

FIFTEENTH
ANNUAL REPORT
OF THE
NATIONAL LABOR
RELATIONS BOARD

FOR THE FISCAL YEAR
ENDED JUNE 30

1950

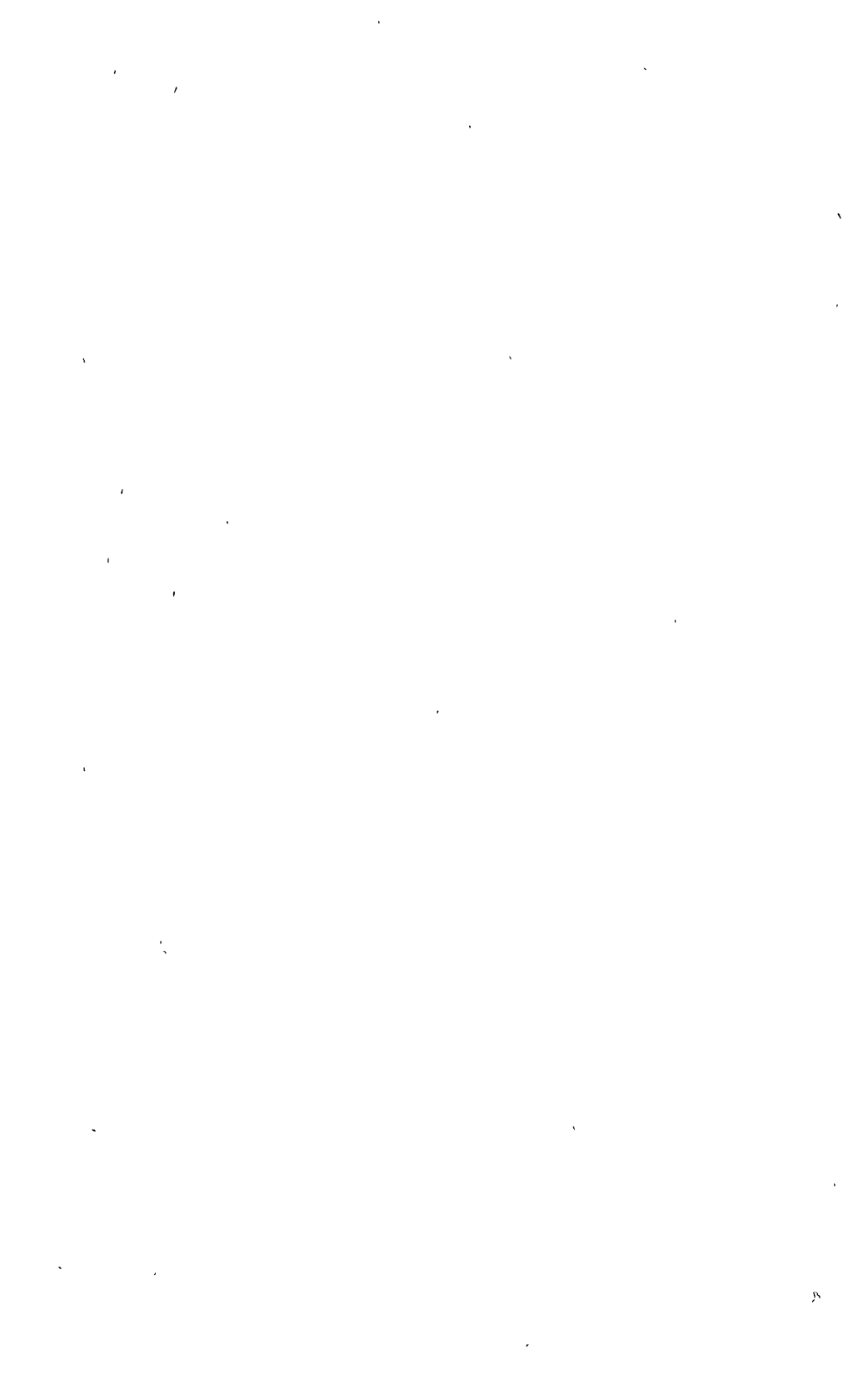
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**UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON, D. C. • 1951**



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NATIONAL LABOR RELATIONS BOARD

Members of the Board

PAUL M. HERZOG, *Chairman*

JOHN M. HOUSTON
ABE MURDOCK

JAMES J. REYNOLDS, JR.
PAUL L. STYLES¹

FRANK M. KLEILER, *Executive Secretary*

IDA KLAUS, *Solicitor*

WILLIAM R. RINGER, *Chief Trial Examiner*

CARROLL K. SHAW, *Director, Division of Administration*

LOUIS G. SILVERBERG, *Director of Information*

Office of the General Counsel

GEORGE J. BOTT,² *General Counsel*

WILLIAM O. MURDOCK,³ *Associate General Counsel*

DAVID P. FINDLING, *Associate General Counsel*

ELLISON D. SMITH,⁴ *Associate General Counsel*

¹ Appointed February 27, 1950, to succeed J. Copeland Gray.

² Appointed September 29, 1950, to succeed Robert N. Denham.

³ Appointed October 11, 1950, to succeed Mr. Bott.

⁴ Appointed June 1, 1950, to succeed Joseph C. Wells.



LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., January 3, 1951.

SIR: As provided in section 3 (c) of the Labor Management Relations Act, 1947, I submit herewith the Fifteenth Annual Report of the National Labor Relations Board for the year ended June 30, 1950, and, under separate cover, lists containing the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board.

PAUL M. HERZOG, *Chairman.*

THE PRESIDENT OF THE UNITED STATES
THE PRESIDENT OF THE SENATE,
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.



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I

L. M. R. A. in Operation

WITH the close of the 1950 fiscal year on June 30, 1950, the National Labor Relations Board completed its second full fiscal year of enforcing the Labor Management Relations Act, 1947.¹

The Board's duties, in carrying out the statutory objectives of "encouraging the practice and procedure of collective bargaining"² and of "protecting the exercise by workers of full freedom of association"³ for the purposes of collective bargaining, continued to be (1) the remedy and prevention of unfair labor practices by either employers or labor organizations; (2) the conduct of elections to determine the choice of employees for a bargaining representative, if any; and (3) the conduct of polls to determine whether or not employees wish to authorize their bargaining agent to negotiate a union-shop contract.

The number of unfair labor practice charges and the number of petitions for representation elections each showed an increase of about 10 percent⁴ over the preceding fiscal year. However, an over-all decrease of 16 percent in the total of cases of all types resulted from a long-anticipated decline of nearly half in the number of petitions for union-shop authorization polls. The marked decrease in union-shop petitions did not bring about a corresponding decrease in demand for Board investigatory and decisional activity because, on an average, less than two-tenths of 1 percent of the union-shop cases required a hearing, decision, or other type of formal action. The remaining 99.8 percent of these cases was closed by consent agreements for the conduct of polls or by other informal action in the field offices.

A total of 21,632 cases of all types was filed with the Board during fiscal 1950.⁵ This compares with 25,874 cases of all types filed

¹ The Labor Management Relations Act, known also as the Taft-Hartley law, was enacted by Congress June 23, 1947, and took effect August 22, 1947. The Board enforces Title I, which amended the National Labor Relations Act. The Board's operations in previous fiscal years under the Labor Management Relations Act are discussed in the Thirteenth and Fourteenth Annual Reports.

² Paragraph 5 of sec. 1 of the amended act, "Findings and Policies."

³ See footnote 2, *supra*.

⁴ Filings of unfair practice cases increased 9.3 percent, while representation cases increased 10.7 and the total for these two major types of cases increased 10.2 percent.

⁵ Detailed statistics of the agency's operations during the fiscal year 1950 are set forth in appendix B.

during the 1949 fiscal year. Charges of unfair labor practices, against employers or unions, were filed in 5,809 cases during fiscal 1950, compared with 5,314 cases in the preceding year. Petitions for representation elections of all types were filed in 9,279 cases during 1950, compared with 8,370 cases filed during the preceding year. Petitions for union-shop authorization polls totaled 6,544, compared with 12,190 such petitions filed during fiscal 1949.

The Board closed 20,640 cases of all types during the fiscal year 1950.⁶ This compares with 32,796 cases of all types closed during fiscal 1949. Again, the decline was largely the result of the sharp decrease in union-shop authorization polls. During fiscal 1950, the Board closed 5,615 cases involving charges of unfair labor practices against either employers or unions; this compared with 4,664 such cases closed during the preceding fiscal year. During fiscal 1950, the Board closed 8,761 representation cases of all types, compared with 9,245 during the 1949 fiscal year. Only 6,264 union-shop authorization cases, however, were closed during the 1950 fiscal year, compared with 18,887 during the preceding year. This sharp decline in the closing of union-shop cases resulted directly from a corresponding decline in the filing of petitions for union-shop authorization. Because of the absence of contested issues in all but a small portion of cases of this type, the Board has been able to maintain the conduct of union-shop polls on a current basis. The Board ended the 1950 fiscal year with only 991 such cases pending.

1. Case Activities of Five-Member Board

The 5-member Board, which is the decisional arm of the agency,⁷ issued decisions in 2,951 cases of all types during the fiscal year 1950. This was a decrease of 12 percent from the 3,365 cases in which decisions were issued during fiscal 1949. The Board's output of decisions in fiscal 1950, however, continued more than 47 percent above the 2,005 cases decided during fiscal 1947, the last year of operation with a 3-member Board. Practically the entire decrease between 1949 and 1950 was due to a decline in requests for Board certifications in union-shop authorization polls held by regional directors. These certifications were requested in only 5 cases during fiscal 1950, compared with 311 in 1949.

⁶ The actions by which cases were closed varied from formal decisions by the Board Members to withdrawals by the charging parties and dismissals by the regional directors.

⁷ Unfair labor practice cases can come to the Board Members for decision only after the General Counsel, after his investigation of the charge filed by the complaining party, issues a formal complaint. Following a hearing on the evidence, a preliminary decision is made by a trial examiner in the form of an "Intermediate Report and Recommended Order" or an order of dismissal. The Board Members ordinarily issue a formal decision in this type of case only if the General Counsel or one of the parties files exceptions to the findings or rulings of the trial examiner. If no exceptions are filed, the trial examiner's recommendations take effect as a Board order.

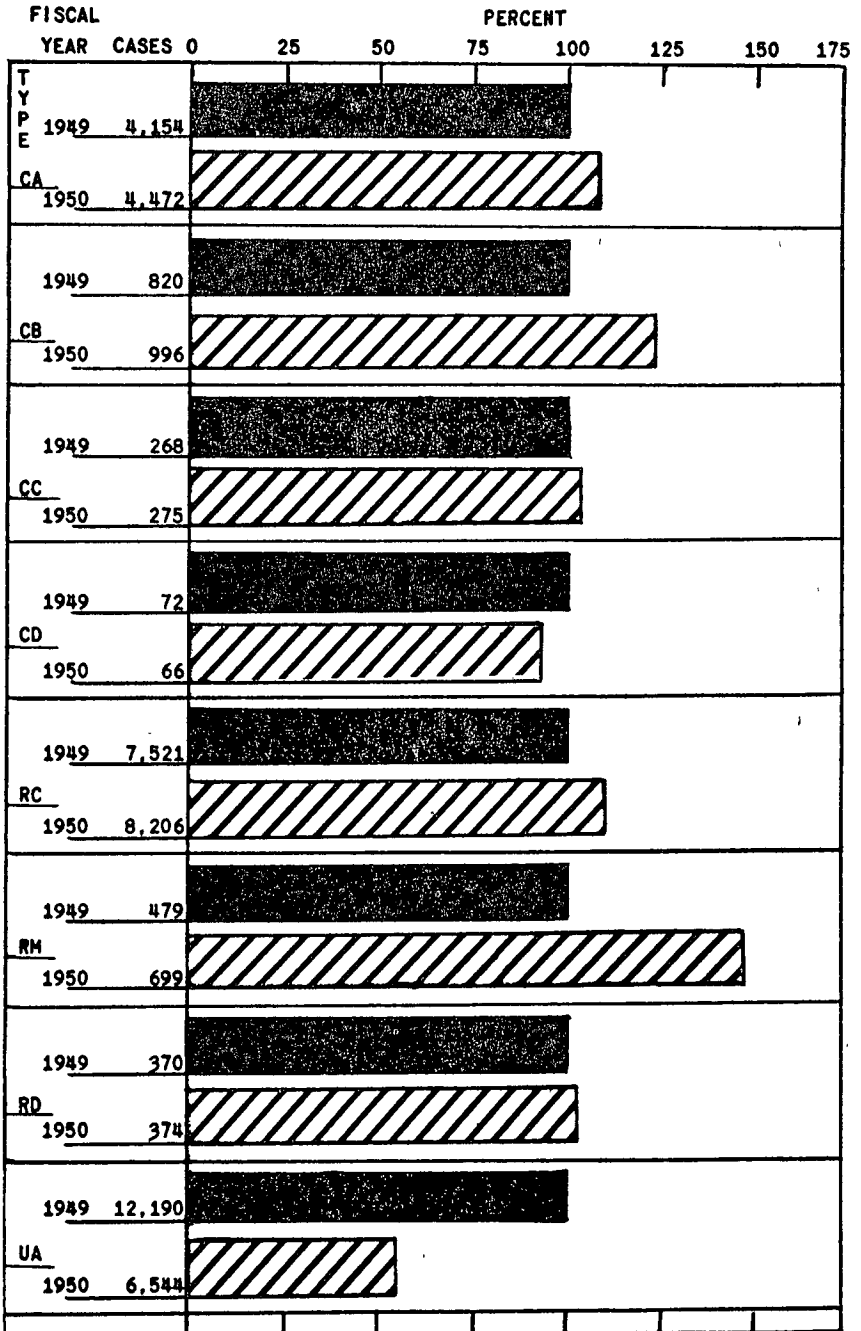


CHART 1.—Comparison of cases filed in fiscal 1949 and 1950 by type of case. 1949=100 percent. (See appendix A for definition of types of cases.)

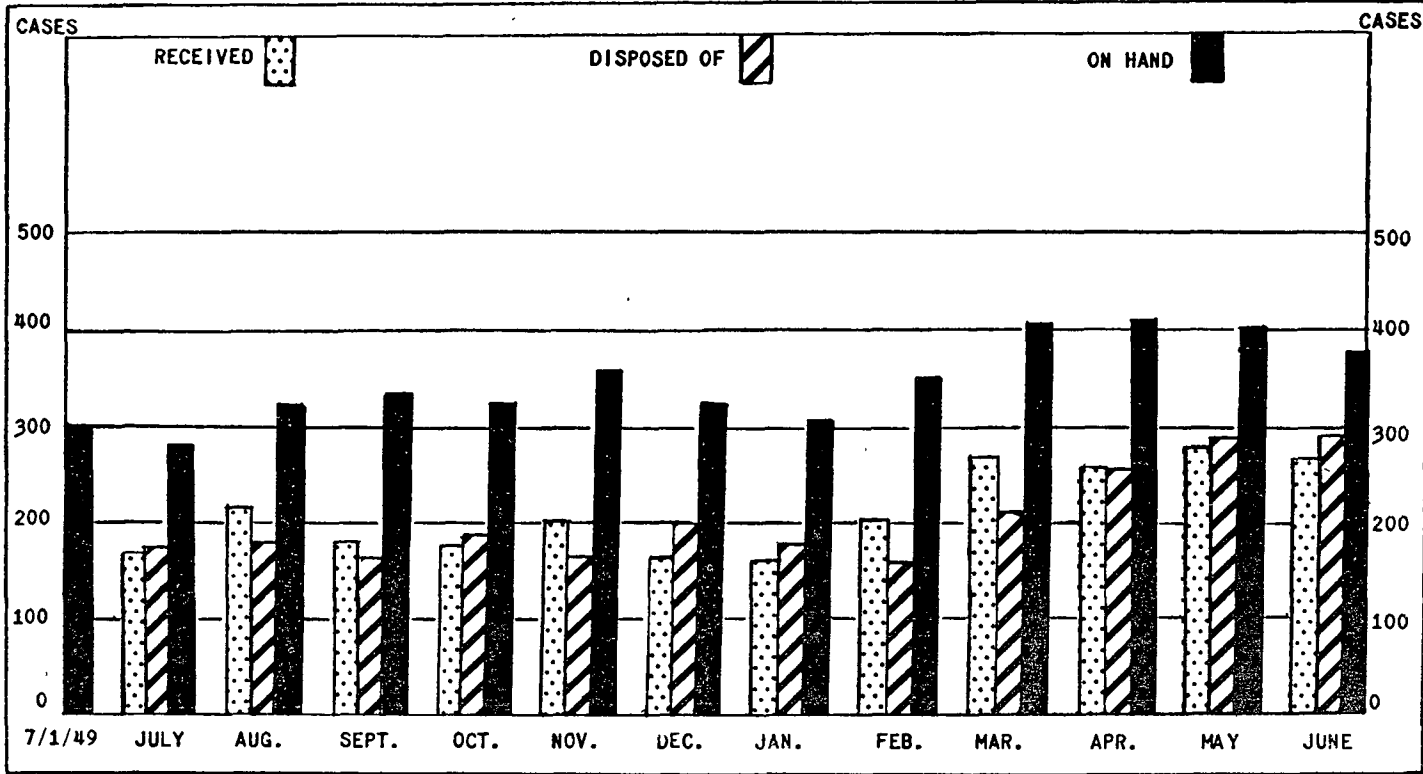


CHART 2.—Total number of charge, representation, and union-security authorization cases received by the Board Members, disposed of by the Board Members, and on hand before the Board Members, July 1, 1949–June 30, 1950.

The Board's output of decisions in representation and unfair labor practice cases showed a decrease of less than 3 percent from the 1949 output. The Board Members issued decisions in 2,900 representation and unfair labor practice cases. This compares with 2,982 such cases decided in fiscal 1949. Decisions were issued in 417 unfair labor practice cases, compared with 484 in the preceding fiscal year; and in 2,483 representation cases, compared with 2,498 decided the preceding year.

Of the unfair labor practice cases decided by the Board, 315 involved charges against employers and 102 involved charges against unions. The Board Members directed representation elections in 1,630 cases, and dismissed petitions for elections in 292 cases.

The Board Members had 376 cases awaiting decision on June 30, 1950, the end of the fiscal year. Of these, 240 were representation cases and 136 were unfair labor practice cases.

a. Jurisdiction of the Board

One of the major problems confronting the Board from time to time since its establishment in 1935 has been the extent to which it should assert its jurisdiction. The courts have held that the Board's authority over representation questions and unfair labor practices "affecting" interstate commerce (except on airlines and railroads and in agriculture) is as broad as the Federal power to regulate labor-management relations.⁸ The Board, however, has long taken the position that it will better effectuate the purposes of the act "not to exercise its jurisdiction to the fullest extent possible under the authority delegated to it by Congress, but to limit that exercise to enterprises whose operations have, or at which labor disputes would have, a pronounced impact upon the flow of interstate commerce."⁹ For many years, the question of where to draw the line necessarily turned upon the facts of each case as it came before the Board for decision. In October 1950, after long study of the pattern emerging from past decisions, the Board issued a series of unanimous decisions,¹⁰ setting forth more precisely the standards to govern its future exercise of jurisdiction. The Board said: "The time has come, we believe, when experience warrants the establishment and announcement of certain standards which will better clarify and define where the difficult line can best be drawn."¹¹

⁸ *N. L. R. B. v. Fainblatt*, 306 U. S. 606.

⁹ *Hollow Tree Lumber Company*, 91 NLRB No. 113.

¹⁰ *WBSR, Inc.*, NLRB No. 110; *Local Transit Lines (Knoxville, Tenn.)*, 91 NLRB No. 96; *The Borden Company*, 91 NLRB No. 109; *Stanslaus Implement and Hardware Co., Ltd.*, 91 NLRB No. 116; *Hollow Tree Lumber Co.*, *supra*; *Federal Dairy, Inc.*, 91 NLRB No. 107; *Dorn's House of Miracles, Inc.*, 91 NLRB No. 82; *The Rutledge Paper Products, Inc.*, 91 NLRB No. 115.

¹¹ *Hollow Tree Lumber Company*, *supra*.

