72	67	122
December	128	129	67	99	191
1937					
Total	9,424	4,270	2,412	221	391
January	110	160	80	69	138
February	195	199	110	98	177
March	239	581	281	41	85
April	477	490	270	97	177
May	1,064	532	298	200	357
June	1,283	552	329	232	390
July	1,325	400	238	331	557
August	1,119	400	243	280	460
September	994	321	196	310	507
October	1,054	278	165	379	639
November	959	232	132	413	727
December	606	125	70	485	866
1938					
January	674	148	66	455	1,021
February	629	156	76	403	828
March	896	216	100	415	896
April	823	207	93	398	885
May	624	233	102	268	612
June	727	178	93	408	782

[1] Strike data are monthly figures released by the U. S. Department of Labor, Bureau of Labor Statistics, Division of Industrial Relations. Annual revised figures are not broken down by causes for each month.

CHART A. **NUMBER OF STRIKES CONTRASTED WITH THE NUMBER OF CASES BROUGHT BEFORE THE NATIONAL LABOR RELATIONS BOARD**

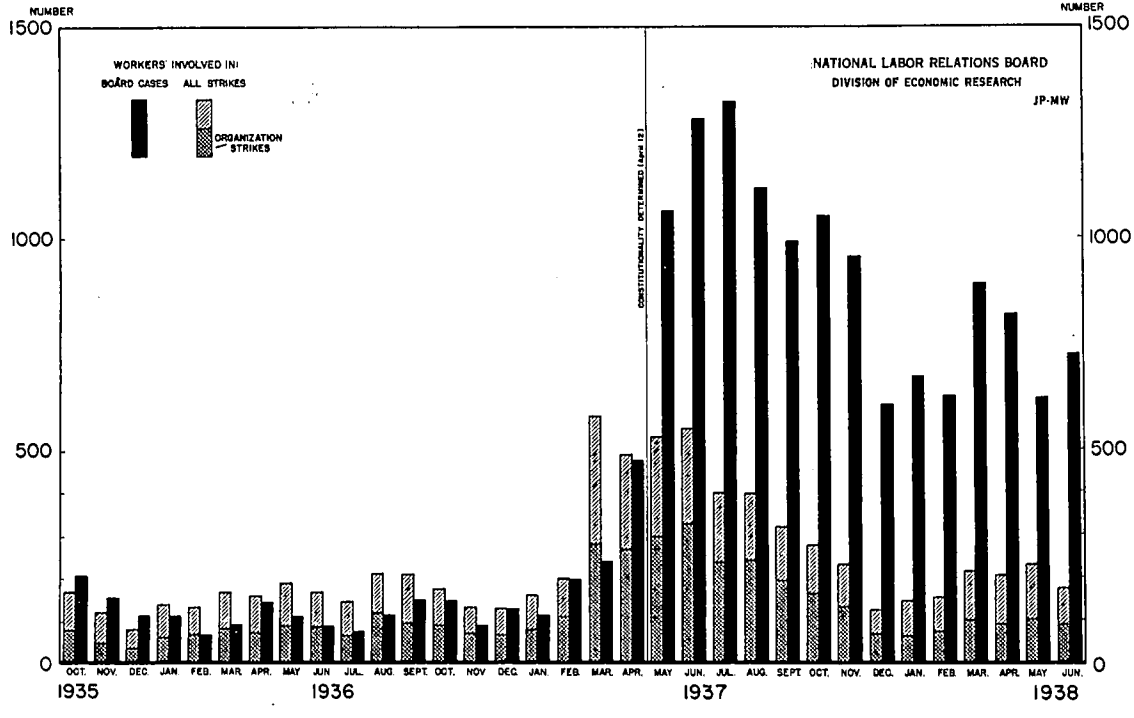
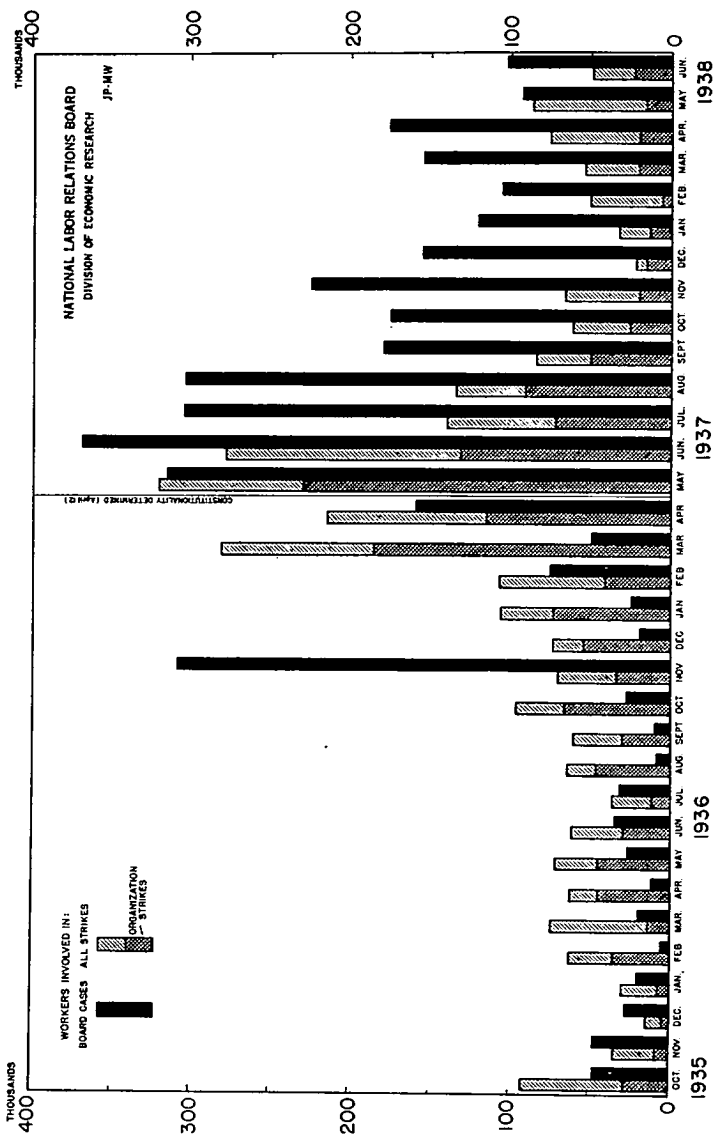