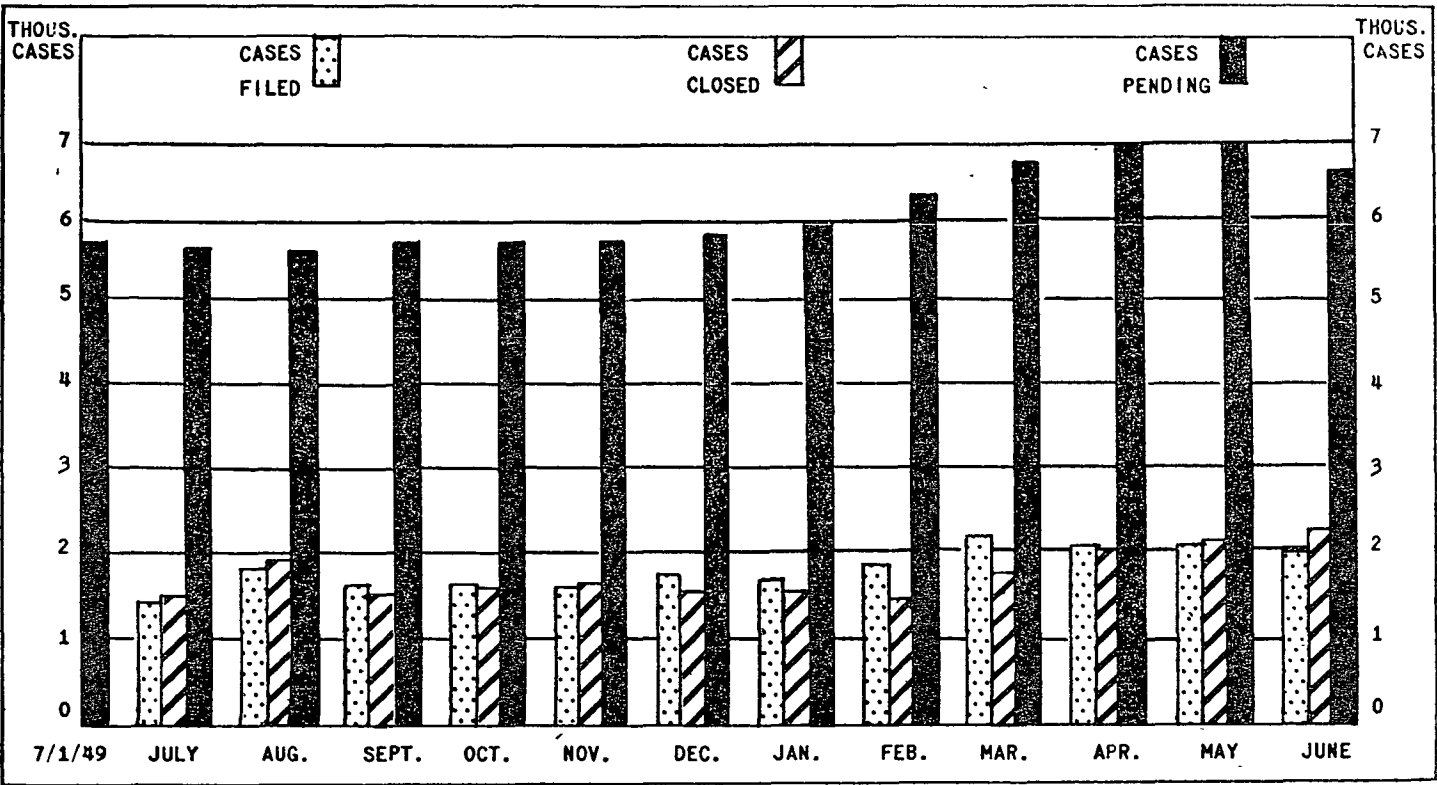


CHART 3.—Total number of unfair practice, representation, and union-shop authorization cases filed, closed, and pending July 1, 1949–June 30, 1950.

In general, the Board declared that it will assert jurisdiction over any enterprise which produces or handles goods destined for out-of-State shipment, or which performs services outside the State in which the firm is located, if the goods or services reach a value of \$25,000 a year. It will assert jurisdiction also over firms receiving directly from out-of-State material valued at \$500,000 a year; or indirectly, \$1,000,000 a year. Jurisdiction will be asserted also over a firm whose dollar volume of business in any of the three categories above or category (4) below does not meet the minimum amounts required in these categories, provided that its volume in each of two or more categories makes a large enough percentage of the minimum amount required in the category so that the *percentages* added together equal 100 or more. Thus, the Board asserted jurisdiction over a company whose sales directly in commerce amounted to 90 percent of the \$25,000 requirement and its purchases in commerce amounted to 15 percent of the minimum direct inflow requirement, because "the total of the two percentages is thus in excess of '100 percent.'" ¹² Of this firm, the Board said in a unanimous opinion: "Interference by a labor dispute with this Employer's interstate business would, in our opinion, exert an impact upon commerce as great as would be exerted in the case of companies having interstate shipments of the value of either of the minimum yardstick figures. . . ." In addition, the Board declared it would continue to assert jurisdiction over the following special categories of business: (1) Instrumentalities and channels of interstate commerce, such as banks,¹³ radio stations,¹⁴ or taxicab companies serving interstate bus and railway terminals;¹⁵ (2) public utility and transit systems; (3) establishments which operate as integral parts of a multistate enterprise, such as chain stores or franchised dealers in new automobiles and trucks;¹⁶ (4) enterprises which furnish goods or services valued at \$50,000 a year to concerns in categories (1) or (2) or concerns doing a \$25,000 out-of-State business; and (5) establishments whose operations substantially affect national defense.

2. Activities of Office of General Counsel

The General Counsel of the National Labor Relations Board has the sole and independent responsibility for investigating charges of unfair labor practices, issuing complaints in cases where his investigators find evidence of violation, and prosecuting the cases upon the complaints before the Board Members. Also, under an arrangement between the

¹² *Rutledge Paper Products, Inc., supra.*

¹³ *Amalgamated Bank of New York, 92 NLRB No. 100.*

¹⁴ *WBSR, Inc., supra.*

¹⁵ *Red Cab, Inc., 92 NLRB No. 18.*

¹⁶ *Baxter Bros., 91 NLRB No. 233.*

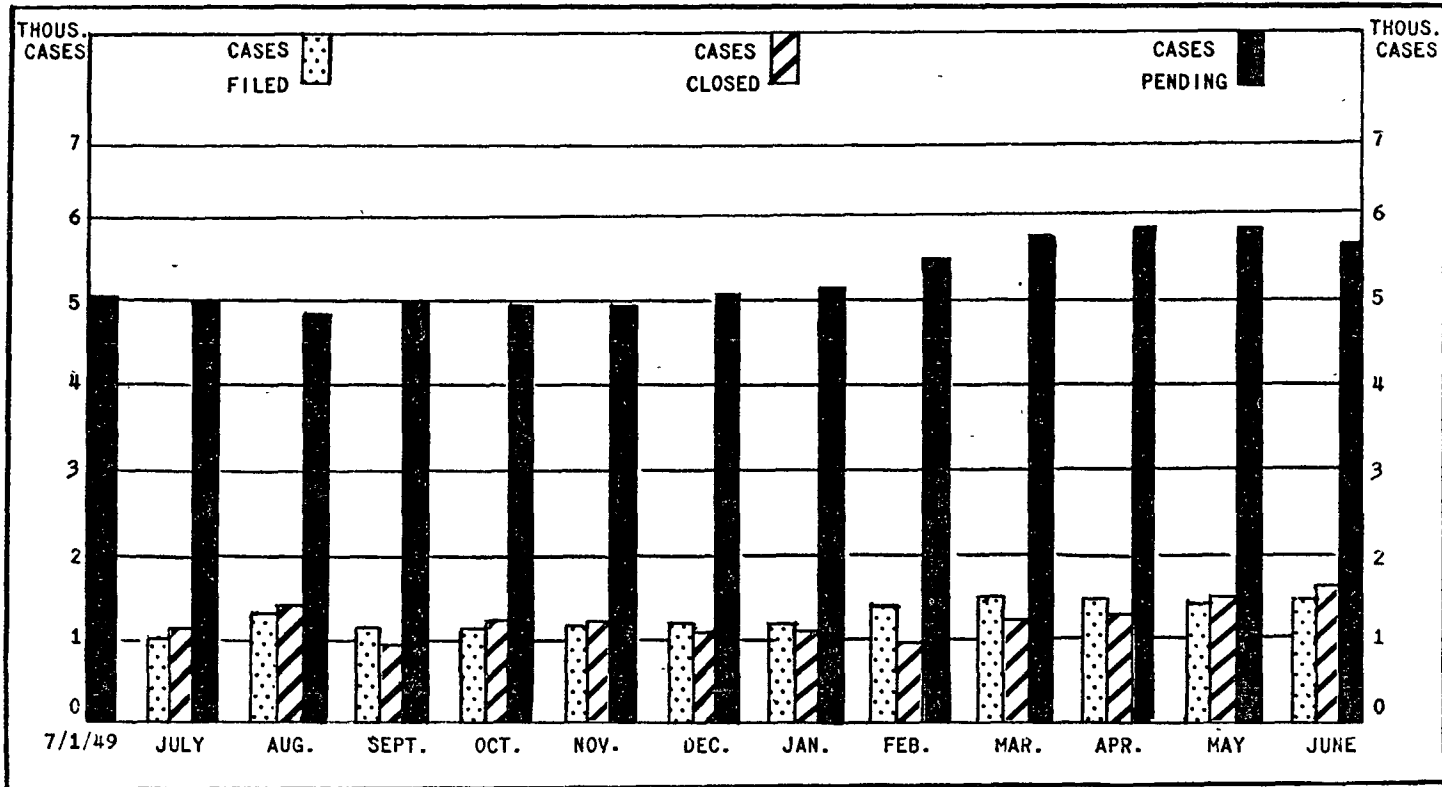


CHART 4.—Total number of unfair practice and representation cases filed, closed, and pending July 1, 1949–June 30, 1950.

five-member Board and the General Counsel,¹⁷ the field staff under the latter's supervision has the task of acting as agents of the Board in the preliminary investigation of representation and union-shop cases. In this capacity, the field staff in the regional offices has authority to effect settlements or adjustments in such cases and to conduct hearings on the issues involved. The five-member Board, however, makes decisions in all contested representation and union-shop cases:

Dismissals by regional directors of charges in unfair labor practice cases may be appealed to the General Counsel; their dismissals in representation and union-shop cases may be appealed to the Board Members.

a. Representation and Union-Shop Cases

The General Counsel's field staff closed 6,906 representation cases during the 1950 fiscal year, most of them pursuant to agreement by all parties. This was approximately 78 percent of the 8,761 cases closed by the agency. The remainder of the representation cases was closed by action of the Board Members.

The field staff conducted hearings in a total of 2,258 representation cases. This was an increase of 24 percent over the 1,821 cases in which hearings were conducted during the 1949 fiscal year.

A total of 11,322 elections of all types was conducted among employees during the 1950 fiscal year. Of these, 9,302, or 82.2 percent, were conducted on the basis of agreement of the parties. A total of 5,731 representation elections, to determine the employees' choice of bargaining representatives, was held. The parties agreed to the holding of 4,156 of these elections, or approximately 72.5 percent. Union-shop authorization polls numbered 5,591, of which 5,146, or 92 percent, were held pursuant to agreement of the parties.

Representation petitions were dismissed by regional directors in 478 cases, and they were withdrawn by the parties before Board decision in 2,185 cases.

b. Unfair Labor Practice Cases

In the capacity of prosecutor of unfair labor practices, the General Counsel's staff closed 5,098 unfair practice cases of all types without the necessity of formal action. This was 90.8 percent of the 5,615 unfair practice cases closed by the agency during the 1950 fiscal year. Of the cases closed without formal action, 2,637 were withdrawn by the charging party; and 1,324 were adjusted. Regional directors dismissed 1,137, or approximately 20 percent. About the same percentage of dismissals prevailed in both charges against employers and charges against unions.

¹⁷ See amended Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board (effective October 10, 1950), 15 Fed. Reg. 6924 (published October 14, 1950).

Formal complaints charging either an employer or a labor organization with unfair labor practices were issued by the General Counsel in 708 cases during fiscal 1950. This was an increase of 14.7 percent over the 617 cases in which complaints were issued during the 1949 fiscal year. In 1950, complaints were issued against employers in 552 cases, and against unions in 156 cases. The complaints against unions constituted 22 percent of all complaints issued. This corresponds approximately to the percentage of cases which were filed against unions. The 1,337 cases in which charges were leveled at labor organizations constituted 23 percent of the 5,809 cases in which unfair practice charges were filed during fiscal 1950.

c. Injunctions¹⁸

Section 10 (1) of the amended act requires the agency to seek a Federal district court injunction against a labor organization charged with secondary boycott or certain other specified unfair labor practices whenever there is "reasonable cause to believe" that the charge is true. The act in section 10 (j) confers discretion to seek Federal district court injunctions against either a labor organization or an employer that has been charged in a formal complaint with any other type of unfair labor practice. Injunctions under these sections may run only until the Board issues a final decision in the case. Section 10 (e) and (f) authorizes the Board, after its final decision in a case, to seek a temporary injunction in a United States court of appeals against either an employer or a union to prevent attempts to circumvent or evade the effect of the Board's order while the Board is seeking court enforcement of its decision or the order is awaiting court review.

During the 1950 fiscal year, the General Counsel petitioned various Federal courts for a total of 30 injunctions; this compares with 33 injunctions sought during the 1949 fiscal year. Of the injunctions sought during the 1950 fiscal year, 28 were against labor organizations and 2 against employers. Of those sought against labor organizations, 14 were granted, 4 denied, 3 settled, and 1 withdrawn. At the close of the fiscal year, 6 were still pending.

Four injunctions were sought against unions under the discretionary provisions of the act. Of these, three were granted, one by consent of the labor organization involved.

Of the two injunctions sought against employers, one was granted and one case was settled. The injunction granted against an employer was sought under section 10 (e) of the act to prevent a company from disposing of its assets while proceedings were pending for enforcement of a Board unfair labor practice order against it.

¹⁸ The General Counsel's activities in seeking injunctions under sec 10 (j) and (1) of the act are discussed in greater detail in chapter VII. The injunction sought under sec. 10 (e) is discussed in chapter VIII.

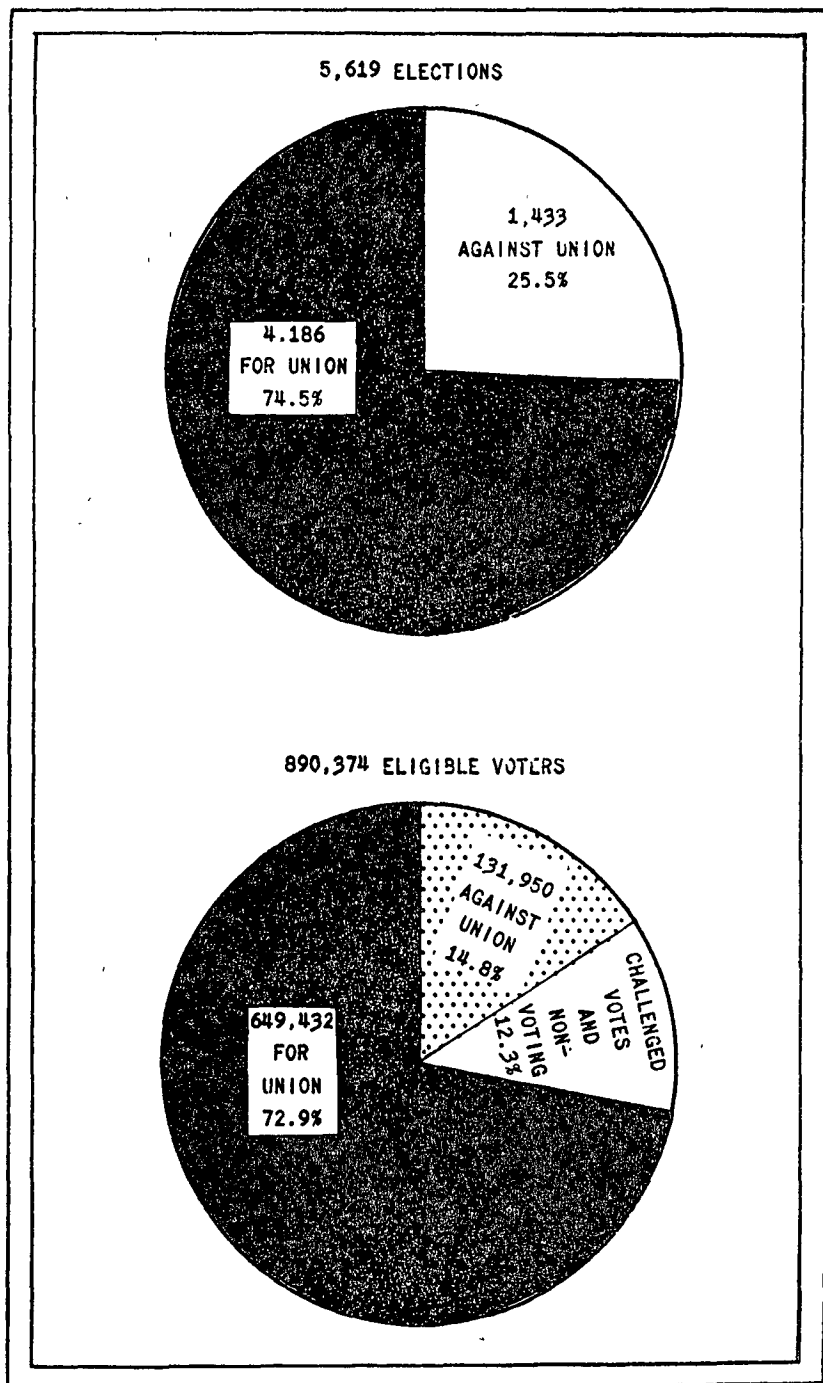
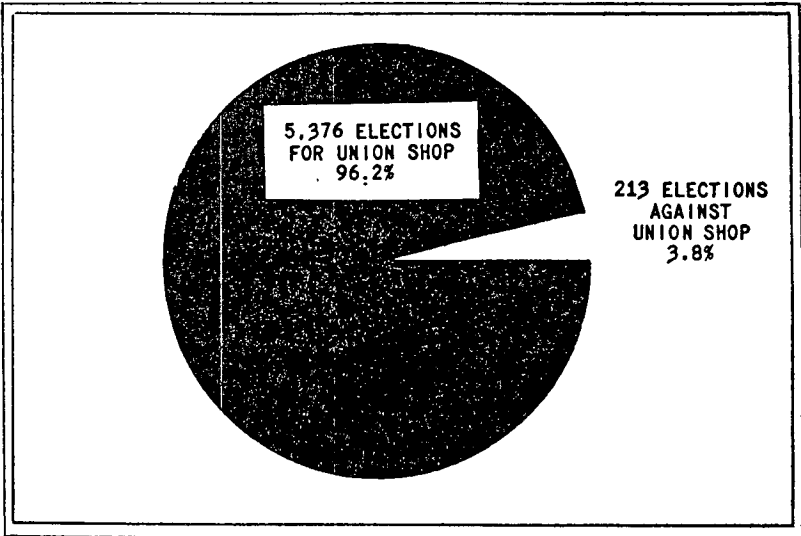


CHART 5.—Collective bargaining elections held during the fiscal year 1950.

5,589 ELECTIONS HELD



ELIGIBLE VOTERS, VOTES CAST, AND PERCENTAGES

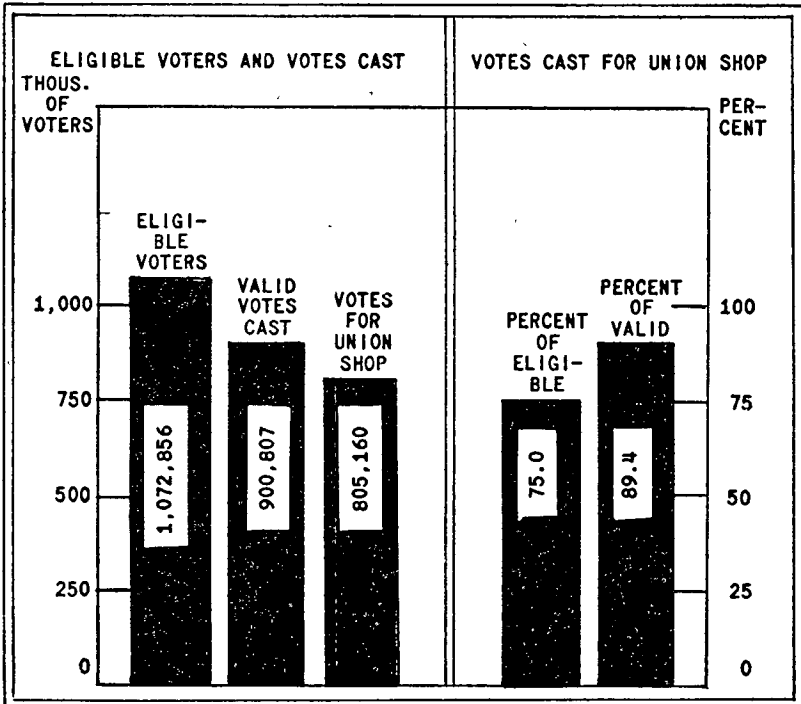


CHART 6.—Union-security authorization elections, July 1, 1949–June 30, 1950.

3. Division of Trial Examiners

At the beginning of the 1950 fiscal year, the Board's division of trial examiners had a staff of 40 examiners. During the year, it was increased to 51.

The trial examiners, who conduct hearings on behalf of the Board in unfair labor practice cases, issued 281 intermediate reports and recommended orders setting forth their findings and recommendations in 350 cases during fiscal 1950.¹⁹ This was an increase of 18 percent over 237 reports covering 328 cases issued during the 1949 fiscal year. In addition, trial examiners issued 15 orders of dismissal, which, like intermediate reports, are subject to appeal to the Board Members.

In 41 cases, the trial examiner's recommended order was adopted as a Board order because the parties filed no exceptions. Of these cases, 31 involved charges against employers and 10 involved charges against unions.

A total of 390 hearings on the evidence in 472 unfair labor practice cases was conducted by the trial examiners.

4. Representation Elections and Results

Representation elections conducted by the Board during fiscal year 1950 were marked by two principal changes when compared with those conducted during the preceding year: (1) A substantial increase in the number of employees in the units voting, and (2) an increase in the percentage of employees voting in favor of collective bargaining representation. There also was an increase in the number of elections held.

During fiscal 1950, the Board conducted 5,731 representation elections of all types, in which 899,848 employees were eligible to vote. This was an increase of only 1.5 percent over the 5,646 elections held in fiscal 1949, but the number of employees in the voting units represented an increase of 48 percent over the 607,534 employees eligible to vote in the 1949 elections. The number of employees per election in 1950 averaged 157 compared with an average of 107 in 1949. There were 142 elections in voting units which included 1,000 or more employees. In 10 of these elections, more than 10,000 employees were eligible to vote. The largest single voting unit comprised 47,000 employees.²⁰

Of 789,867 employees casting valid ballots in all 1950 representation elections, 653,753, or 83 percent, voted in favor of union representation. This compares with 73 percent in the 1949 elections.

¹⁹ In a number of instances, two or more cases were consolidated and evidence on them taken at the same hearing.

²⁰ *Southern Bell Telephone Co*, Case No. 10-RM-31.

Collective bargaining representatives were selected in 4,223 of the 1950 elections, or approximately 73 percent. However, the units selecting representatives comprised 759,038 employees, which was approximately 84 percent of the employees in all voting units. These figures would suggest that labor organizations generally were more successful in obtaining bargaining rights in large units than in small ones.

Unions affiliated with the American Federation of Labor won 2,113 representation elections during fiscal 1950. This was 63.8 percent of the 3,312 elections in which A. F. L. unions participated. In fiscal 1949, A. F. L. unions won approximately 62 percent.

Unions affiliated with the Congress of Industrial Organizations won 1,222 representation elections during fiscal 1950. This was 57.6 percent of the 2,122 elections in which they participated. In 1949 elections, C. I. O. unions won approximately 55 percent.

Unaffiliated unions won 888 representation elections. This was 59 percent of the 1,506 in which they participated. In fiscal 1949, they won approximately 72 percent.

5. Results of Union-Shop Authorization Polls

The agency conducted 5,591 polls to determine whether employees wished to authorize their union to negotiate a union-shop contract requiring all employees to join the union as a condition of continued employment. This compared with 15,074 such polls conducted in fiscal 1949.

Negotiation of union-shop contracts was authorized by the employees in 5,377 polls, or 96.2 percent of those conducted. A total of 1,072,917 employees was eligible to vote in these polls, and units comprising 1,045,162 employees (97 percent of those eligible) authorized the union shop. Of the 900,866 valid ballots cast, 805,189, or 89.4 percent, voted in favor of the union shop.

Unions affiliated with the American Federation of Labor won union-shop authorizations in 3,231 polls, or 95.5 percent of the 3,384 in which they participated. A total of 312,049 employees was eligible to vote in these polls, and the A. F. L. unions polled 251,606 votes.

Unions affiliated with the Congress of Industrial Organizations received union-shop authorizations in 1,192 polls, or 97.4 percent of the 1,223 polls in which they participated. In these polls, 594,932 employees were eligible to vote, and the C. I. O. unions polled 434,131 votes.

Unaffiliated unions received union-shop authorizations in 954 polls, or 97 percent of the 984 in which they participated. A total of 165,936 was eligible to vote in these polls, and the unaffiliated unions polled 119,452 votes.

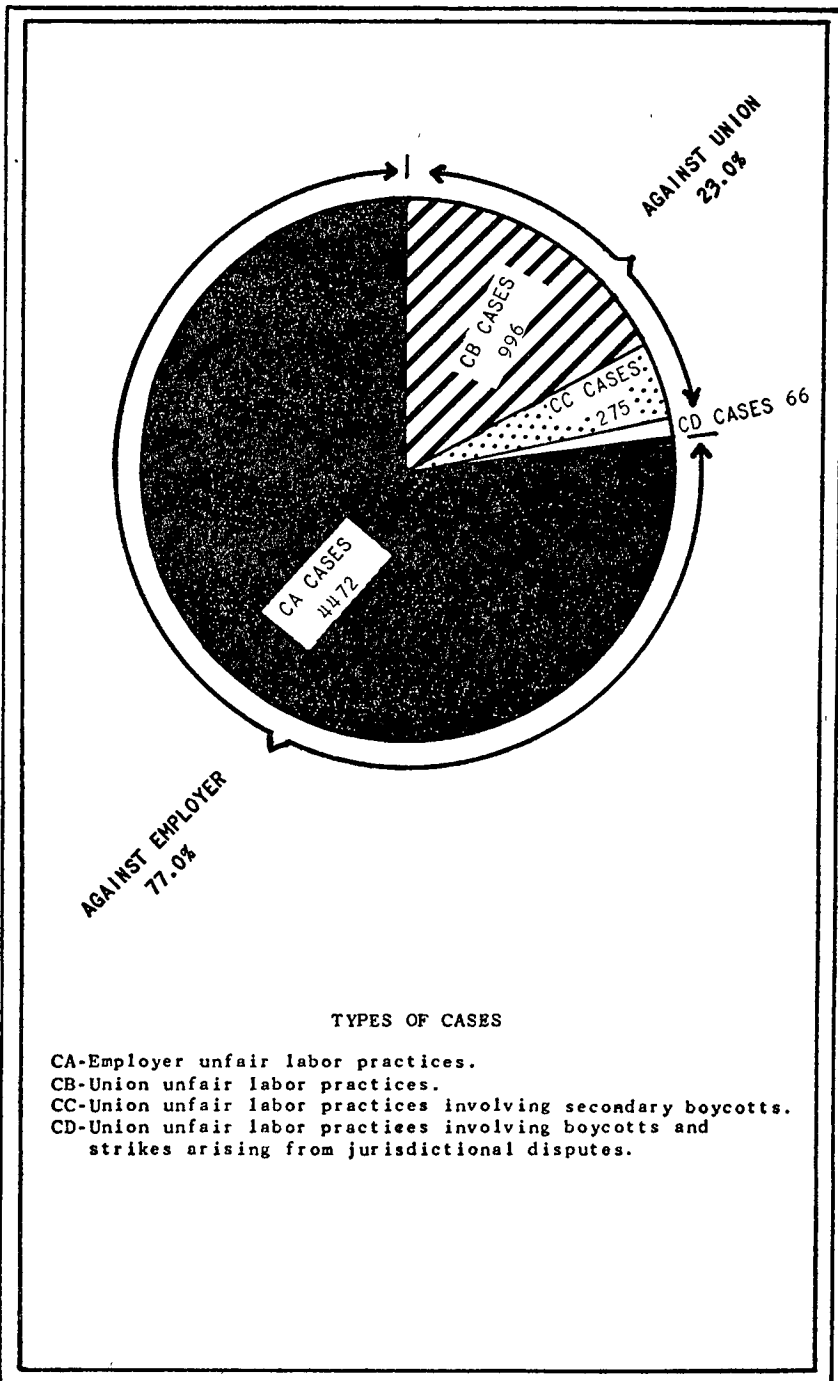


CHART 7.—Unfair labor practice cases filed against employers and unions, July 1, 1949-June 30, 1950.

6. Types of Unfair Labor Practice Charges

Of the 5,809 unfair practice cases filed during the 1950 fiscal year, 4,472, or approximately 76.9 percent, involved charges against employers. In the remaining 1,337 cases, charges of unfair labor practices were made against unions.

The most common charge against employers, as in earlier years, was that of discriminating against employees because of their self-organization activities, union membership, or lack of membership. This was charged in 3,213 cases, or 72 percent of the cases against employers.²¹ The second most common charge against employers was refusal to bargain with the representative chosen by a majority of their employees. This was charged in 1,309 cases, or approximately 29.3 percent. In 570 cases, employers were accused of interfering in the formation or the operation of a labor organization among their employees, or of dominating such an organization. This allegation was made in 12.7 percent of the cases against employers.

The most common charge against labor organizations also continued to involve discrimination in employment. In 778 cases, unions were accused of causing or attempting to cause an employer to discriminate against employees because of their union membership or lack of it. This allegation was made in 58.2 percent of the cases against unions. The next most common charge against unions was restraint or coercion of employees. This was alleged in 691 cases, or 51.7 percent. The third most common charge against labor organizations was that of illegal secondary boycott. This was alleged in 238 cases, or approximately 17.8 percent of the cases against unions. Unions were charged with refusal to bargain in 170 cases, or 12.7 percent.

Unions filed 3,250 of the cases against employers, while individuals filed 1,222. Of the cases against unions, 595 were filed by employers, and 615 by individuals.

7. Remedial Actions in Unfair Practice Cases

In remedying unfair practices of both unions and employers, the Board continued to employ the same remedies it has used in earlier years. Among the most commonly used remedies were:

- (1) To order a union or an employer, as the case may be, to cease and desist from the acts found illegal, and similar or related conduct;
- (2) To post notices stating that the violations will not be repeated in the future;
- (3) To order collective bargaining;
- (4) To order disestablishment of a labor organization found to be dominated by employer;

²¹ The total of percentages is more than 100 percent because violations of more than one section of the act often are charged in one case.

- (5) To order the employer to cease recognizing a union which the employer is found to have supported or assisted illegally;
- (6) To order the reinstatement of employees found to have been discriminatorily discharged or demoted; and
- (7) To order an employer or a union, or both, jointly and severally, to reimburse an employee for any wages he may have lost as a result of illegal discrimination.

During the 1950 fiscal year, 2,272 employees received awards of back pay totaling \$1,090,280 to reimburse them for loss of wages suffered as a result of discrimination. This compares with 1,994 employees receiving back pay totaling \$605,940 during the 1949 fiscal year. Reinstatement was offered to 2,111 as a result of Board action in discrimination cases.

Collective bargaining was ordered in 236 cases involving charges against employers and in 15 cases involving charges against unions. Employers were ordered to withhold recognition or other assistance from unions found illegally assisted in 233 cases. Employer-dominated organizations were ordered disestablished in 20 cases.

8. Non-Communist Affidavits

In order to have access to the processes of the agency, a labor organization is required by the act to file an affidavit by each of its officers swearing that he is not a Communist and does not support or advocate a subversive organization.²² The act also requires a labor organization to file certain annual financial reports with the Department of Labor and distribute the reports to its members. An officer of a labor organization must file a new non-Communist affidavit each year, if the union is to be entitled to continue using the processes of the agency. If any officer is replaced, his successor must file an affidavit. Details of the Board's rulings on the application of the filing requirements of the act are set forth in chapter II.

At the close of the 1950 fiscal year, 213 national and international unions had qualified to use the services of the Board by satisfying the filing requirements of the act. To qualify these unions, a total of 2,522 officers had non-Communist affidavits on file. Nineteen other national unions had made filings which were not entirely complete. Of the unions in compliance with the filing requirements, 107 were affiliates of the American Federation of Labor, 33 were affiliates of the Congress of Industrial Organizations, and 73 were unaffiliated.

²² The text of the affidavit for non-Communist union officers is as follows: "The undersigned, being duly sworn, deposes and says. (1) I am a responsible officer of the union named below; (2) I am not a member of the Communist Party or affiliated with such party; (3) I do not believe in, and I am not a member of nor do I support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods." Filing of a false or fraudulent affidavit is punishable under section 35 (A) of the criminal code.

A total of 10,985 local unions was in full compliance on June 30, 1950. To qualify these unions, officials holding a total of 99,577 union offices had current non-Communist affidavits on file. Of the locals in compliance, 5,948 were affiliated with the American Federation of Labor, 2,534 with the Congress of Industrial Organizations, and 2,503 were unaffiliated. In addition, 359 local unions had completed their own filings but were not in compliance because their parent national or international union had failed to complete compliance.

Altogether, 22,697 local unions had met the affidavit and filing requirements applicable to them, at one time or another between the effective date of the amended act, August 22, 1947, and June 30, 1950. As of June 30, a total of 11,353 local unions had permitted their filings of affidavits to lapse. All told, up to June 30, 1950, 204,420 officers in local, national, and international unions had filed affidavits that they were not Communists or advocates or supporters of subversive movements.

The Filing Requirements¹

THE act provides that a labor organization must file certain documents and statements, including a non-Communist affidavit for each of its officers, before the Board may process any case brought by the organization.² The filing requirements must be complied with before the Board may act on any petition by a labor organization for a Board election or before the Board may certify the organization as a collective bargaining representative of employees. The filing requirements also must be met before a complaint may be issued upon any charge of unfair labor practices brought by a labor organization. The affidavits and certain of the reports must be renewed annually.

Many of the principles governing the application of these provisions have been laid down by the Board in the two prior years since passage of the amended act.³ During the past fiscal year, the Board has reaffirmed a number of these principles and a few have been amplified.

In numerous cases, the Board reiterated its long-established rule that compliance with the filing requirements is a matter exclusively for administrative determination by the Board, and not a subject for litigation by the parties in either a representation hearing or an unfair labor practice case.⁴ In the *Vulcan Forging* case,⁵ the Board ruled

¹ This discussion is limited to the Board's rulings and actions relating to the provisions of sec. 9 (f), (g), and (h). Discussion of the rulings of the courts on these provisions will be found in chapters V and VI. Statistical data relating to the compliance of labor organizations with these provisions is set forth in chapter I, pp 17-18

² These provisions are contained in sec. 9 (f), (g), and (h). Sec. 9 (f) and (g) requires that labor organizations file with the Secretary of Labor copies of their constitution and bylaws, and information as to the identity and salaries of their officers, finances, and various practices. They also require unions to furnish annual financial reports to their members. Sec. 9 (h) requires that each officer of a union seeking to bring a case before the Board shall file with the Board an affidavit stating "that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods." The section provides further that: "The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits."

³ See Fourteenth Annual Report (1949) pp. 13-17; Thirteenth Annual Report (1948) pp. 21-25.

⁴ *The Baldwin Locomotive Works*, 76 NLRB 922; *Pauls Valley Milling Co.*, 82 NLRB 1266; *The Ann Arbor Press*, 85 NLRB 58; *South Georgia Pecan Shelling Co.*, 85 NLRB 591; *Western Electric Co., Inc.*, 85 NLRB 563; *Sun Shipbuilding & Dry Dock Co.*, 86 NLRB 20; *Memphis Steam Laundry-Cleaner, Inc.*, 86 NLRB 1094; *Metropolitan Life Insurance Co.*, 86 NLRB 428; *Porto Rico Container Corp.*, 89 NLRB No. 205. See also *Pottatch Forests, Inc.*, 87 NLRB 1193; *General Armature & Manufacturing Co.*, 89 NLRB No. 50; *Ray Smith Transport Co.*, 89 NLRB No. 134; *Illinois Bell Telephone Co.*, 88 NLRB No. 191; *Peerless X-ray Laboratories & Manufacturing Corp.*, 89 NLRB No. 185; *Tanners Association of Fulton County, Inc.*, 87 NLRB 211.

⁵ 85 NLRB 621.

that the trial examiner properly granted the General Counsel's motion to strike portions of the respondent's answer alleging noncompliance by the charging union. The Board held also that parties are not entitled to the evidence on which the Board determined a union's compliance.⁶

The Board also reaffirmed its ruling that it is not the function of the Board to investigate the truth or falsity of affidavits filed under section 9 (h) because the responsibility for such investigations is conferred by the statute upon the Department of Justice.⁷

The Board has held that the provisions of section 9 (f), (g), and (h) concern solely the rights and privileges of labor organizations⁸ and that the filing requirements of the act are not applicable to individuals.⁹ Consequently, the Board has concluded that, barring "fronting," its power to issue a complaint is not affected by the fact that an individual filing an unfair labor practice charge in his own behalf has been assisted by,¹⁰ or was a member of,¹¹ or even an officer of,¹² a noncomplying union.

1. Rules Amended

A major problem with which the Board dealt during the past year was the possible abuse of its processes by labor organizations which might seek to circumvent the filing requirements by various stratagems or evasions. One of the Board's principal actions aimed at safeguarding its processes against such abuse took the form of amendments to its Rules and Regulations and its Statements of Procedure.¹³ To forestall evasion by the failure of a labor organization to list all its officers in the filing of non-Communist affidavits, the Board set forth in the amendments a definition of "officer" as used in section 9 (h). At the same time, the Board established the rule that it may require non-Communist affidavits from persons other than those designated as officers by a union in its constitution, if the Board believes that their names were omitted by the union for the purpose of circumventing section 9 (h). In general, however, the Board continued to accept the list of officers set forth in the constitution of labor organizations as complete for the purposes of determining compliance unless it had caused to suspect evasion.

⁶ *Grocer's Biscuit Co., Inc.*, 85 NLRB 603.

⁷ *General Baking Co.*, 90 NLRB No 90 See Fourteenth Annual Report (1949) p. 15.

⁸ *Andrews Company*, 87 NLRB 379.

⁹ *The Hoffmann Packing Co., Inc.*, 87 NLRB 601.

¹⁰ *Augusta Chemical Co.*, 83 NLRB 53.

¹¹ *Globe Wireless Ltd.*, 88 NLRB No. 211.

¹² *Luzerne Hide & Tallow Co.*, 89 NLRB No. 119.

¹³ Additions to sec. 102.13 of the Rules and Regulations, Series 5, and to sec. 101.3 of the Statements of Procedure, as amended August 18, 1948, published in Federal Register of December 2, 1949.

The amendment of the Board's Rules and Regulations was an outgrowth of its experience in a case in which the president of a union, which was seeking to comply in order to obtain a place on a representation ballot, resigned and took a newly created position of "national administrative director" but did not file a non-Communist affidavit.¹⁴ The union filed non-Communist affidavits executed by the four officers listed in its constitution and an affidavit stating that these were the sole officers of the union, but the Board believed that this fell short of full compliance. It therefore ordered the union to show cause why it should not be declared in noncompliance and denied a place on the ballot, unless an affidavit were filed by the "national administrative director." The Board's order pointed out that, while no amendment to the union's constitution was made to create the new position, the executive board of the union, in designating the former president to the new position, had announced that his appointment "well assures our members of his continued service as a leader of" the union. Therefore, the Board said, he would be presumed to be an officer of the union unless it were shown otherwise. The union failed to make the showing asked or to submit an affidavit for the administrative director in time to participate in the first of three elections in which it sought to participate. Later, however, a non-Communist affidavit executed by the administrative director was filed and the union was declared to be in compliance.

The question of the possible concealment of union officers arose in two cases—*Grower-Shipper Vegetable Association of Central California*¹⁵ and *Columbia Broadcasting System, Inc.*¹⁶ In the *Grower-Shipper* case, the Board held that the union was in compliance with section 9 (h) where its officers, who were elected by the entire membership, had filed the required affidavits, although no affidavits had been filed by the officers of the union's geographic districts who were elected by the members in the respective districts.¹⁷ In the *Columbia Broadcasting* case, it was held that a parent organization was in compliance where all officers designated as such in its constitution had filed affidavits. It was found immaterial that the constitution did not list as officers the members of the organization's "council." The Board based this ruling on the fact that the sole function of the

¹⁴ *Alaska Salmon Industry, Inc.*, Case No. 19-RC-327 (a consent election case, not reported in the printed volumes of Board decisions). The rule to show cause issued August 3, 1949. The union involved was the Food, Tobacco, Agricultural and Allied Workers' Union of America, commonly known as FTA.

¹⁵ 21-RC-1231, May 26, 1950.

¹⁶ 2-UA-5588, May 31, 1950.

¹⁷ See also *Newport News Children's Dress Co.*, 89 NLRB No. 53, where the petitioner's geographic "district" was found to be a mere servicing arm of petitioner rather than a "labor organization," and thus not required to comply with sec. 9 (f), (g), and (h). But a central labor council was held to be a "labor organization"; *Spokane Building and Trades Council, etc.* (*Kimsey Manufacturing Co.*), 89 NLRB No. 141.

council was to manage the affairs, funds, and property of the organization's affiliates, and the failure to list the members of the council apparently was not due to a desire to evade or circumvent the filing requirements of section 9.

2. "Fronting" for Noncomplying Unions

Another device for possible evasion of the filing requirements is that of a noncomplying labor organization using an individual or a complying organization as a "front" for bringing cases before the Board and achieving representative status clandestinely. Early in the operation of the amended act, the Board ruled that it would not permit a noncomplying union to circumvent the filing requirements by acting through an individual¹⁸ or through a complying labor organization.¹⁹ The Board continued to apply this rule so as to prevent even the possibility of such evasion.

In *Tanners Association of Fulton County, Inc.*,²⁰ the Board held that an allegedly independent union which intervened in a representation proceeding was "fronting" for a noncomplying international with which it had previously been affiliated. The intervenor in this case disaffiliated from the noncomplying international and reconstituted itself as an independent union upon the international's advice. It continued to receive financial and other assistance from the international, took over all the assets and liabilities of the former local, retained the same personnel on major committees as the local had, and occupied the former local's offices.