TABLE II.—*Comparison of number of workers involved in cases brought before the National Labor Relations Board and number of workers involved in strikes, beginning in each month, for all causes and for organization, October 1935–June, 1938*

Year and month	Number of workers involved in cases brought before Board (1)	Number of workers involved in strikes [1]		Ratio of board cases to strikes	
		For all causes (2)	For organization (3)	Percent for all causes [(1) over (2)]	Percent for organization [(1) over (3)]
1935					
October	47,790	92,357	28,213	52	169
November	47,580	34,661	8,259	137	576
December	27,580	14,133	4,059	195	679
1936					
Total	523,138	763,783	419,538	68	125
January	20,346	30,001	7,225	68	282
February	5,424	62,259	35,898	9	15
March	19,300	74,475	13,811	26	140
April	11,646	62,551	45,465	19	26
May	26,460	71,625	45,388	37	58
June	34,739	61,243	29,250	57	119
July	31,936	36,115	11,893	88	269
August	8,565	64,510	46,252	13	19
September	9,214	60,555	29,730	15	31
October	27,335	96,608	66,898	28	41
November	309,187	70,515	33,795	438	915
December	18,986	73,326	53,933	26	35
1937					
Total	2,339,631	1,816,847	1,051,528	129	222
January	24,744	106,076	73,202	23	34
February	74,870	106,910	40,949	70	183
March	49,187	281,887	186,049	17	26
April	159,051	214,760	114,965	74	138
May	315,470	321,022	229,936	98	137
June	369,737	278,783	131,574	133	281
July	305,049	139,976	72,173	218	423
August	304,267	134,078	91,125	227	334
September	180,261	84,032	50,387	215	358
October	175,951	61,395	25,928	287	679
November	225,410	66,168	20,286	341	1,111
December	155,634	21,760	14,954	715	1,041
1938					
January	121,113	32,357	13,312	374	910
February	106,172	50,935	5,719	208	1,856
March	154,868	53,914	20,395	287	759
April	176,414	75,840	20,390	233	865
May	92,917	86,792	15,810	107	588
June	102,813	49,602	23,368	207	440

[1] Strike data are monthly figures released by the U. S. Department of Labor, Bureau of Labor Statistics, Division of Industrial Relations. Annual revised figures are not broken down by causes for each month.

CHART B. NUMBER OF WORKERS INVOLVED IN STRIKES CONTRASTED WITH THE NUMBER OF WORKERS INVOLVED IN CASES BROUGHT BEFORE THE NATIONAL LABOR RELATIONS BOARD



APPENDIX B

LIST OF RECENT REFERENCES ON NATIONAL LABOR RELATIONS BOARD [1]

COMPILED BY DIVISION OF ECONOMIC RESEARCH

A. CURRENT

American Federation of Labor. *American Federationist.* Washington. Monthly. (Contains section "National Labor Relations Board decisions.")
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Chester M. Wright and Associates. *Chester Wright's labor letter.* Washington. Weekly.
Commerce Clearing House. *Labor law service.* New York. Irregular.
Congressional Intelligence. *Labor relations service.* Washington. Weekly.
International Juridicial Association. *International Juridical Association bulletin.* New York. Monthly.
Prentice-Hall. *Labor and unemployment insurance service.* New York. Irregular.

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Daugherty, Carroll R. *Labor problems in American industry.* Revised Edition. Boston. Houghton Mifflin. 1938. 984 p.
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Feller, Alexander and Hurwitz, Jacob E. *How to deal with organized labor.* New York. Alexander Publishing Co. 1937. 684 p.
Labor Research Association. *Labor fact book. vol. IV.* New York. International Publishers. 1938. 223 p.
Levinson, Edward. *Labor on the march.* New York. 1938. 325 p.
McDonald, Lois. *Labor problems and the American scene.* New York. Harpers. 1938. 878 p.
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Seidman, Joel. *The Wagner Act and the automobile worker.* Detroit. United Automobile Workers of America. 1937. 16 p. (mimeographed).
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U. S. National Labor Relations Board. *Decisions and orders. vol. II. July 1, 1936–July 1, 1937.* Washington. 1937. 1165 p.
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——— *Decisions and orders. vol. V. Feb. 1, 1938–Mar. 15, 1938.* Washington. 1938. 1061 p.
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——— Division of Economic Research. *Digest of testimony at hearing in case of Inland Steel Co. and Steel Workers' Organizing Committee, C–352, concerning written agreements in collective bargaining,* by David J. Saposs. Research memorandum No. 2. Washington. April 1938. 13 p. (mimeographed).
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——— Division of Economic Research. *Employer labor policies and activities,* by David J. Saposs. Washington. Outline No. VI. March 1938. 11 p. (mimeographed).
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——— Division of Economic Research. *Union responsibility and incorporation of labor unions,* by David J. Saposs. Washington. February 1938. 8 p. (mimeographed).
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Walsh, J. Raymond. *C. I. O. Industrial unionism in action.* New York. Norton. 1937.

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