In another case, the petitioning union was found not to be "fronting" for a noncomplying union, notwithstanding the fact that several of its active leaders had formerly been outspoken adherents of the noncomplying union and that it started circulation of literature when the noncomplying union ceased to do so. In this case, the two unions involved were affiliated with rival parent federations. The petitioner's printing expenses were paid by its international, petitioner had requested recognition, and there was no indication that petitioner would not in itself represent the employees involved.²¹ Nor was "fronting" found where the petitioner had been a bona fide labor organization for 18 years and there was no evidence that it could not, or would not, represent certain employees who had been members of a noncomplying union.²² Nor did the Board find that a petitioning inter-

¹⁸ *Campbell Soup Co.*, 76 NLRB 950.

¹⁹ *Rub-R Engraving Co.*, 79 NLRB 332, and cases cited in Fourteenth Annual Report (1949) p. 16.

²⁰ 87 NLRB 211.

²¹ *Mine Safety Appliances Co.*, 85 NLRB 290.

²² *John Dritz & Sons*, 88 NLRB No. 262.

national union was "fronting" for a noncomplying local union where the local was not a functioning labor organization and the international was the real party in interest.²³ In this case, although a charter for the local had been issued, it was held in abeyance. The local had no officers, had issued no membership cards, and had collected no dues.

3. Compliance in Discrimination Cases

The question of whether an individual is precluded from filing charges of discrimination because of his relationship to a noncomplying union also was raised in some cases involving violations of section 8 (a) (1) and (3). In these cases, employers charged with violations contended either that the individual filing the charge was acting as a "front" for a noncomplying union or that the reinstatement of the individual employees, if ordered, would indirectly benefit a noncomplying union.²⁴ The Board uniformly rejected these contentions.

In another case,²⁵ the Board upheld the right of four officials of a noncomplying union to file charges as individual employees alleging that they had been discriminated against in violation of section 8 (a) (3). The Board, in its opinion, pointed out that individual employees, and not labor organizations, benefit primarily from an order under section 8 (a) (3). The Board said:

This policy gives full effect to the purposes of Congress to deny to noncomplying labor organizations the benefits of the amended Act while keeping intact the protection against employer reprisal for union activity, protection which is extended to employees both under the initial and the amended Act alike * * * this is consistent with the language of the amended Act which imposes restrictions on access to the processes of the Board only upon labor organizations as such and not upon individuals.

In line with this policy, the Board held that the trial examiner properly excluded evidence purporting to show that the charging party, an attorney, had filed the charges which alleged 8 (a) (1) and (3) violations, at the request of, and on the basis of evidence furnished by, a noncomplying union.²⁶ It was held immaterial that the union might derive an incidental benefit from a finding of unfair labor practices. The Board came to the same conclusion where the charges had been filed by an employee in behalf of himself and other

²³ *United Aircraft Corp., Chance Vought Aircraft Division*, 85 NLRB 209. See also *Auburn Rubber Corp.*, 85 NLRB 545, and *Stauffer Chemical Co. of Texas*, 85 NLRB 595, where an election was directed in a decertification proceeding although the contention had been made that the petitioning union was a "front" for a noncomplying union.

²⁴ *Olin Industries, Inc., Winchester Repeating Arms Co. Division*, 86 NLRB 203; *Aside*, *Inc.*, 88 NLRB No. 101.

²⁵ *Lucerne Hide & Tallow Co.*, 89 NLRB No. 119.

²⁶ *Olin Industries, Inc., Winchester Repeating Arms Co. Division*, 86 NLRB 203.

individual employees.²⁷ Nor is an attorney precluded from filing charges of unlawful discrimination on behalf of individual employees because he also acts as counsel for a noncomplying union.²⁸

4. Procedural Problems

The matter of compliance also raised some procedural problems in unfair labor practice cases. In one case, the proceeding was challenged on the ground that the charging union was not in compliance at the time it filed the charge. The Board ruled that the statute required only that, in the case of a complaint based upon charges filed by a labor organization, the organization shall be in compliance at the time the formal complaint is issued.²⁹

The transition from the Wagner Act, which had no such filing requirements, also was still presenting some questions during the past year. In one case, the Board held that a complaint issued prior to the effective date of the 1947 amendments did not have to be dismissed because of noncompliance of the charging party.³⁰ In another case, the fact that the charging union, prior to the effective date of the act, but after initiating the case, had changed its name and affiliation raised a question. Because the new union was in compliance at the time of the hearing, the Board declined to dismiss the complaint despite the noncompliance of the union which had filed the original charge.³¹ The Board, in still another case,³² held that it was not precluded from adjudicating an employer's alleged refusal to bargain with a union which was presently in compliance, although the regional director had investigated the union's majority status shortly before the filing requirements became effective.

5. Compliance in Bargaining Cases

The question of compliance arises whenever the Board is about to issue an order to bargain based upon a finding that an employer has unlawfully refused to bargain with the representative of a majority of his employees, in violation of section 8 (a) (5).³³ Ordinarily in such cases the charging union has maintained full compliance, but in one case during the past fiscal year, it happened that an employer was found to have refused to bargain with an international union whose

²⁷ *Alside, Inc.*, 88 NLRB No. 101.

²⁸ *B. F. Goodrich Co.*, 88 NLRB No. 117.

²⁹ *H. & H. Manufacturing Co., Inc.*, 87 NLRB 1373.

³⁰ *E. A. Laboratories, Inc.*, 88 NLRB No. 140.

³¹ *Illinois Bell Telephone Co.*, 88 NLRB No. 191.

³² *McMullen Leavens Co.*, 89 NLRB No. 195.

³³ The matter of compliance of a union at the time it makes a request upon the employer to bargain is discussed under Refusal to Bargain, chapter IV.

local in the employer's plant had not complied. In this case,³⁴ the Board issued a conditional order for the employer to bargain with the international union if the local complied with the filing requirements within 30 days. In another case where an international and all its locals in the plants of an employer were joint parties to contracts covering a company-wide bargaining unit, the question arose as to whether all locals had to be in compliance before an order to bargain could be issued based upon charges filed by one of the locals. The Board ruled that it was sufficient that the charging local and its parent international be in compliance.³⁵ The compliance status of the other locals which were representing other employees of the employer was held to be immaterial.

A union's noncompliance, however, does not prevent the Board from ordering it to bargain in good faith upon request of an employer. In the *Chicago Typographical Union* case,³⁶ the Board held that a union found to have refused to bargain in violation of section 8 (b) (3) may not assert its own noncompliance as a bar to an order directing it to bargain collectively upon the employer's request.

6. Compliance in Representation Cases

During the past year, the Board again has had to pass upon a variety of questions regarding compliance with the filing requirements on the part of unions seeking to participate in representation proceedings.³⁷

The Board has continued to require that a local union be in compliance although the petition in its behalf was filed by the parent organization. However, in one case³⁸ where a noncomplying local achieved compliance after the parent's petition had been dismissed, the Board, in the absence of intervening representation claims, directed an election without requiring that a new petition be filed. Similarly, the Board declined to dismiss a petition where a noncom-

³⁴ *General Armature & Manufacturing Co.*, 89 NLRB No. 50.

³⁵ *Potlatch Forests, Inc.*, 87 NLRB 1193.

³⁶ *Chicago Newspaper Publishers Association (Chicago Typographical Union No. 16, et al)*, 86 NLRB 1041.

³⁷ Cf. Fourteenth Annual Report (1949) pp. 13-15.

The Board's holding that the filing requirements of sec. 9 are not applicable to such autonomous organizations as the Congress of Industrial Organizations and the American Federation of Labor (see Fourteenth Annual Report, p. 15) has been litigated in the courts. It was approved by the Court of Appeals for the District of Columbia Circuit (*West Texas Utilities Co. v. N. L. R. B.*, July 10, 1950, 26 L. R. R. M. 2359). However, a contrary view was taken by the Courts of Appeals for the Fourth and Fifth Circuits (*N. L. R. B. v. Highland Park Manufacturing Co.*, September 2, 1950 (C. A. 4), 26 L. R. R. M. 2531, and *N. L. R. B. v. Postex Cotton Mills, Inc.*, 181 F. 2d 919 (C. A. 5)). The Board is contemplating the submission of the question to the Supreme Court.

³⁸ *United States Gypsum Co.*, 86 NLRB 200.

plying local, which acted jointly with the petitioner, achieved compliance 4 days after the filing of the petition.³⁹

a. Lapse of Compliance

In a number of representation cases, the Board was confronted with the lapse of the compliance status of one of the participating unions. Where the petitioner's compliance lapsed prior to the hearing and was not renewed after notice, the regional director's dismissal of the petition was sustained although the petitioner subsequently renewed its compliance.⁴⁰ On the other hand, where the compliance status of a petitioner which was the only union seeking certification had lapsed since the hearing, the Board issued a Direction of Election conditioned upon the petitioner's renewal of its compliance status within 2 weeks.⁴¹ The same procedure was followed in cases in which the compliance status of one or both of two joint petitioners had lapsed since the hearings.⁴² But where there were intervenors, the name of the petitioner whose compliance status had lapsed since the beginning of⁴³ or after the hearing, was ordered deleted from the ballot unless the petitioner renewed its compliance within 2 weeks from the date of the Direction of Election.⁴⁴ Likewise, the name of an intervenor whose compliance had lapsed since the hearing was placed on the ballot, subject to deletion in case of the intervenor's failure to renew its compliance within 2 weeks from the date of the Direction of Election.⁴⁵ But where the intervenor's compliance status had lapsed after the election, the Board directed that a majority vote in favor of the intervenor shall not be certified pending the renewal of its compliance.⁴⁶

³⁹ *Lennox Furnace Co., Inc.*, 86 NLRB 698

⁴⁰ *Peters Sausage Co.*, 7-RC-858, and *Detroit Lumber Yard*, 7-RC-908, June 15, 1950.

⁴¹ E. g., *Reynolds Metals Co.*, 85 NLRB 110; *Lundahl Motors, Inc.*, 85 NLRB 224; *Beaunit Mills, Inc.*, 85 NLRB 316; *Bulletin Co. (Homemakers Center)*, 85 NLRB 568. *Sun Ray Drug Co.*, 87 NLRB 208; *Grace Motor Sales, Inc.*, 88 NLRB No. 90; *Porto Rican Express Co.*, 88 NLRB No. 166; *Black, Sivalls & Bryson, Inc.*, 89 NLRB No. 28. See also *Grinnell Brothers*, 88 NLRB No. 85, where the petitioner was also the union named in the petition filed by the employer.

⁴² *Plywood-Plastics Corp.*, 85 NLRB 265; *The Fuller Automobile Co.*, 88 NLRB No. 245; *Milk Products Manufacturers' Association*, 88 NLRB No. 80.

⁴³ *The Association of Motion Pictures Producers, Inc., et al.*, 87 NLRB 657.

⁴⁴ *Nicholson Transit Co.*, 85 NLRB 955; *Soller Sugar Co., Inc.*, 85 NLRB 755

⁴⁵ See e. g., *W. B. Willett Co.*, 85 NLRB 761; *Radio Station WLAV, WLAV-FM, and WLAV-TV*, 87 NLRB 1570; *American Hoist & Derrick Co.*, 88 NLRB No. 56; *Firestone Tire & Rubber Co.*, 88 NLRB No. 172; *Hoke, Inc.*, 88 NLRB No. 255; *Pratt & Letchworth Co., Inc.*, 89 NLRB No. 23; *International Harvester Co., Tractor Works*, 89 NLRB No. 26; *Atlas Imperial Diesel Engine Co., et al.*, 89 NLRB No. 42; *East Tennessee Packing Co.*, 89 NLRB No. 73; *Lone Star Cement Corp.*, 88 NLRB No. 92; *The Schaitble Co.*, 88 NLRB No. 145.

⁴⁶ *Columbia Picture Corp., et al.*, 85 NLRB 1085.

b. Compliance of Intervenors

A noncomplying union which has a contractual interest in a representation proceeding will be permitted to intervene⁴⁷ for all purposes, except it will not be placed on the ballot.⁴⁸

Absent a contractual interest, intervention generally is denied to a noncomplying union,⁴⁹ even though the union seeking intervention has previously been certified and is taking steps leading to compliance at some time following the hearing.⁵⁰ But in one case, a union was permitted to intervene after the hearing and was placed on the ballot where compliance was effected after the hearing and the renewed request to intervene was based on employee authorizations acquired prior to the hearing.⁵¹ The general rule was applied also to a craft union which was not in compliance. Accordingly intervention for the purpose of craft severance was denied;⁵² and a craft union whose compliance has lapsed after the hearing will be removed from the ballot unless compliance is renewed.⁵³

Joint intervenors will be denied a place on the ballot if one of them is not in compliance.⁵⁴ But where the compliance of one of two locals, which had intervened jointly with their international, lapsed after the hearing, and where a third local which had a joint interest with the international and the other two locals also was not in compliance, all four organizations were conditionally placed on the ballot and were to be removed jointly unless compliance was achieved by all.⁵⁵ In another case, however the Board placed on the ballot a complying international and its local, but omitted therefrom two other internationals and their locals because of the latter's lack of compliance. The omitted unions were to receive a place on the ballot in case of their later compliance.⁵⁶ In cases where intervention is sought on the basis of contractual interests, permission of noncomplying unions to appear on the ballot is conditioned upon compliance.⁵⁷

⁴⁷ *General Electric Co., Medford Plant*, 85 NLRB 150; *The Liquid Carbonic Corp., Medical Gas Division*, 85 NLRB 284; *Hygrade Food Products Corp.*, 85 NLRB 841; *Hygrade Food Products Corp. (Supro Meat Products Co.)*, 85 NLRB 853; *Heyden Chemical Corp.*, 85 NLRB 1181; *Westinghouse Electric Corp.*, 87 NLRB 463. But see *Joseph E. Know & Co., Inc.*, 86 NLRB 1257, where intervention was denied to an international since its local was permitted to intervene on the basis of a contract interest, and the international's position was thereby adequately presented.

⁴⁸ *Reynolds Metals Co.*, 85 NLRB 110; see also *Pyrene Manufacturing Co.*, 89 NLRB No. 208, where the intervenor had "never" effected compliance.

⁴⁹ See *Brewer & Brewer Sons, Inc.*, 85 NLRB 387; *Sylvania Electric Products, Inc.*, 87 NLRB 597; *John Dritz & Sons*, 88 NLRB No. 262.

⁵⁰ *Sunbeam Corp.*, 87 NLRB 123.

⁵¹ *Sylvania Electric Products, Inc.*, 87 NLRB 597.

⁵² *Boeing Airplane Co., et al.*, 86 NLRB 368.

⁵³ *Calumet and Hecla Consolidated Copper Co. (Wolverine Tube Division)*, 86 NLRB 126.

⁵⁴ *Champton Blower & Forge Co.*, 88 NLRB No. 162.

⁵⁵ *Bunker Hill and Sullivan Mining and Concentrating Co., et al.*, 89 NLRB No. 8.

⁵⁶ *Indianapolis Cleaners & Launderers Club*, 87 NLRB 472. See also *International Harvester Co., West Pullman Works*, 89 NLRB No. 53.

⁵⁷ *California Walnut Growers Association*, 86 NLRB 28; *Joseph E. Know & Co., Inc.*, 86 NLRB 1257; *International Harvester Co., Metrose Park Plant*, 87 NLRB 1101.

c. Compliance of Affiliates⁵⁸

The Board has also had occasion to determine in a number of cases whether the petition of an international union was barred because of the noncompliance of the affiliate which eventually might represent the employees involved. In one case, compliance by the international, which was shown to be the real party in interest, was held sufficient, and it was held immaterial whether or not the international's constitution required the establishment of a local for the purpose of consummating collective bargaining.⁵⁹ Compliance by a petitioning international was likewise held to be sufficient where it did not appear that a local, whose officers had been elected by the employees in the unit, existed as a functioning organization.⁶⁰ But the petitioning parent of a noncomplying local, which did not appear to be the real party in interest, was placed on the ballot only with the understanding that its certification was to be vacated if later it should be shown that the noncomplying local participated in representation of the employees concerned.⁶¹ Similarly, where it was not clear whether a noncomplying local existed as a functioning organization, the complying international was placed on the ballot, but its participation in the election was conditioned upon full compliance by any local which might bargain for employees in several units.⁶² Intervening internationals were similarly omitted from the ballot where there was no clear showing that their noncomplying contracting locals were no longer in existence.⁶³

In decertification proceedings, a noncomplying union will be placed on the ballot, but if it wins the election, it will be certified only if it is then in compliance⁶⁴ or has renewed its lapsed compliance.⁶⁵ In the absence of such compliance, only the arithmetic results of the election will be certified.

⁵⁸ The compliance of parent federations is discussed in footnote 37, *supra*.

⁵⁹ *Farrell-Cheek Steel Co.*, 88 NLRB No. 83.

⁶⁰ *General Box Co.*, 89 NLRB No. 163.

⁶¹ *Manistee Salt Works*, 85 NLRB 147. See also *Wells Manufacturing Corp.*, 85 NLRB 23

⁶² *Electric Products Co.*, 89 NLRB No. 24; *Consolidated Electric Lamp Co. (Champion Lamp Works Division)*, 89 NLRB No. 41; *Sylvania Electric Products, Inc.*, 89 NLRB No. 52; *Apex Electrical Manufacturing Co.*, 89 NLRB No. 60; *Signal Manufacturing Co.*, 89 NLRB No. 65. See *General Motors Corp., Frigidaire Division, et al.*, 88 NLRB No. 112.

For other situations in which the foregoing principles were applied see *Westinghouse Electric Corp.*, 89 NLRB No. 11; *Baldwin Locomotive Works, Eddystone Division*, 89 NLRB No. 38; *Fostoria, Ohio, Works of the National Carbon Division, Union Carbide and Carbon Corp.*, 89 NLRB No. 63; *Foote Bros. Gear & Machine Corp.*, 89 NLRB No. 103; *Foster Wheeler Corp.*, 89 NLRB No. 105; *General Instrument Corp.*, 89 NLRB No. 135; *Philco Corp.*, 89 NLRB No. 112; *General Electric Co.*, 89 NLRB No. 120; *Lennox Manufacturing Co.*, 89 NLRB No. 183.

⁶³ *Bowen Products Corp.*, 89 NLRB No. 20; *Easy Washing Machine Corp.*, 89 NLRB No. 27.

⁶⁴ *Hercules Powder Co.*, 89 NLRB No. 3; *Stauffer Chemical Co. of Texas*, 85 NLRB 595; *Pittsburgh Plate Glass Co.*, 90 NLRB No. 60.

⁶⁵ *Sterling Tool & Manufacturing Co.*, 89 NLRB No. 9.

III

Representation and Union-Shop Cases

THE act requires that an employer bargain with the representative selected by a majority of his employees in a unit appropriate for collective bargaining. In determining the employees' choice for a bargaining agent, the Board may act only after a petition has been filed by the employees or any individual or labor organization acting in their behalf, or by the employer. Once a petition has been properly filed, the Board has full statutory power to determine the employees' choice of collective bargaining representative in any business or industry where a labor dispute might affect interstate commerce with the major exceptions of agriculture, railroads, and airlines. It does not always exercise that power, however, where small or local enterprises are involved. It also has the power to determine the unit of employees appropriate for collective bargaining.

The Board may formally certify a collective bargaining representative in a representation case only upon the basis of the results of a Board-conducted secret ballot election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. The right of a bargaining agent to exclusive representative status, however, is limited by a statutory proviso that any individual employee or group of employees has the right to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of any collective bargaining contract that may then be in effect. The statute requires, however, that the bargaining representative must be given an opportunity to be present at the adjustment.

The act also empowers the Board to conduct an election to decertify an incumbent bargaining agent which has been previously certified or which is being currently recognized by the employer. Decertification petitions may be filed by employees or individuals, or by labor organizations acting on behalf of employees.

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

During the 1950 fiscal year, 9,279 petitions for representation elections were filed in the Board's offices. During this period, the Board conducted 5,731 representation elections, in which 899,848 employees were eligible to vote. Bargaining representatives were selected in 4,223 of these elections. Collective bargaining representatives were thereby designated to represent a total of 759,000 employees, or approximately 84 percent of those involved in Board elections. More than 72 percent of the elections was conducted by agreement of the parties, without the necessity for formal decisional action by the Board Members. The Board Members, however, were called upon to make decisions in 2,483 representation cases during the year. In these decisions, they directed representation elections in 1,630 cases.

The act requires also that, before a bargaining agent may effectuate a contract with an employer for a union shop, a majority of the eligible employees must authorize it in a Board-conducted referendum. The act permits a union shop in which employees are required to become members of the union not less than 30 days after they are employed or 30 days after a union-shop contract is made, whichever is the later. Under this provision of the act, the Board conducted 5,591 union-shop authorization polls during the 1950 fiscal year. In these polls, 1,072,917 employees were eligible to vote. The employees authorized negotiation of union-shop contracts in 5,377 elections, or about 96 percent of those conducted. The bargaining agents were thereby authorized to negotiate union-shop contracts covering a total of 1,045,162 employees.

The conditions under which the Board will direct representation elections and union-shop polls are discussed in the following sections of this chapter.

A. The Question of Representation

Proceedings before the Board to determine the choice of employees in the matter of a collective bargaining representative are technically of two types—proceedings to certify a bargaining agent and proceedings to decertify an incumbent bargaining agent. In both types of cases, the Board must determine whether or not a question of the representation of employees exists and whether or not there is sufficient interest in the question among the employees to merit the holding of an

election. If the Board finds that a question of representation exists, it can make a final determination of the employees' choice only by a secret-ballot election.

The Board's proceedings in both types of cases are set in motion by the filing of a petition. The filing of petitions and the proceedings are governed by section 9 (c) of the act. This section provides that a petition either for certification or for decertification may be filed (1) by employees or (2) by an individual or a labor organization on behalf of employees. An employer also may file a petition for a certification proceeding, when he is presented with a claim to recognition as bargaining agent by an individual or a labor organization.

1. Showing of Employee Interest

The first question that arises upon the filing of a petition in either type of representation case is whether there is sufficient support for the petition to merit the holding of an election. This is the first step toward determining whether a question of representation does exist. If the petitioner is an employee or group of employees, or an individual or labor organization acting on behalf of employees, section 9 (c) (1) (A) requires that the petition must allege the support of "a substantial number of employees." In administering this provision, the Board has consistently required a showing that at least 30 percent of the employees in the bargaining unit support the petition.¹ This support may be shown to Board investigators by authorization cards signed by employees or by any other appropriate evidence. The requirement of this "showing of interest" is intended to avoid burdening the Board with the duty of conducting elections in cases where there is little likelihood that a majority representative will be chosen.²

In a representation proceeding initiated by an employer, no showing of interest is required.³

Application of the showing of interest requirement frequently calls for determination of two questions: (1) Which parties to the proceeding must disclose their interest, and (2) what interest must each show. The statutory requirement applies only to petitioners, but often there is more than one individual or union claiming to represent the same group of employees. Manifestly, it would be impossible to conduct an orderly investigation of a representation question if every party who claimed any kind of interest in the case was allowed to participate in the proceeding. But, to be balanced against this need

¹ *Statements of Procedure*, sec. 202.17. Example: *Oklahoma Gas and Electric Co.*, 86 NLRB 437.

² See Fourteenth Annual Report, p. 21; *Statements of Procedure*, as amended August 18, 1948, sec. 202.17 (p. 42, Board edition).

³ *P. R. Mallory & Co., Inc.*, 89 NLRB No. 121; *J. C. Penny Co.—Store No. 1518*, 86 NLRB 920.

for an orderly proceeding is the stated policy of the statute to assure employees of "the fullest freedom" ⁴ in the "designation of representatives of their own choosing." ⁵ The Board, out of its experience, has developed a number of rules as to the parties which may intervene in representation proceedings. Most common among those who have been held entitled to intervene are individuals or unions holding contracts with the employer which cover all or part of the employees involved, and individuals or unions which claim to represent all or part of the employees. The Board's rules also provide for intervention limited to the extent of the interest of the person or organization seeking intervention. ⁶

During the past year, the Board has mainly reaffirmed its long-established rules regarding the admission of intervenors and the showing of interest required of them. However, it did deal with a number of points which arose for the first time during fiscal 1950.

In one case, the Board reaffirmed its rule that a party which seeks to intervene in order to be placed on the ballot must make some showing of an adequate interest, ⁷ such as a current or recent contractual or representative interest in the employees. ⁸ However, an intervenor seeking the same industrial unit as the petitioner need not make a 30-percent interest showing. ⁹ Nor need a union make a showing if it is claiming to represent a unit substantially the same as that requested by a petitioning employer. ¹⁰

In general, rival unions contending for representation of substantially different but overlapping units of employees are each required to make full showings of interest in the unit each seeks. In a case where one petition for a production and maintenance unit and other petitions for craft units were filed, the former was dismissed because no 30-percent showing had been made in the larger group. ¹¹ In the *Electric Auto-Lite* case, ¹² it was held necessary for an intervening labor organization, which sought a unit appreciably larger than that sought by the petitioner, to file a separate petition or make an administrative showing of interest which would support a petition for the larger unit. In *Boeing Airplane Company*, ¹³ the Board, reversing its prior practice, ¹⁴ ruled that a union which seeks to sever a craft unit from an

⁴ Sec. 9 (a).

⁵ Sec. 1.

⁶ Rules and Regulations, Series 5, as amended, sec. 203.57.

⁷ *Norfolk Coca-Cola Bottling Works, Inc.*, 86 NLRB 462.

⁸ Cf. Ninth Annual Report, p. 30; Eleventh Annual Report, p. 10, footnote 10.

⁹ *Comwell Co.*, 88 NLRB No. 148.

¹⁰ *Westinghouse Electric Corp.*, 89 NLRB No. 11; *General Electric Co.*, 89 NLRB No. 120.

¹¹ *Carbide & Carbon Chemicals Corp.*, 88 NLRB No. 98.

¹² 87 NLRB 129.

¹³ *Boeing Airplane Co.*, 86 NLRB 368.

¹⁴ *Richfield Oil Corp.*, 59 NLRB 1554; see also *Standard Oil Co. (Ohio), Cleveland Division*, 63 NLRB 1248; and *General Tire and Rubber Co.*, 63 NLRB 182.

existing industrial unit must make a 30-percent showing, whether it appears as cross-petitioner or as intervenor.

When a unit different from that sought by the petitioning union is found appropriate and the union's showing of interest is not sufficient in the appropriate unit, the Board will dismiss the petition, without prejudice to its renewal.¹⁵ Nor will the Board determine whether a group excluded from an appropriate unit might constitute a separate unit or voting group, where no showing of interest in the group was made.¹⁶ If, however, the showing of interest is not sufficient, the petitioner will be permitted to withdraw from the ballot or, if it is the sole union involved, to withdraw its petition altogether.¹⁷ However, the union need not make a separate showing of interest among employees of plants not originally sought but included by the Board in a multi-plant unit along with the plant sought.¹⁸ In one case, where a majority of the Board held that any of three units might be appropriate—a plant-wide unit requested by the petitioning union, or a separate unit of laborers, then represented by the petitioner, or a separate unit of the remaining plant employees—the petition which sought only the plant unit was dismissed because the petitioner had failed to make a separate showing of interest among the remaining employees whom it sought to merge with the laborers.¹⁹

The Board has adhered to its position that the showing of interest is exclusively a matter for administrative determination by the regional director and is not subject to subsequent challenge at any stage of a proceeding²⁰ for the certification or decertification of a representative,²¹ even where it is alleged that the showing is noncurrent,²² fraud-

¹⁵ E. g., *Kindy Optical Co.*, 85 NLRB 940; *American District Telegraph Co.*, 89 NLRB No. 111.

¹⁶ *R. J. Reynolds Tobacco Co.*, 88 NLRB No. 120; *Jaw Beer Co. of Houston, Texas*, 89 NLRB No. 153.

¹⁷ E. g., *Mizer & Co.*, 86 NLRB 656; *Engineering and Research Corp.*, 90 NLRB No. 6 Cf. *Mutual Rough Hat Co.*, 86 NLRB 440; and *The Bailey Department Stores Co.*, 85 NLRB 312. See also *Johnson Optical Co.*, 85 NLRB 895.

¹⁸ *The North Electric Mfg. Co.*, 89 NLRB No. 21.

¹⁹ *Illinois Cities Water Co.*, 87 NLRB 109. See also *Association of Motion Picture Producers, Inc.*, 85 NLRB 902; and see *The National Supply Co.*, 90 NLRB No. 65, where the Board held that a union's showing of interest as to the employees of a group of employers was insufficient standing alone to permit the union to participate in separate elections directed among the employees of the individual employers. The regional director was therefore directed to ascertain the adequacy of the union's showing as to each employer before proceeding to elections. Cf. *Belle Vernon Milk Co.*, 90 NLRB No. 117.

²⁰ Evidence relating to such showing is thus inadmissible at the hearing. *North Electric Mfg. Co.*, 89 NLRB No. 21; *P. R. Mallory & Co., Inc.*, 89 NLRB No. 121. And the refusal to disclose to an employer the field examiner's report on the showing is proper. *J. I. Case Co.*, 87 NLRB 692.

²¹ *Olin Industries, Winchester Repeating Arms Co. Division*, 85 NLRB 396; *Hamilton Bros. Logging Co.*, 89 NLRB No. 207. See *R. J. Reynolds Tobacco Co.*, 88 NLRB No. 120; *General Electric Co.*, 89 NLRB No. 120; *The Hoffman Packing Co., Inc.*, 87 NLRB 601; *Auburn Rubber Corp.*, 85 NLRB 545.

²² E. g., *Northern Redwood Lumber Co.*, 88 NLRB No. 32.

ulent,²³ or otherwise invalid.²⁴ The basic reason is that the results of the election by secret ballot will reveal the actual facts to all the parties and thus protect their interests.

2. Existence of a Question of Representation

Before the Board may direct a representation election, it must find that a question of representation exists.²⁵ Ordinarily, in a certification proceeding, the existence of the question is attested by a specific request for recognition made by the candidate bargaining agent and denied by the employer. If the employer filed the petition, the petition itself constitutes a denial of recognition to the representative seeking bargaining rights. In a decertification proceeding, the Board has ordinarily found that a question exists if the employees in the unit challenge the status of a currently recognized, or previously certified, representative which maintains a claim to recognition.

In a number of instances, however, a bargaining agent which the employer recognized and which the employees did not challenge sought certification. In the first such instance,²⁶ the contention was made that technically no question of representation existed. However, in accordance with the statutory policy of promoting industrial peace by encouraging and stabilizing collective bargaining, the Board declined to adopt this restrictive construction. Instead, it adopted the policy of ordering an election in such a situation if all other prerequisites for an election were met. This policy, the Board noted, is in line with the scheme of the statute, which confers substantial advantages upon certified unions while laying disabilities upon uncertified unions in a number of situations.²⁷

The principle—that a question of representation may exist even where a union petitions for an election at a time when it is currently recognized by the employer—was applied on several occasions during the past year.²⁸ Thus a union need not terminate its existing contract with an employer in order to obtain a representation election among employees it represents.²⁹ Also in several cases,³⁰ the Board applied

²³ Cf. *Cushman's Sons, Inc.*, 88 NLRB No. 49; *Grocer's Biscuit Co., Inc.*, 85 NLRB 603

²⁴ E. g., *White River Lumber Co.*, 88 NLRB No. 37 (signatory employees allegedly desired to rescind union authorization); *Rudolph Wurlitzer Co.*, 88 NLRB No. 188 (petitioning union allegedly used same local number as rival union); *Orenshaw Bros. Produce Co.*, 88 NLRB No. 76 (authorizations not checked against employees' signatures in employer's file).

²⁵ Sec. 9 (c) (1).

²⁶ *General Box Company*, 82 NLRB 678.

²⁷ See secs. 9 (c) (3), 8 (b) (4) (B), (C), and (D) and discussion in *General Box, supra*.

²⁸ *W & W Pickle & Canning Co.*, 85 NLRB 262; *Atlas Cork Works, Inc.*, 88 NLRB No. 121; *Reuben Gordon Shoe Co., Inc.*, 89 NLRB No. 40; *California Association of Employers*, 89 NLRB No. 216; *Singer Mfg. Co.*, 89 NLRB No. 218.

²⁹ *Lone Star Producing Company*, 85 NLRB 1137.

³⁰ E. g., *Detroit Branch, Reliance Steel Division, Detroit Steel Corp.*, 90 NLRB No. 62. The question whether the petitioning union has previously been denied recognition is not litigable even in a complaint proceeding. *J. I. Case Co.*, 87 NLRB 692. A lapse of almost a year between the initial and final hearing on a petition, caused by proceedings to enforce

the corollary doctrine that it is not necessary for a candidate bargaining agent to make a specific request upon the employer for recognition before filing a petition, if it appears as a fact at the Board's hearing that the employer does decline to recognize the candidate agent and that a question of representation actually exists. As the Board has said, it has followed in representation cases "the practice of deciding on its merits any case in which it appeared that a real question concerning representation existed, despite the fortuity that a petition might have disclosed faulty, incomplete, inaccurate, or otherwise imperfect information."³¹ This policy derives from the fact that a petition actually is a part of the Board's technique of investigating representation cases.

Where no question of representation exists in fact, the Board will dismiss the petition. Thus the Board will not entertain a petition for certification where the incumbent union at the hearing unequivocally disclaims any interest in the employees involved.³² Nor will it entertain a decertification petition where it appears that the union whose decertification is sought was never certified and it is not currently recognized by the employer.³³ But where the union has been certified or is currently recognized, an election will be directed.³⁴ However, when the Board found a union's withdrawal of its claim to represent employees who petitioned for a decertification election was equivocal, it directed an election.³⁵ Likewise, a question of representation was found to exist where the union had not renounced its claim to represent the employees, although the employer had taken timely steps to terminate its contract with the union and no new contract had been executed.³⁶ The unexplained failure of a union to appear at the Board hearing, standing alone, was held not to constitute a disclaimer of interest.³⁷ Nor does the contracting union's failure to intervene in a certification proceeding, although served with notice, constitute a disclaimer of interest.³⁸

a subpoena, was held not to warrant dismissal of the petition, because the employer's refusal to recognize the union at the final hearing created a current representation question. *John S. Barnes Corp.*, 88 NLRB No. 161.

³¹ *Advance Pattern Co.*, 80 NLRB 29; Fourteenth Annual Report, p. 19.

³² *Chevrolet Gear & Axle Division of General Motors Corp.*, 86 NLRB 63; *Bonita Ribbon Mills and Brewton Weaving Co.*, 88 NLRB No. 58; *Central Optical Co., Inc.*, 88 NLRB No. 136.

³³ See *Davisville Hosiery Mill, Inc.*, 88 NLRB No. 150; *Wave Publication, Inc.*, 90 NLRB No. 50.

³⁴ *Cross Paper Products Corp.*, 88 NLRB No. 196; *Lee-Mark Metal Mfg. Co.*, 85 NLRB 1299. A defective decertification petition erroneously stating there was no currently recognized bargaining agent was held not to extinguish the question of representation since the employer in fact recognized the union. "The Board will look to the facts rather than to the form [of a petition] to determine if a question of representation exists." *Marrn County Employers Council*, 87 NLRB 296.

³⁵ *Stauffer Chemical Co. of Texas*, 85 NLRB 595.

³⁶ *Anderson & Benson Corp.*, 88 NLRB No. 142; *Lee-Mark Metal Mfg. Co.*, *supra*.

³⁷ *Ness Sanitary Wiper Co.*, 85 NLRB 953; *Central Optical Co., Inc.*, 88 NLRB No. 136; *Cross Paper Products Corp.*, 88 NLRB No. 196. Cf. *Lee-Mark Metal Mfg. Co.*, *supra*.

³⁸ *Penn Paper & Stock Co.*, 88 NLRB No. 9.

It was held also that a question of representation existed where the petitioner in a decertification proceeding attempted to withdraw his petition but stated at the hearing that the employees involved desired an election.³⁹ In one case,⁴⁰ a majority of the Board held that several employer petitions presented no question of representation in view of the union's full disclaimer of any interest. In the opinion of the majority, the fact that the State council of locals, of which the union was a member, resumed the picketing of the employers shortly after the union filed its disclaimer, was not controlling. A majority of the Board said that the subsequent resumption of picketing by the parent council in furtherance of a recognition strike, even if attributable to the disclaiming union, was not a reassertion of the latter's majority status, but rather an attempt to organize the employers' workers almost all of whom were replacements for striking union members.⁴¹ In a later case,⁴² the Board under similar circumstances again pointed out that "there is nothing inconsistent between a valid disclaimer of majority status and continued organizational activity."

3. Equal Representation of Employees

While it is the Board's policy to withhold certification from a labor organization which will not accord equal representation to all the employees in the bargaining unit,⁴³ the Board has repeatedly held that the willingness of the petitioning or intervening union to represent the employees is the controlling factor. Thus the Board has held that "It is no impediment to a Board certification that a labor organization places restrictions upon membership if such a labor organization is willing to, and does during the existence of its certificate, adequately accord representation to all the employees in the appropriate bargaining unit."⁴⁴ Consequently, the Board has declined to inquire into a union's constitutional, jurisdictional, or membership practices in the absence of any proof that the union will not accord effective representation to the employees concerned,⁴⁵ and has directed an election despite

³⁹ *Monroe Cooperative Oil Co.*, 86 NLRB 95.

⁴⁰ *Hubach and Parkinson Motors*, 88 NLRB No. 232. Mr Reynolds dissented; Mr. Styles did not participate.

⁴¹ Cf. *Coca-Cola Bottling Co. of Walla Walla, Washington*, 80 NLRB 1063, which was held distinguishable, since there the disclaiming union engaged in picketing specifically for the purpose of causing the employer to bargain with it. See also Fourteenth Annual Report, p. 20.

⁴² *Bur-Bee Co -Walla Walla, Inc., et al.*, 90 NLRB No. 2.

⁴³ See Fourteenth Annual Report, p. 21; Eleventh Annual Report, p. 11.

⁴⁴ *Public Service Co. of Colorado*, 89 NLRB No. 51.

⁴⁵ *Mine Safety Appliance Co.*, 85 NLRB 290; *Chicago Railway Equipment Co.*, 85 NLRB 586; *Consolidated Vultee Aircraft Corp.*, 88 NLRB No. 12; *Honolulu Rapid Transit Co., Ltd.*, 85 NLRB 1077; *Riggs Antique Co.*, 85 NLRB 554; *Farrell-Cheek Steel Co.*, 88 NLRB No. 83; cf. *Northern Redwood Lumber Co.*, 88 NLRB No. 32; *Central Bus Lines, Inc.*, 88 NLRB No. 215.

an allegation that the petitioning union practices racial discrimination.⁴⁶ Similarly, the Board entertained the petition of an industrial union seeking to represent a craft group,⁴⁷ and the petition of a craft union seeking to represent noncraft employees,⁴⁸ and awarded a place on the ballot to a joint council in spite of the contention that it was acting in place of a local union which had been refused a charter by its own international.⁴⁹

4. Capacity for Representation

The Board also has continued to give effect to the principle that the selection of a bargaining agent is primarily a matter for the employees' own choice. Thus the Board permitted production and maintenance unions to seek certification as bargaining agent for office,⁵⁰ clerical,⁵¹ and time-study personnel;⁵² and directed elections where two unions were to represent the employees concerned jointly.⁵³ And, in accordance with the policy laid down in the preceding fiscal year,⁵⁴ the Board certified an international, even though there was a functioning affiliated local in existence.⁵⁵

However, the Board will not direct an election where the sole union seeking certification lacks the attributes of a bona fide labor organization, and is therefore incapable of serving as the employees' representative.⁵⁶ Thus, relying on the *Alaska Salmon Industry* case⁵⁷ decided during the previous fiscal year, the Board dismissed the petition of a union which had been organized by supervisory employees and whose officers and negotiating committee members for the most part were supervisors.⁵⁸ However, where management participation in the petitioning union is alleged but not clearly shown, the Board will not

⁴⁶ *Plywood-Plastics Corp.*, 85 NLRB 265.

⁴⁷ *Iowa Packing Co., a division of Swift and Co.*, 85 NLRB 1080.

⁴⁸ *Oklahoma Gas and Electric Co.*, 86 NLRB 437.

⁴⁹ *Honolulu Rapid Transit Co., Ltd.*, 85 NLRB 1077.

⁵⁰ *The Studebaker Corp. (St. Louis, Mo., Parts Depot)*, 86 NLRB 460.

⁵¹ *Birmingham Electric Co.*, 89 NLRB No. 159.

⁵² *Westinghouse Electric Corp.*, 89 NLRB No. 11.

⁵³ *Gus Gillerman Iron & Metal Co.*, 88 NLRB No. 217; *White Motor Co.*, 86 NLRB 380, and cases cited there.

⁵⁴ *Lane Wells Co.*, 79 NLRB 252; see Fourteenth Annual Report, pp. 18-19.

⁵⁵ *Florida Coca-Cola Bottling Co.*, 87 NLRB 201; and see *Sunbeam Corp.*, 89 NLRB No. 81. Cf. *Pacific Gas and Electric Co.*, 87 NLRB 257, and *The Ohio Bell Telephone Co.*, 87 NLRB 1555. In *Wells Mfg Co.*, 85 NLRB 23, the Board granted the local union's request to have its name omitted from the ballot, leaving only that of its international.

⁵⁶ See Fourteenth Annual Report, p. 21, Eleventh Annual Report, p. 11.

⁵⁷ *Alaska Salmon Industry, Inc.*, 78 NLRB 185; and see cases cited therein.

⁵⁸ *American District Telegraph Co. of Pennsylvania*, 89 NLRB No. 214. Cf. *Allen B. Dumont Laboratories, Inc.*, 88 NLRB No. 234, where the Board declined to dismiss the petition because an allegedly supervisory employee had participated in the union's early organization.

dismiss the petition,⁵⁹ since the question of employer domination or assistance may not be litigated in a representation proceeding.⁶⁰

5. Jurisdictional Disputes

While the Board has been reluctant to entertain proceedings involving jurisdictional disputes between two or more unions affiliated with the same parent organization,⁶¹ it will direct an election where the dispute cannot be immediately resolved without resort to the administrative processes of the act.⁶² In one case, the Board refused to exclude from the unit certain employees, as requested by an intervening union because the jurisdictional dispute involved could not properly be raised in a representation case but had to be determined in a proceeding under section 10 (k) of the act.⁶³

B. Unit Appropriate for Collective Bargaining

The act imposes upon the Board the duty to determine, whenever the question arises, whether a proposed or existing bargaining unit is "appropriate" in the sense that it will "assure to employees the fullest freedom in exercising the rights guaranteed by the Act."¹ The discretion of the Board is limited insofar as section 9 (b) provides that "the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." The proviso of section 9 (b) further limits the Board's discretion in the following respects:

1. Professional employees may not be included in a unit of non-professional employees, unless a majority of the professional employees vote for the inclusion in such unit.
2. No craft unit may be deemed inappropriate on the ground that a different unit was established by a prior Board decision.
3. No unit may be deemed appropriate if it groups guards together with other employees.

The broad standard of section 9 (b) must be applied to individual situations in the large number of cases in which the Board is requested to determine the bargaining rights of a representative under the various provisions of section 9. It also must be applied in cases in which it

⁵⁹ Cf. *Jackson Daily News*, 86 NLRB 729; and *Alaska Salmon Industry, Inc.*, 90 NLRB No. 13.

⁶⁰ See *Comwel Co.*, 88 NLRB No. 148.

⁶¹ See Twelfth Annual Report, p. 8.

⁶² *Pacific Outdoor Advertising Co.*, 90 NLRB No. 25; *Wells Mfg. Co.*, 85 NLRB 23. Cf. *Honolulu Rapid Transit Co., Ltd.*, 85 NLRB 1077.

⁶³ *Radio Station WLAV*, 87 NLRB 1570.

¹ Sec. 9 (b).

is alleged that an employer has violated section 8 (a) (5) by refusing to bargain with the representative of employees in an appropriate unit, and in cases in which it is charged that a union which represents employees in such a unit has refused to bargain with their employer in violation of section 8 (b) (3). The same question is involved in cases where the Board must determine whether a union-security agreement is valid, in that it covers employees represented by the contracting union in an appropriate unit, as required by section 8 (a) (3).

In any of these cases, certain basic issues present themselves which concern: (1) The type of the unit, i. e., whether an industrial unit, embracing a general class such as production and maintenance employees, or a smaller group within the general category is proper; (2) the scope of the unit, i. e., whether it should be a multiemployer, multiplant, plant-wide, or some smaller departmental unit; and (3) the composition of the unit; i. e., whether the unit should include "fringe" groups such as clerks, technical and professional employees, etc.² To some extent the composition of bargaining units may be specifically limited by section 2 (3) of the act which exempts certain classes of employees, such as agricultural and domestic workers, from its operation.³

In resolving unit issues, the Board's primary concern is to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment. In determining whether such mutual interests exist in a given group, the Board continues to look primarily to such factors as (1) extent and type of union organization of the employees involved;⁴ (2) the pertinent bargaining history; (3) similarity of duties, skills, interests, and working conditions of the employees; and (4) the desires of the employees.

² The numerical size of the unit is important only insofar as the Board has consistently held one-man units inappropriate. See *National Licorice Co.*, 85 NLRB 140; *Erie City Iron Works*, 85 NLRB 1308; *Savage Arms Corp.*, 89 NLRB No. 179. However, the appropriateness of a unit is not affected by the speculative possibility that the employee complement may be reduced to one employee. See *National Licorice Co.*, *supra*.

³ Sec. 2 (3) expressly excludes "any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined."

⁴ Sec. 9 (c) (5) provides: "In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling." This does not preclude the Board, however, from giving some consideration to the extent of self-organization, when that is not the "controlling" factor supporting the determination of the appropriate unit. See *Southwestern Electric Service Co.*, 89 NLRB No. 6. In *J. I. Case Co.*, 87 NLRB 692, the Board also took the position that because self-determination elections are sanctioned by the amended act, the prohibition of the use of the "extent of organization" as the controlling factor in a unit determination has reference only to preelection unit determinations, and that reliance on the extent of a union's success in several "Globe" elections was therefore not barred by sec. 9 (c) (5).

1. Collective Bargaining History

In a number of cases decided during the past year, the Board has again indicated the extent to which it will give weight to an existing and pertinent bargaining history. Thus, in granting a self-determination election to a group of laborers in view of a prior 9-year bargaining history, the Board majority stated:⁵

Basically, this policy stems from the Board's reluctance to disturb the contract unit or units established as a result of collective bargaining, and a desire by the Board to give recognition and effect to a bargaining history, effectively evincing the intent of the parties, which is not repugnant to established Board policy respecting the composition and scope of bargaining units.

In considering the bargaining history, the Board is not necessarily guided by the period immediately preceding its decision but will examine the bargaining pattern as a whole. Thus, in one case, the Board held that an earlier 2½-year bargaining history of separate representation, rather than a more recent 6-month history on a broader basis, was controlling.⁶ In another case, controlling effect was similarly given to an earlier 8-year bargaining history rather than to a more recent 1-year history.⁷ On the other hand, the bargaining history is not the decisive factor where the facts of a particular case indicate a unit more appropriate to the immediate circumstances. In the *Freuhauf* case, the Board said:

While we place great weight on collective bargaining history, we will not make it the determinative factor in deciding the unit issue where * * * new and significant changes in the employer's organization and operations have occurred * * * which dictate a contrary result.⁸

Thus, the Board disregarded a 6-year bargaining history under a master contract covering 13 of the employer's 60 plants, holding the 13-plant unit a "fortuitous aggregation" which was not controlling.⁹ However, a mere change in ownership without a substantial change in operations is not sufficient cause to disrupt the bargaining pattern established by a long bargaining history.¹⁰

⁵ *Illinois Cities Water Co.*, 87 NLRB 109 (Board Members Houston and Murdock dissenting). See also *Westinghouse Electric Corporation*, 89 NLRB No. 11; *Sinclair Refining Co.*, 89 NLRB No. 137; *New England Casket Co.*, 89 NLRB No. 177.

⁶ *Brown Ely Co.*, 87 NLRB 27.

⁷ *General Optical Co., et al.*, 88 NLRB No. 89.

⁸ *Freuhauf Trailer Co.*, 87 NLRB 589.

⁹ *Hygrade Food Products*, 85 NLRB 841. See also *Boeing Airplane Co., et al.*, 86 NLRB 368; *Freuhauf Trailer Co.*, 87 NLRB 589; *The Ohio Bell Telephone Co.*, 87 NLRB 1555; *B. F. Goodrich Co.*, 87 NLRB 1355, where the Board disregarded the bargaining history at the employer's other stores; cf. *Rollman & Sons Co.*, 90 NLRB No. 1, where the Board held that "a unit is not inappropriate because petitioner has already been representing a less inclusive unit"; *The Kroger Co.*, 88 NLRB No. 69.

¹⁰ *Allied Chemical and Dye Co.*, 87 NLRB 593.

2. Severance of Craft Units

Insofar as skilled or craft groups are concerned, the Board has had occasion to reaffirm and expand its rules governing so-called craft-severance cases. Petitions for craft severance, as indicated in the last annual report,¹¹ have been occasioned in many cases by the provisions of section 9 (b) (2) of the act, which prohibits the Board from deciding "that any craft unit is inappropriate * * * on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation." The Board has ruled unanimously that this provision does not make craft severance mandatory.¹²

In the matter of procedure, the Board ruled in the *Boeing* case¹³ that a union seeking to sever a craft unit from an existing industrial unit must make a showing of a 30-percent interest in the unit it seeks.¹⁴ Percentage-wise, this is the same showing of interest that is required of other petitioners.

Once such a showing is made, the Board generally permits the severance of the craft group concerned, provided it is sufficiently identifiable and homogeneous.¹⁵ Ordinarily employees engaged in craft work of a distinctive nature may constitute separate units,¹⁶ even though they work in conjunction or close association with other employees,¹⁷ and notwithstanding a bargaining history on a broader basis.¹⁸ Where the requested unit includes some employees less skilled than the craftsmen in the group, or some totally unskilled ones, and therefore cannot be viewed as a pure craft group, the Board nevertheless permits the group to sever from the larger unit provided there is a sufficient nucleus

¹¹ Fourteenth Annual Report, p. 33.

¹² *National Tube Co.*, 76 NLRB 1199.

¹³ *Boeing Airplane Co.*, 86 NLRB 368.

¹⁴ See Showing of Interest, pp. 31-34.

¹⁵ *W. B. Willett Co.*, 85 NLRB 761; *Reynolds Metal Co.*, 85 NLRB 110; *Lone Star Cement Corp.*, 88 NLRB No. 92; *Consolidated Vultee Aircraft Corp.*, 88 NLRB No. 12; *General Electric Co.*, 89 NLRB No. 120.

¹⁶ See, e. g., the following cases involving patternmakers: *American Steel Foundries*, 85 NLRB 19; *Union Steel Casting Division of Blaw-Knox Co.*, 88 NLRB No. 55; *Pratt & Letchworth Co., Inc.*, 89 NLRB No. 23; the following cases involving electricians: *The Dayton Steel Foundry Co.*, 85 NLRB 1499; *Boeing Airplane Co.*, 86 NLRB 368; *Merck & Co., Inc.*, 88 NLRB No. 192; the following cases involving machinists: *A. O. Smith Corp.*, 86 NLRB 466; *West Virginia Pulp & Paper Co.*, 89 NLRB No. 82; *The National Supply Co.*, 90 NLRB No. 65; the following cases pertaining to carpenters: *Heyden Chemical Corp.*, 85 NLRB 1181; *General Electric Corp.*, 89 NLRB No. 120; *Coosa River Newsprint Co.*, 90 NLRB No. 57.

¹⁷ *A. C. Spark Plug Division, General Motors Corp. (Milwaukee Plant)*, 88 NLRB No. 220; *The Baldwin Locomotive Works, Eddystone Div.*, 89 NLRB No. 38; *Nepa Division of Fairchild Engine and Airplane Corp.*, 88 NLRB No. 22.

¹⁸ Although the bargaining history will be considered, the Board has consistently held that a prior bargaining history on a broader basis does not necessarily preclude craft severance. See *Schultz Die Casting Co.*, 85 NLRB 1019; *A. O. Smith Corp.*, 86 NLRB 466; *Boeing Airplane Co., et al.*, 86 NLRB 368; *Great Lakes Terminal Warehouse Co.*, 87 NLRB 607; *Lone Star Cement Corp., supra*; *Mueller Brass Co.*, 88 NLRB No. 53.

of skilled craftsmen and the group performs a specialized operation.¹⁹ Moreover, severance will be permitted to a homogeneous group with common interests which, by custom or practice, has come to be regarded as a craft even though the members of the group do not possess traditional craft skills.²⁰ Nor does the fact that the employees sought to be severed use their skills directly on parts of the final product prevent their qualifying as a severable craft group, so long as the particular employees are not so intermingled and integrated with other production employees as to lose their separate identity as a craft group.²¹ Where, however, the employees sought to be severed are not members of a traditional craft group²² or lack the specific skills belonging to their respective craft designations, the Board has consistently refused their severance from an already existing broader unit.²³ As a rule, craft severance is denied where the employees to be severed comprise only a segment of a particular craft group, i. e., the proposed craft unit must include all employees exercising the skill which distinguishes the craft group from the other employees.²⁴

While maintenance employees are generally included in a unit with production employees, the Board, in accordance with the rule established in the *Armstrong* case,²⁵ permits maintenance craftsmen to sever and to form multicraft units²⁶ where they have mutual interests distinct from those of production employees, and perform duties which are not an integral part of production or merchandising functions.²⁷ However, in the presence of a bargaining history on an industrial basis, severance is not permitted, particularly where the group consists of employees with different unrelated occupations and

¹⁹ *Schultz Die Casting Co.*, *supra*; *The Plomb Tool Co., J. P. Danielson Div.*, 87 NLRB 134; *General Electric Co.*, *supra*.

²⁰ Such groups usually include truck drivers, teamsters, powerhouse operators, foundry workers, and other allied classifications. See *Wm. J. Silva Co.*, 85 NLRB 573; *Reynolds Metals Co.*, *supra*; *Heyden Chemical Corp.*, 85 NLRB 1181; *American Hoist & Derrick Co.*, 87 NLRB 654; *National Farm Machinery Cooperative Inc. (Ohio Cultivator Division)*, 88 NLRB No. 27.

²¹ *General Electric Co.*, 86 NLRB 327.

²² *Frederick Loeser & Co., Inc.*, 85 NLRB 281; *International Harvester Co. (Louisville Works)*, 87 NLRB 317; *Brockway-Smith-Haigh-Lovell Co.*, 90 NLRB No. 140.

²³ *General Electric Co.*, 89 NLRB No. 120; *International Harvester Co. (Louisville Works)*, *supra*; *United Growers, Inc., et al.*, 86 NLRB 583. The Board ordinarily considers the presence of an apprenticeship program as a test of a true craft. See *Rice Stew Dry Goods Co.*, 85 NLRB 541; *Armstrong Cork Co.*, 89 NLRB No. 47; *Park Sherman Co.*, 89 NLRB No. 160; *Pacific Outdoor Advertising Co.*, 90 NLRB No. 25.

²⁴ *General Electric Corp.*, *supra*; *Milprint, Inc.*, 90 NLRB No. 16. However, the mere fact that the proposed craft group does not include all employees in the plant who possess similar skills does not prevent craft severance where it appears that the excluded employees do not exercise those skills in the performance of their jobs. See *General Electric Co., et al.*, 86 NLRB 327; *Chase Candy Co.*, 88 NLRB No. 5.

²⁵ 80 NLRB 1328 (1948); see Fourteenth Annual Report, pp. 34-35.

²⁶ *Hotpoint, Inc.*, 85 NLRB 485; *W. F. Schraft & Sons Corp.*, 86 NLRB 77; *General Electric Co., Circleville Lamp Works*, 89 NLRB No. 110.

²⁷ *Montgomery Ward & Co., Inc.*, 87 NLRB 254; *Borden's Soy Processing Co., Division of the Borden Company*, 88 NLRB No. 213.

varying degrees of skill,²⁸ and where maintenance as well as production employees perform both maintenance and production work.²⁹

3. Units in Integrated Industries

While section 9 (b) (2) precludes the Board from rejecting a proposed craft unit solely on the ground that a different unit was established by a prior Board decision, craft severance is not mandatory in the face of a contrary bargaining history or the integration of the craft operations into production process. Thus the Board in the *National Tube* case denied craft severance in the basic steel industry because of the complete integration of the functions of all employees in the steel-making process and the industry's prevailing pattern of industrial units.³⁰ During the past fiscal year, the Board found that similar conditions prevailed in the lumber and aluminum industries. Consequently, the Board in the *Weyerhaeuser* case³¹ denied the severance of a group of maintenance electricians from an established industrial unit on the ground that—

The development of successful maintenance and production processes and methods in the lumber industry has been accomplished by an integration and specialization which has foreclosed the existence of distinct and well defined crafts. In view of the comprehensive and consistent history of industrial bargaining, the extensive integration of all production and maintenance work, and the fact that the industry has tended to develop specialists rather than workmen in the craft tradition, we believe that separate craft representation is not appropriate for employees in the lumber industry.³²

In the *Permanente Metals* case,³³ the Board expressly overruled a prior holding³⁴ and likewise applied the principles of the *National Tube* case to the aluminum industry. In view of the integration of the industry's operations and predominantly industrial bargaining history, the Board held, "collective bargaining on other than an industrial basis will not assure employees in the aluminum industry the best opportunity to exercise the rights guaranteed by the Act."

4. Employees' Wishes in Unit Determinations

The power to determine the appropriateness of bargaining units is conferred by the statute upon the Board, but the desires of the

²⁸ See *United States Time Corp.*, 86 NLRB 724; *The Borden Co., Borden's Ice Cream Co. of Michigan Division*, 85 NLRB 385; *National Biscuit Co.*, 88 NLRB No. 81.

²⁹ *The Borden Co., Borden's Ice Cream Co. of Michigan Division*, *supra*.

³⁰ *National Tube Co.*, 76 NLRB 1199 (1948). See Thirteenth Annual Report, pp. 36-37; Fourteenth Annual Report, p. 34.

³¹ *Weyerhaeuser Timber Co. (Springfield Lumber Division)*, 87 NLRB 1076.

³² See also *Nettleton Timber Co.*, 87 NLRB 1319; *Weyerhaeuser Timber Co.*, 88 NLRB No. 36; *White River Lumber Co.*, 88 NLRB No. 37; *Magnolia Lumber Corp.*, 88 NLRB No. 41.

³³ *Permanente Metals Corp.*, 89 NLRB No. 88.

³⁴ *Reynolds Metal Co.*, 85 NLRB 110; *Aluminum Ore Co.*, 85 NLRB 121 (1949).

employees regarding the unit in which they are to be represented will be given effect in cases where the Board finds two distinct units would be equally appropriate. This occurs only when two or more unions are competing for the right to represent a group of employees, who are part of a larger unit sought by one of the unions, but who would also constitute an appropriate separate unit. Usually the smaller unit is a craft group. Under these circumstances, the Board permits the employees to indicate their preference in a self-determination election commonly called a "Globe" election.³⁵ The typical question submitted to a vote in such an election is whether the voters, most frequently craft employees,³⁶ wish to be represented by the union which seeks to represent them as a separate group, or by an industrial union which proposes to include them in a larger unit.³⁷

In one case, the problem of determining the ultimate bargaining unit was complicated by the fact that a majority of the employees in the craft group voted for an industrial union, which failed to win a majority in the industrial unit it proposed.³⁸ This raised the question of the interpretation to be placed on the vote of the craft group. The Board interpreted it as a vote for representation by the industrial union and found the craft unit appropriate for the industrial union to represent. In this case, besides the industrial union, three other unions were involved, seeking to represent separate groups of employees in the plant. The Board directed self-determination elections in four voting groups. In each election, the employees had a choice of the industrial union, the union seeking separate representation, and "no union." In two groups, majorities voted for "no union." The third group voted for the industrial union, and the fourth chose a union seeking separate representation. The Board certified the industrial union as bargaining agent for the group that had voted for it;³⁹ but the employer challenged the certification in a technical refusal-to-bargain proceeding on the ground that the Board was bound, in a self-determination election, to interpret the group's vote as a vote for only plant-wide representation and a rejection of a separate unit. The Board rejected this contention, saying it "overlooks the fact that the vote for the [industrial] union was an affirmative, not a negative vote. Accordingly, our first inquiry was concerned with what the majority in group three voted for rather than what they

³⁵ See *Globe Machine & Stamping Co.*, 3 NLRB 294, where the doctrine was first announced.

³⁶ *Western Condensing Co.*, 85 NLRB 981; *Boeing Airplane Co.*, 86 NLRB 368; *Consolidated Vultee Aircraft Corp.*, 88 NLRB No. 12, *Coosa River Newsprint Co.*, 90 NLRB No. 57.

³⁷ See Fourteenth Annual Report, p. 33.

³⁸ *J. I. Case Company*, 87 NLRB 692.

³⁹ *J. I. Case Company*, 80 NLRB 45 (Board Member Murdock dissenting from the certification).

voted against.” The Board found they had voted for collective bargaining on whatever basis the industrial union was able to represent them. The Board observed that under the circumstances the employees in each group could not know in advance in which of the other groups the industrial union would be successful, and that therefore a vote for the industrial union could not be interpreted as a vote for inclusion in any particular unit—such as the predetermined plant-wide unit—but must be construed as a desire for inclusion in the unit which the industrial union might eventually represent even if that unit consisted of a single voting group. In the Board’s opinion, this view was reinforced by the fact that the employees did not avail themselves of the “no-union” choice.⁴⁰

A self-determination election will be directed also where a union seeks to enlarge an existing unit by including a distinct group of employees which has not been part of the unit and has not been afforded an opportunity to participate in the choice of the original unit’s representative.⁴¹ On the other hand, a majority of the Board declined to direct an election in the case of mere accretions to an existing unit.⁴² The majority pointed out that: The employees involved did not constitute distinct fringe groups; “only historical accident” had caused these employees to be omitted from the union’s contracts in the past; and the original piecemeal units in the plant had been effectively merged into a single group so that only a company-wide unit was now appropriate. In one case, however, a Board majority reaffirmed the policy of granting a self-determination election to employees sought to be included in an existing unit, in a situation where the group involved had been separately represented over a 9-year period.⁴³

5. Multiplant Units

The question of the appropriateness of a multiplant unit was involved in a number of cases. As heretofore, the Board in determining the issue took into consideration the bargaining history of the employees involved,⁴⁴ the functional integration of the employer’s

⁴⁰ The Board rejected the contention that its determination was in conflict with the provisions of sec 9 (c) (5) which prohibits the Board from giving controlling weight to the extent of organization among the employees involved. In the Board’s view, sec. 9 (c) (5) has reference only to preelection unit determinations, but not to a union’s limited success in a series of “Globe” elections

⁴¹ *J. R. Reeves, et al.*, 89 NLRB No. 1; *Great Lakes Pipe Line Co.*, 88 NLRB No. 225.

⁴² *Lone Star Producing Company*, 85 NLRB 1137 (Board Member Reynolds dissenting).

⁴³ *Illinois Cities Water Co.*, 87 NLRB 109, overruling *York Motor Express Co.*, 82 NLRB 801 and *Tingling & Powell*, 82 NLRB 526. (Board Members Houston and Murdock dissenting) However, the petition in the case was dismissed, without prejudice, because of the petitioner’s failure to make an appropriate showing of interest in the smaller group.

⁴⁴ *The Great Atlantic & Pacific Tea Co.*, 85 NLRB 680; *Kindy Optical Co.*, 85 NLRB 940; *Westinghouse Electric Corp.*, 89 NLRB No. 11.

plants,⁴⁵ centralization of management⁴⁶ and supervision,⁴⁷ employee interchange,⁴⁸ and the geographical location of the several plants.⁴⁹

Where the employees at all or several like plants of one employer have been treated historically as a single unit, the Board will ordinarily not permit the severance of one of the constituent plant groups.⁵⁰ This reluctance on the part of the Board to disturb a historically recognized employee group extends to those cases in which severance is sought for craftsmen in one plant rather than for all members of the craft in the multiplant unit.⁵¹ Multiplant units have been found most frequently in the case of public utilities⁵² because of the highly integrated and interdependent nature of their operations, and the centralized control over labor relations.

In 1 case, a single plant unit was found appropriate rather than a unit comprising 13 out of the employer's 60 meat packing plants, even though the 13 plants had been covered by successive master contracts for 6 years.⁵³ The majority of the Board pointed out that those contracts left numerous matters to be negotiated at the local plant level and gave no clear indication that the parties, whose convenience they served primarily, intended to effect a consolidation of the 13 plant units and to extinguish the right of the employees in those units to select and change their representatives separately. Consequently, the majority declined to give decisive weight to the contractual bargaining history, particularly because the 13 plants did "not comprise any functional, administrative or geographical sector of the employer's business organization." The majority concluded—

There is no Board doctrine that constrains us to find effective consolidation of employees in many separate and widely scattered plant groups where, as here, the record does not even show that the historical collective bargaining was designed

⁴⁵ *Kindy Optical Co*, *supra*; *American Shuffleboard Co.*, 85 NLRB 51; *Lone Star Producing Co.*, 85 NLRB 1137; *Norfolk Coca-Cola Bottling Works, Inc.*, 86 NLRB 462; *Permanente Metals Corp.*, 89 NLRB No. 88; *Nashville Display Co.*, 89 NLRB No. 14.

⁴⁶ *American Shuffleboard Co.*, *supra*; *Permanente Metals Corp.*, *supra*; *Jacksonville Linen Service, Branch of the National Linen Service Corp.*, 89 NLRB No. 180; *Southwestern Electric Service Co.*, 89 NLRB No. 6. *Chadbourne Hosiery Mills, Inc.*, 89 NLRB No. 157; *Miaer and Co.*, 86 NLRB 656; *Lone Star Producing Co.*, *supra*; *The Harris Clay Co.*, 88 NLRB No. 177.

⁴⁷ *Great Atlantic & Pacific Tea Co.*, *supra*; *Lone Star Producing Co.*, *supra*; *Union Asbestos and Rubber Co.*, 86 NLRB 321; *Westinghouse Electric Corp.*, 87 NLRB 203.

⁴⁸ *B. F. Goodrich Co.*, 87 NLRB 1355; *Farrington Mfg. Co.*, 87 NLRB 1051; *Nashville Display Co.*, 89 NLRB No. 14; *Southwestern Electric Service Co.*, 89 NLRB No. 6.

⁴⁹ *The Fort Industry Co.*, 88 NLRB No. 110; *Manhattan Sponging Works*, 90 NLRB No. 7.

⁵⁰ *West Virginia Pulp & Paper Co.*, 89 NLRB No. 82; see also *American Steel Foundries*, 85 NLRB 19.

⁵¹ *Southwestern Electric Service Co.*, 85 NLRB 4; *Del Rio & Winter Garden Telephone Co.*, 85 NLRB 199; *The Ohio Bell Telephone Co.*, 87 NLRB 1555; *Pacific Gas and Electric Co.*, 87 NLRB 257; *New England Telephone and Telegraph Co.*, 90 NLRB No. 102. But cf. *Southwestern Electric Service Co.*, 89 NLRB No. 24, where the Board pointed out that while the company-wide unit is the optimum unit in public utilities, such unit is not at all times and in all circumstances the only appropriate unit, particularly where no union seeks to represent a group of employees on a company-wide basis.

⁵² *Hygrade Food Corp.*, 85 NLRB 841 (Board Member Reynolds dissenting).

to achieve such consolidation. Much less is it a rule of this Board to find appropriate any unit that may have been desired and agreed upon by the employer and a bargaining representative in the past where, as here, that unit does not conform reasonably well to other standards of appropriateness. Section 9 (b) of the act provides that "The Board shall decide," and "in each case," what unit is appropriate for collective bargaining purposes.

6. Multiemployer Units

Where several independent employers engage in joint collective bargaining negotiations, either as members of an association or by individual designations of a joint bargaining agent, the Board will establish a multiemployer unit, if requested.⁵⁴ In such cases, the absence of a formal employers' association for bargaining purposes does not preclude the establishment of a multiemployer unit where the employers, through an authorized representative, have participated in bargaining as a group rather than on an individual basis.⁵⁵

In the case of association-wide units, the Board will include only the employees of those employers who are actually members of the association and have participated in group bargaining.⁵⁶ Thus the Board excluded from a multiemployer unit the employees of one employer who had adopted and signed the standard contracts resulting from joint negotiations, but had never participated in the joint negotiations or specifically delegated to any of the participating employers authority to negotiate on his behalf.⁵⁷ Conversely, where all members of an association participated in joint bargaining, a unit limited to the employees of only some of the participating employers was held inappropriate.⁵⁸

While the Board takes into consideration the bargaining history,⁵⁹ it is primarily guided by the desires of the parties in determining the appropriateness of multiemployer units.⁶⁰ For example, where after the Board's finding of such a unit the employers involved abandoned all group bargaining and elected to pursue individual courses of action, the Board, upon a motion for reconsideration, set aside its prior finding and held individual employer units appropriate.⁶¹ In another case,

⁵⁴ *Columbia Marble Co., et al.*, 89 NLRB No. 200.

⁵⁵ *Johnson Optical Co., et al.*, 85 NLRB 895.

⁵⁶ *Indianapolis Cleaners and Launderers Club*, 87 NLRB 472; see also *Association of Motion Picture Producers, Inc., et al.*, 85 NLRB 902.

⁵⁷ *Bunker Hill and Sullivan Mining and Concentrating Co.*, 89 NLRB No. 8.

⁵⁸ *Association of Motion Picture Producers, Inc., et al.*, 85 NLRB 902.

⁵⁹ *Johnson Optical Co., et al.*, 85 NLRB 895; *Association of Motion Picture Producers, Inc., et al., supra*; *Epp Furniture Co., et al.*, 86 NLRB 120; *Balaban & Katz (Princess Theater)*, 87 NLRB 1071; *Chicago Typographical Union No. 16, et al. (Printing Industry of America, etc.)*, 87 NLRB 1418; *General Optical Co., et al.*, 88 NLRB No. 89; *Central Baking Co.*, 90 NLRB No. 90.

⁶⁰ See *RKO Radio Pictures, Inc.*, 90 NLRB No. 58.

⁶¹ *Johnson Optical Co., et al.*, 87 NLRB 539, see also *The Association of Motion Picture Producers, Inc., et al.*, 88 NLRB No. 190.

the Board excluded from an association-wide unit the employees of those association members who affirmatively indicated a desire to bargain individually.⁶² And, where originally a single unit had been found for the employees of seven employers, a separate unit for the employees of one of these employers was established after he indicated his desire to pursue an independent course of action.⁶³ However, in the *Johnson Optical* case,⁶⁴ the Board found a multiemployer unit appropriate despite the fact that the employers had concurred in the petitioning union's request for separate units. The Board, while relying mainly on the successful 13-year bargaining history of the group during which a labor relations consultant had bargained on behalf of the several employers, took into consideration the additional fact that the employers' agreement with the union's request for separate units was not accompanied by any indication that they intended to abandon their concerted course of action on labor relations.

The Board is often called upon to determine the appropriateness of a unit where the employers involved are interrelated through stock ownership, common control, or highly integrated operations. The Board has consistently treated such companies as a single employer in its unit determination. Thus, in view of their common over-all management and control of labor relations, a bus company and a retail service station, while separate corporate entities, were held to be a single employer whose employees could constitute a single appropriate unit.⁶⁵ In another case,⁶⁶ the Board similarly found that three separate companies with common officers, highly integrated operations, and unified labor policies constituted a single employer for the purposes of a unit determination.⁶⁷

7. Professional Employees

Section 9 (b) (1), which codified established Board practice,⁶⁸ forbids the inclusion of professional employees in a unit with nonprofessional employees unless a majority of the professional employees vote for inclusion. Consequently, the Board in a number of cases either excluded professionals from the unit found or directed self-determi-

⁶² *Kindy Optical Co.*, 85 NLRB 940; *Henry J. Nortz, Inc.*, 86 NLRB 580.

⁶³ *Epp Furniture Co., et al*, *supra*.

⁶⁴ 85 NLRB 895.

⁶⁵ *The McMahon Transportation Co., Inc., et al.*, 89 NLRB No. 211.

⁶⁶ *South Georgia Pecan Shelling Co.*, 85 NLRB 591; see also *Victor Hosiery Corp., et al*, 86 NLRB 195.

⁶⁷ But cf. *Strathmore District Orange Association, et al.*, 85 NLRB 1029, where notwithstanding factors evidencing a high degree of integration of operations, the Board found three nonprofit cooperative associations to be separate and distinct entities whose labor policies were determined separately and whose employees, therefore, could not form a multiemployer unit.

⁶⁸ See Thirteenth Annual Report, p. 40.

nation elections among them.⁶⁹ However, the Board has construed section 9 (b) (1) as not precluding the establishment of a single unit composed of both professional and nonprofessional employees, where the group is predominantly professional and includes only a small minority of nonprofessional employees. In such cases, the unit as a whole is held to qualify as a professional group.⁷⁰

In determining whether employees are "professional" within the act's definition,⁷¹ the Board looks to the specific work performed by the employee concerned, rather than the employee's job classification.⁷² Thus, the Board found in one case that employees engaged in routine electrical and chemical testing were technical rather than professional employees; whereas it found another group of chemical testers in the same department were professional employees on the ground that practically all employees in the group had college degrees in chemistry or chemical engineering and performed work which involved continual use of their scientific knowledge.⁷³ Similarly, the Board found a chemist who was not a college graduate to be a professional employee, because he had 18 years of laboratory experience and exercised independent judgment in performing analytical and experimental laboratory work, but found that another chemist who had a college degree in chemistry was not a professional employee, since he merely assisted in the testing of products under the close supervision of a nonprofessional laboratory head.⁷⁴

⁶⁹ *Kelsey Hayes Wheel Co.*, 85 NLRB 666; *Boeing Airplane Co.*, 86 NLRB 368; *Pacific Gas and Electric Co.*, 87 NLRB 257; *General Electric Co.*, 89 NLRB No. 120; *Westinghouse Electric Corp.*, 89 NLRB No. 11.

⁷⁰ *Boeing Airplane Co.*, *supra*.

⁷¹ Sec. 2 (12) of the act provides: "The term 'professional employee' means—(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of high learning or a hospital as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical process, or (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a)."

⁷² The following types of employees were held to be professional employees under the circumstances of the respective cases: Chemist (*Union Oil Company of California*, 88 NLRB No. 185); cost and material estimators at gas and electric utility (*Pacific Gas and Electric Co.*, 87 NLRB 257); metallurgist (*Kelsey Hayes Wheel Co.*, *supra*); time-study employees (*General Electric Co.*, 89 NLRB No. 120); methods engineers, technical writers, nurses, negotiation correspondents, laboratory technicians (*Westinghouse Electric Corp.*, 89 NLRB No. 11). On the other hand, the Board held that the following workers were not professional employees, Artistic and photographic employees (*Koopman-Neumer*, 88 NLRB No. 125); research and control technicians at a chemical laboratory (*Boeing Airplane Co.*, 86 NLRB 368); laboratory analyst performing routine functions (*Victor Chemical Works*, 85 NLRB 495).

⁷³ *Boeing Airplane Co.*, 86 NLRB 368.

⁷⁴ *The Colorado Milling and Elevator Co.*, 87 NLRB 1091.

Technical employees who do not meet the statutory requirements of professional employees nevertheless may be excluded from production and maintenance units and may form separate bargaining units because of the differences in their work.⁷⁵

8. Units of Guards

Section 9 (b) (3) not only forbids the inclusion of guards in units with other employees, but it forbids the certification of any labor organization as a representative of guards if it admits to membership employees other than guards or it is affiliated, directly or indirectly, with an organization which admits nonguards to membership.

The Board has ruled, in prior years, that this provision forbids it to certify as a representative of guards either a Federal labor union affiliated with a national federation of other labor organizations, or an international union composed exclusively of guards but affiliated with a national federation of other labor organizations.⁷⁶

During the past fiscal year, the Board has held that a petitioning guard union, whose international shared office space with several nonguard unions, was a bona fide guard union since the international paid its own rent and other office expenses, and since both the petitioner and its international had severed all connections with the nonguard unions.⁷⁷ In another case,⁷⁸ however, the Board found that a guard union whose officers continued to hold policy-making positions in nonguard unions for more than 1 year after the guard union's inception, was indirectly affiliated with nonguard unions and, therefore, was not eligible to represent guards. On the other hand, the Board reiterated its view, previously expressed in the *Squibb* case,⁷⁹ that sec. 9 (b) (3) does not preclude the certification of a union as the representative of a unit of production and maintenance employees, although the union is affiliated directly or indirectly with a union which presently represents guards.⁸⁰

The Board, during the past year, was also confronted with the question whether section 9 (b) (3) applies to employees who guard property belonging not to their own employer, but to their employer's cus-

⁷⁵ *Monsanto Chemical Co., Mound Laboratory*, 89 NLRB No. 201 (instrument operators, laboratory aides, health surveyors); *Delta Manufacturing Division, Rockwell Manufacturing Co.*, 89 NLRB No. 188 (blueprint operators, tool designers, tracers); *Buckeye Rural Electric Cooperative*, 88 NLRB No. 44 (stakers); *Boeing Airplane Co.*, 86 NLRB 368 (chemical testers, production engineers); *Lake Superior District Power Co.*, 87 NLRB 8 (draftsmen); *Middlesex Broadcasting Corp.*, 87 NLRB 1567 (radio station engineers); *National Broadcasting Co., Inc.*, 89 NLRB No. 165 (light direction engineer at television studio).

⁷⁶ *Schenley Distilleries, Inc.*, 77 NLRB 468 (1948); *General Motors Corp.*, 77 NLRB 1029 (1948).

⁷⁷ *Brooklyn Piers, Inc.*, 88 NLRB No. 243.

⁷⁸ *Wilcox Construction Co., Inc.*, 87 NLRB 371.

⁷⁹ *E. R. Squibb & Sons*, 77 NLRB 84 (1948).

⁸⁰ *Pinkerton's National Detective Agency, Inc.*, 90 NLRB No. 81.

tomers. This section defines a guard as "any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." In a new *American District Telegraph* case,⁸¹ a majority of the Board overruled the holding in the earlier *American District Telegraph* cases⁸² and reaffirmed the principle announced in the *Brinks* case,⁸³ that section 9 (b) (3) extends only to guards employed to protect the property of their own employer or to protect the safety of persons on the premises of their own employer. Of guards engaged in guarding property of customers of their employer on a commercial basis, the majority said :

To hold that these employees are "guards" within the meaning of the Act, would achieve a result inimical to the very intent of Congress in enacting these restrictions. Congress was concerned with the problem of divided loyalties between an employer's own plant guards and those of his own other employees whose derelictions of duty the guards are expected to report.

The Board has held also that watchmen who do not function as monitors of fellow employees may nevertheless qualify as guards because they have a duty to protect their employer's property against theft or damage, whether by employees or "other persons" who might have access to the employer's premises.⁸⁴ Firemen, however, are not considered guards within the meaning of the act unless a large and integral part of their work is the enforcement of rules concerning the use of plant property.⁸⁵ Guard duties must be the main part of the employment, and incidental guard or watchman duties which occupy 50 percent or less of an employee's time do not qualify him as a guard within the act's definition.⁸⁶

9. Exclusion of Supervisors

Since section 2 (3) of the act excludes supervisors from its protection, the Board in determining an appropriate unit frequently must decide whether certain employees are supervisors within the statutory definition and, therefore, should be excluded from the unit.

Section 2 (11) defines a supervisor as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances,

⁸¹ 89 NLRB No. 111 (Board Members Reynolds and Murdock dissenting).

⁸² 83 NLRB 517, Fourteenth Annual Report, p. 38.

⁸³ *Brinks, Inc.*, 77 NLRB 1182, Fourteenth Annual Report, p. 38.

⁸⁴ *Shenango Pottery Co., Inc.*, 85 NLRB 490; *Olin Industries, Winchester Repeating Arms Co. Div.*, 85 NLRB 396; *General Box Co.*, 89 NLRB No. 163.

⁸⁵ *Mine Safety Appliance Co.*, 85 NLRB 290; *Sperry Gyroscope Co.*, 88 NLRB No. 181; *Boro Wood Products Co., Inc.*, 88 NLRB No. 160; *Scranton Battery Corp.*, 89 NLRB No. 85.

⁸⁶ *Paraffine Companies, Inc.*, 85 NLRB 325; *Waldensian Hosiery Mills, Inc.*, 85 NLRB 758; *Lake Superior District Power Co.*, 87 NLRB 8; *Cherry-Burrell Corp.*, 88 NLRB No. 197.

or to effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The Board summarized the impact of this definition upon its prior rulings in regard to supervisors as follows:

The [1947] amendment to the Act has not changed the criteria heretofore applied by the Board in determining who are supervisors, except that under the amended Act an employee is a supervisor if, although he satisfies none of the other criteria, he has authority "responsibly to direct" other employees.⁸⁷

The test of supervisory status is not the mere right to exercise the various functions enumerated in the act, but the use of independent judgment in the actual exercise of the specified authority, the Board has ruled.⁸⁸ Thus employees who merely transmit instructions to other workers without the exercise of independent judgment are not regarded as supervisors,⁸⁹ and an employee who spent 90 percent of his time in the routine direction of work of two other workers was included in a unit with regular employees.⁹⁰

The Board applies the rule that an employee is a supervisor if he acts in a supervisory capacity either regularly or for any substantial period of time,⁹¹ but that workers who exercise only sporadic and limited supervisory authority are not supervisors.⁹² However, the frequency with which actual supervisory authority is exercised is not controlling.⁹³ In determining the supervisory status of an employee, the Board will also take into consideration the ratio of supervisors to production employees in the plant. Thus the Board found that certain employees could not be supervisors where a contrary determination would have resulted in a ratio of four supervisors to six non-

⁸⁷ *John Deere Killefer Co.*, 86 NLRB 1073.

⁸⁸ *Spandisco Oil and Royalty Co.*, 88 NLRB No 235.

⁸⁹ *East Tennessee Packing Co.*, 89 NLRB No. 73; *Pacific Gas and Electric Co.*, 87 NLRB 257

⁹⁰ *The Fuller Automobile Co.*, 88 NLRB No 245 See also *Continental Oil Co.*, 88 NLRB No 39; *Maus Brothers, Inc.*, 88 NLRB No. 38; *The Ironside Co.*, 87 NLRB 1564. See also *Rollman & Sons Co.*, 90 NLRB No. 1, where the Board took into consideration that "the work performed by the other stockmen * * * is itself of such a routine nature that it can hardly be said that the direction of these [employees] requires the use of independent judgment."

⁹¹ *Charles Livingston & Sons, Inc.*, 86 NLRB 30; *Salt Lake Refining Co.*, 86 NLRB 68, *Epp Furniture Co., et al.*, 86 NLRB 120. Overruling *Magnolia Petroleum Co.*, 79 NLRB 1027 (1948), the Board majority (Chairman Herzog and Board Member Houston dissenting) held in *The Texas Co., Salem Gasoline Plant*, 85 NLRB 1211, that employees who regularly serve in a supervisory position 1 or 2 days each week, and during such periods exercise the privileges and responsibilities of supervisors, are supervisory employees within the meaning of the act. See also *Pan American Refining Corp., Chemical Division*, 85 NLRB 1506; *Salt Lake Refining Co.*, 86 NLRB 68; *E. I. Du Pont de Nemours and Co., Inc. (Rayon Division)*, 85 NLRB 1516.

⁹² *Muskogee Dairy Products Co.*, 85 NLRB 520; *Rosedale Passenger Lines, Inc.*, 85 NLRB 527; *Strong Co.*, 86 NLRB 687; *The Ann Arbor Press*, 85 NLRB 946.

⁹³ *Mine Safety Appliances Co.*, 85 NLRB 290

supervisory employees.⁹⁴ But in a number of cases, the Board has found supervisors who direct the work of only one employee.⁹⁵ In one case, the Board found that an employee who directed the work of only one part-time employee 2 days each week met the statutory test of supervisor because of his regular exercise of supervisory authority.⁹⁶ In the same case, the Board found that a power company meter superintendent who had no employees regularly assigned to him qualified as a supervisor because of his exercise of independent judgment in supervising the installation of meters.

In determining supervisory status, the Board also considers as evidence such factors as the alleged supervisors title, wage or salary rate, the intervals at which he is paid, the amount of work he does that is similar to that of employees claimed to be under his supervision, and his duties in training other employees. None of these factors, however, is controlling. Thus the Board ruled that an employee who had no official title was a supervisor when he was regarded by several employees as office manager, trained and instructed other employees, and appeared to have authority to reprimand and effectively to recommend promotions and discharges.⁹⁷ However, employees bearing the titles of "assistant chief engineer" in a radio broadcasting station,⁹⁸ "assistant department manager" in a factory,⁹⁹ and "assistant manager" in a retail store¹ were held not to be supervisors when the Board found that their authority and responsibilities did not measure up to the statutory requirements.

Similarly in considering rate or manner of wage or salary payment, the Board weighs it only as a factor which may, in certain circumstances, indicate the employee's actual status. Thus, in holding that a leader in charge of a factory canteen was a supervisor, the Board cited the fact that she was paid 20 percent more than employees whom she trained, assigned, directed, and recommended for transfers.² However, a shop mechanic whose supervision was limited to routine direction of workers temporarily assigned to him was found not to be a supervisor even though he received considerably more than foremen—in fact, the second largest salary and bonus in the plant

⁹⁴ *Rollman & Sons Co.*, 90 NLRB No. 1. See also *United States Gypsum Co.*, 85 NLRB 162, where a contrary finding would have resulted in a ratio of 1 supervisor to every 3 employees, whereas the normal ratio in the industry was 1 to 12 or 15. See also *The Ironside Co.*, 87 NLRB 1564.

⁹⁵ *Maas Brothers, Inc.*, 88 NLRB No. 38, *The Fuller Automobile Co.*, 88 NLRB No. 245, *General Box Co.*, 89 NLRB No. 163; *Phillips Chemical Co.*, 90 NLRB No. 76.

⁹⁶ *Lake Superior District Power Co.*, 87 NLRB 8. See also *The Texas Co.*, 85 NLRB 1211 (Chairman Herzog and Board Member Houston dissenting), footnote 91, *supra*.

⁹⁷ *General Finance Corp.*, 88 NLRB No. 189.

⁹⁸ *Middlesex Broadcasting Corp.*, 87 NLRB 1567.

⁹⁹ *Electric Auto-Lite Co.*, 87 NLRB 1552.

¹ *Singer Sewing Machine Co.*, 87 NLRB 460.

² *Delco-Remy Division, General Motors Corp.*, 89 NLRB No. 164.

below top management—and was paid weekly.³ But in numerous cases, the Board has found hourly paid employees qualified as supervisors.⁴

Nor does the fact that a supervisor works with the employees under him, even doing the same work, dissipate his supervisory status. Thus working foremen, “lead men,” and “strawbosses” were found to be supervisors in a number of cases where they had actual supervisory powers.⁵ Likewise, “gang pushers” and “production snappers” and other work expeditors have been found to be supervisors where they assign or direct work, have authority to order overtime or permit employees under them to leave the job, and whose recommendations concerning promotion, transfer, or discipline of employees is given weight by management.⁶ However, lead men who assign and inspect work only on specific instructions or who only transmit instructions to other employees are not supervisors.⁷ But employees who spent 50, 60, or 90 percent of their time assigning work according to a prescribed schedule, instructing employees, and inspecting work were held not to be supervisors because they neither responsibly directed work nor had authority to change or effectively recommend change in employees’ status.⁸ Nor were factory “lead men” found to have supervisory status when they spent 50 to 90 percent of their time on production work even though they were paid 17 cents an hour more than other employees, sometimes explained the work to departmental crews of 2 to 15 men, and could on occasion effect transfers of other employees to speed up departmental output.⁹

Nor is the Board bound in determining supervisory status by prior determinations, present inclusion of the supervisor in a unit of other employees, or the fact that the employee in question has voted in a Board-conducted election.¹⁰

In the case of employees who have temporarily lost their supervisory status because of changes of operations in the plant, the Board includes them in the bargaining unit if the resumption of the supervisory status is uncertain.¹¹ But they are excluded if, at the time of the Board election, they have resumed their supervisory powers.¹²

³ *Porto Rico Container Corp.*, 89 NLRB No. 205.

⁴ *West Virginia Pulp & Paper Co.*, 89 NLRB No. 82, *Ball Brothers Co., Inc.*, 87 NLRB 34

⁵ *Ellison Bronze Co., Inc.*, 90 NLRB No. 79; *Metal Textile Corp.*, 88 NLRB No. 239; *G. Ray Randall Mfg. Co.*, 88 NLRB No. 18, *Northern Redwood Lumber Co.*, 88 NLRB No. 32; *The Cincinnati Steel Castings Co.*, 86 NLRB 592; *Empire Pencil Co.*, 86 NLRB 1187; *Peerless Yeast Co.*, 86 NLRB 1098.

⁶ *Phillips Petroleum Co.*, 88 NLRB No. 183, *Todd Shipyards Corp.*, 87 NLRB 627; *Ball Brothers Co., Inc.*, 87 NLRB 34

⁷ *John Dritz & Sons*, 88 NLRB No. 262, *East Tennessee Packing Co.*, 89 NLRB No. 73.

⁸ *United Screw & Bolt Corp.*, 89 NLRB No. 132.

⁹ *Stremel Brothers Mfg. Co.*, 89 NLRB No. 186.

¹⁰ *West Virginia Pulp & Paper Co.*, 89 NLRB No. 82; *R. J. Reynolds Tobacco Co.*, 88 NLRB No. 120; *Peerless Yeast Co.*, 86 NLRB 1098.

¹¹ *Northern Redwood Lumber Co.*, 88 NLRB No. 32; *Columbia Broadcasting System, Inc.*, 88 NLRB No. 78.

¹² *Northern Redwood Lumber Co.*, *ibid.*

10. Independent Contractors

Independent contractors, who are likewise excluded from the coverage of section 2 (3), are not defined in the act. Ordinarily the Board finds an employer-independent contractor relationship to exist where the employer's right to control is limited to the result to be accomplished by the work; whereas an employer-employee relationship is considered present where the person for whom the services are performed reserves the right to control¹³ the manner and means by which the result is accomplished.¹⁴ Applying these tests, the Board in one case¹⁵ found that exchange agents of a telephone company were employees rather than independent contractors, since the company had decisive control over the tenure and remuneration of the agents, owned all the equipment, and reserved, though did not actually exercise, the right to control the manner in which the work was to be performed; and in another case¹⁶ held that salesmen at a retail furniture store were employees rather than independent contractors, since the employer retained control over operations, selling techniques, tenure, and payment of the salesmen.¹⁷ A related problem arises with regard to individuals who, while working in conjunction with employees of a certain employer, are in fact controlled by an independent contractor. Such workers are usually excluded from the unit.¹⁸

11. Agricultural Laborers

Agricultural laborers while excluded from its coverage, are likewise not defined by the act.¹⁹ However, since 1946 Congress has continued

¹³ The fact that such control may not be actually exercised is not controlling *Del Rio & Winter Garden Telephone Co*, 85 NLRB 199

¹⁴ *The Fuller Automobile Co*, 88 NLRB No. 245.

¹⁵ See *Del Rio & Winter Garden Telephone Co*, *supra*.

¹⁶ *Epp Furniture Co, et al*, 86 NLRB 120

¹⁷ See also *Columbia Reporting Co*, 88 NLRB No. 39, where the Board considered staff reporters employees rather than independent contractors in view of the employer's control over earnings, the fact that the work performed constituted an integral part of the employer's business, and the continuous relationship of the employer and the reporters; *Nelson-Ricks Creamery Co.*, 89 NLRB No. 4, where truck drivers who delivered milk to a creamery under a written 1-year contract were held to be independent contractors rather than employees, since they established their own methods of servicing routes, hired their own assistants, supplied their own equipment, paid all taxes and license fees, and were free to engage in other gainful employment; *Shell Oil Co*, 90 NLRB No. 53, where an automobile service station manager was held not to be an independent contractor, since the oil company owned a substantial part of the station equipment, dictated the mode of operations, and reserved the right to approve employees and wages.

¹⁸ Thus buckers and fallers in a logging camp were held to be employees of an independent contractor rather than the lumber company which paid for their wages and workmen's compensation but had no power to hire, discharge, or discipline them. *Matheny Creek Lumber Co.*, 85 NLRB 515 Similarly, employees in leased departments at a department store who participated in general store employee benefits, were included in the store's rating program, and transferred to and from other departments, were excluded from unit of department store employees, since the lessee controlled all essential terms and conditions of employment and the store's control was limited to general supervision to insure conformance with store policies and regulations, *Maas Brothers, Inc*, 88 NLRB No. 38; see also *Darling Utah Corp.*, 85 NLRB 614.

¹⁹ Sec. 2 (3).

to attach a "rider" to the Board's appropriation act which makes the definition of "agricultural labor" in section 3 (f) of the Fair Labor Standards Act (Wage-Hour Law) controlling on the question of whether particular employees are "agricultural laborers" within the meaning of the act.²⁰ Section 3 (f) provides that "'agriculture' includes farming in all its branches and among other things includes * * * the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities * * * and any practice * * * performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or market or to carriers for transportation to market." The Board has held that, in the light of this definition, the agricultural labor exemption is not applicable to employees who work on commodities which are not grown by their own employers, since such employees are engaged in a commercial rather than a farming operation.²¹ The Board has also held that operations which materially change the product in order to enhance its market value are commercial rather than agricultural, and that employees engaged in such operations are therefore covered by the act.²² Packers of produce grown on their employer's own farm are agricultural employees; but where packing operations were, in fact, a separate commercial venture and not incidental to farming, the Board considered the workers involved "employees" within the meaning of the act.²³ In the same case, the Board held that no agricultural labor was involved where the employer prepared for shipment fruit which, though grown to some extent in fields owned or leased by the employer, was chiefly obtained under contractual arrangements with other growers to whom the employer furnished services necessary to mature and gather the crops, such as pruning, cultivating and irrigating the grounds, and harvesting.

12. Clerical and Seasonal Employees

Many recurrent questions as to the composition of bargaining units, not controlled by specific statutory provisions, are decided by applica-

²⁰ See *Wade & Paxton*, 89 NLRB No. 97; *Roberts Fig Co.*, 88 NLRB No. 208.

²¹ *Wade & Paxton*, 89 NLRB No. 97. See also *George I. Petit, Inc.*, 89 NLRB No. 87, where employees processing poultry and eggs purchased, but not raised, by their own employer were held to be engaged in commercial rather than farming operations and hence not "agricultural laborers." *Crown Crest Fruit Corp.*, 90 NLRB No. 47, where fruit packing shed employees were held not "agricultural laborers," since less than 8 percent of the fruit was grown in the employer's own grove, and *South Georgia Pecan Shelling Co., et al.*, 85 NLRB 591, where employees engaged in processing pecans purchased, but not grown, by their employer were found to be engaged in commercial rather than farming operations.

²² *Roberts Fig Company*, *supra*

²³ *Grower-Shipper Vegetable Association of Southern California*, Case No. 20-RC-631 (an unpublished ruling in a consent election case), decided October 5, 1949. *Crown Crest Fruit Corp.*, 90 NLRB No. 47; *Imperial Garden Growers*, 91 NLRB No. 167, decided October 17, 1950.

tion of certain discretionary principles which the Board has formulated in the course of its experience. Thus, the Board ordinarily excludes office clerical workers from units comprising manual workers,²⁴ but includes plant clericals in production and maintenance units.²⁵

The inclusion or exclusion of seasonal and part-time employees, on the other hand, depends on the similarity or diversity of their interests as compared with those of permanent workers. Thus seasonal workers who with some regularity return, season after season, and whose working conditions are similar to those of nonseasonal workers, will ordinarily be included in a unit with permanent employees.²⁶ Conversely, if there is a high degree of turn-over and there are differences in working conditions, seasonal employees will be excluded.²⁷

In the case of part-time employees, the Board is mainly guided by the regularity of their employment. Accordingly, employees who work regularly a certain number of hours each week (regardless of the number of hours), and perform the same duties as full-time employees, usually will be included in a unit with full-time employees;²⁸ but part-time employees who work only short and irregular periods and whose work is not comparable to that of full-time employees will be excluded.²⁹

13. Confidential and Managerial Employees

Consistent with its established policy, the Board has continued to exclude from bargaining units confidential employees and managerial personnel.³⁰ In order to come within these categories, the particular employees must either participate in the formulation of general labor policies or assist, in a confidential capacity, executives who formulate or effectuate those policies. Not within these categories are employees who, in the course of their duties, may acquire confidential information pertaining to matters other than the employer's labor relations.³¹ The

²⁴ *Western Electric Co., Inc.*, 85 NLRB 227; *Boeing Airplane Co.*, 86 NLRB 368; *Buckeye Rural Electric Co-Operative, Inc.*, 88 NLRB No. 44; *Westinghouse Electric Corp.*, 89 NLRB No. 11; *Chadbourn Hosiery Mills, Inc.*, 89 NLRB No. 157.

²⁵ *Minneapolis-Moline Co.*, 85 NLRB 597; *Riverside Mills*, 85 NLRB 969; *Southern Athletic Co., Inc.*, 86 NLRB 908; *Great Lakes Pipe Line Co.*, 88 NLRB No. 225.

²⁶ *Tauton Pearl Works*, 89 NLRB No. 169; *Libby, McNeil & Libby*, 90 NLRB No. 42.

²⁷ *Lusk Candy Co.*, 85 NLRB 216; *R. J. Reynolds Tobacco Co.*, 88 NLRB No. 120.

²⁸ *Rosedale Passenger Lanes, Inc.*, 85 NLRB 527; *J. C. Penny Co., Store #1518*, 86 NLRB 920; *Montgomery Ward & Co.*, 89 NLRB No. 174; *The Hofman Packing Co.*, 90 NLRB No. 83.

²⁹ *Lake Superior District Power Co.*, 87 NLRB 8. Temporary employees are usually excluded from the unit; *B. F. Goodrich Co.*, 87 NLRB 1355.

³⁰ *The Minneapolis-Moline, supra* (confidential); *Westinghouse Electric Corp.*, 89 NLRB No. 11 (managerial); *Charles Livingston & Sons, Inc.*, 86 NLRB 30 (managerial); *The Louisville News Co. (Division of the American News Co.)*, 87 NLRB 311 (confidential).

³¹ *Poole Dry Goods Co.*, 89 NLRB No. 196; *Amplifier Mfg. Co.*, 85 NLRB 523 (telephone operators who may overhear confidential information pertaining to labor relations are not confidential employees); *Great Lakes Pipe Line Co.*, 88 NLRB No. 225 (employees who have access to customers' highly secret specifications held not confidential employees); *Ball Brothers Co., Inc.*, 87 NLRB 34 (secretary to division manager who established local rather than general labor policies held not confidential).

Board continues to follow its policy of excluding from a bargaining unit close relatives of the employer, or of managerial employees.³²

14. Elections in Changing Units

A somewhat different problem in the determination of appropriate unit is presented at times by changes or anticipated changes in a proposed bargaining unit. The general rule is that the Board will order an election if the unit, as then constituted, comprises a substantial and representative proportion of the anticipated ultimate bargaining unit. This applies to either an expansion or reduction in force, contemplated or already in progress.³³ Conversely, the Board will dismiss the petition, without prejudice to later refileing, if the character of the unit is expected to change materially. This is the general rule in cases where substantially different operations or processes are to be adopted which will require personnel of different classifications or skills, or where completion of an operation makes the type of future products and the composition of future work force uncertain.³⁴

The Board follows the general practice of endeavoring to give employees at a new plant or in a new operation the earliest possible opportunity to select a representative and engage in collective bargaining, if they wish. Thus the Board will order an election in one category of employees, which constitutes an appropriate unit, if most of the employees in the category have been hired, even though only a small proportion of the remainder of the projected total working force of the plant is employed.³⁵ In other cases, rather than dismiss a petition and require that the whole representation proceeding be repeated from the beginning, the Board will direct an election to be held at a future time when a representative proportion of the employees has been hired.³⁶

A similar practice is followed in the case of temporary shutdowns, or if there is a doubt as to whether the shutdown is temporary or permanent.³⁷ In such cases, the Board usually authorizes the regional director of the region in which the plant is located to conduct an elec-

³² *East Tennessee Packing Co.*, 87 NLRB 546 (wife of plant superintendent); *Kimsey Mfg. Co.*, 87 NLRB 651 (employer's son); *General Finance Corp.*, 88 NLRB No. 189 (son-in-law of operations manager).

³³ For cases involving expanding units, see e. g., *Harnischfeger Corp.*, 86 NLRB 325; *Auto-Lite Battery Corp.*, 90 NLRB No. 37. Actual or contemplated reductions in force were involved in *Southern Athletic Co., Inc.*, 86 NLRB 908; *Mueller Brass Co.*, 88 NLRB No. 53; *Atlas Cork Works, Inc.*, 88 NLRB No. 121; *Clarostat Mfg. Co., Inc.*, 88 NLRB No. 141; *W. B. Willett Co.*, 85 NLRB 761. Cf. *Alaska Salmon Industry, Inc.*, 90 NLRB No. 13, where a seasonal reduction in force was held not to prevent an election.

³⁴ *Liberty Products Mfg. Co.*, 88 NLRB No. 61.

³⁵ *Westinghouse Electric Corp.*, 85 NLRB 1519, and *Westinghouse Electric Corp.*, 89 NLRB No. 109.

³⁶ *Watson Bros Transportation Co.*, 89 NLRB No. 5.

³⁷ *Waite Carpet Co.*, 85 NLRB 1130; *Betsy Ross Throwing Co.*, 86 NLRB 589; *Rathy Shoes, Inc.*, 88 NLRB No. 171.

tion whenever a representative group of employees is at work. In one case, for instance, a manufacturer had ceased production because of disappearance of market but retained a number of employees for experimental and maintenance purposes. The Board denied the petitioning union's request for an immediate election because the current complement of employees was not representative in a number of categories, and it was not certain when a representative force would be employed. The Board instructed the regional director to conduct an election whenever the plant resumed operations with a representative group of employees. Eligibility to vote in the election was ordered to be determined by the payroll period immediately preceding the issuance of the notice of election.³⁸ However, in cases involving expanding units, the Board usually limits the regional director's discretion to a time when not less than 50 percent of the appropriate unit is employed.³⁹ But where the employer had not yet reached the production stage and employed only 3 percent of its projected ultimate force, the Board considered a current direction of election premature.⁴⁰

Where the complete cessation of operations or the termination of the employees in the unit has taken place or is imminent, without any prospect of a resumption of operations, the Board will not direct an election.⁴¹ But the rule does not apply if the discontinuation of operations is purely speculative⁴² or their interruption is only temporary.⁴³ Elections at seasonal plants are customarily directed to be held at or near the time of peak employment, a time usually determined by the regional director.⁴⁴

15. Units in Decertification Proceedings

In determining the appropriate unit in decertification proceedings under section 9 (c) of the act, the Board applies the same criteria as in certification cases.⁴⁵ Ordinarily, the unit found appropriate for the purposes of a decertification election will coincide with the unit for which the union named in the petition has previously been certified or is currently recognized as representative.⁴⁶ In one case, how-

³⁸ *Waite Carpet Co.*, *supra*

³⁹ *Watson Bros. Transportation Co.*, *supra*.

⁴⁰ *Westinghouse Electric Corp.* (Kansas City, Mo.), 89 NLRB No. 109

⁴¹ *Weber Showcase and Fixture Co.*, 85 NLRB 1202, *Parsons Corp.*, 86 NLRB 74; *Walker County Hosiery Mills*, 87 NLRB 1167, *General Motors Corp.* (GMC Truck & Coach Div.), 88 NLRB No. 29; *Westinghouse Electric Corp.*, *et al.*, 88 NLRB No. 105; *Bunker Hill and Sullivan Mining and Construction Co.*, *et al.*, 89 NLRB No. 8. See also *Churchward & Co., Inc.*, 87 NLRB 307, where the business was being reorganized under the bankruptcy laws and personnel had been reduced from 250 to 16 employees who were not in job categories sought, petition was dismissed.

⁴² *Knorr-Maynard, Inc.*, 90 NLRB No. 17.

⁴³ *Penn-Hadley Mills, Inc.*, 85 NLRB 570

⁴⁴ Cf. *Atlas Imperial Diesel Engine Co.*, *et al.*, 89 NLRB No. 42.

⁴⁵ *C. B. Cottrell & Sons Co.*, 85 NLRB 1

⁴⁶ *Kelsey Hayes Wheel Co.*, 85 NLRB 666.

ever, the Board held that, notwithstanding a prior certification of a separate unit at one of the employer's oil fields, only a company-wide unit, including previously unrepresented "miscellaneous" employees, was appropriate for decertification purposes in view of the employer's integrated operations, extensive employee interchange, similarity in working conditions, and the fact that each unit, following certification, was brought within the coverage of a single contract.⁴⁷ And in another case, the Board directed a decertification election for a group of employees included in a larger unit, where the smaller group could appropriately be severed for the purposes of separate representation.⁴⁸

C. Impact of Contracts and Prior Determinations

Sometimes when the Board is asked to conduct a representation election among a group of employees, they are found to be covered by an existing contract between their employer and a collective bargaining agent still claiming to represent them. This presents the Board with what is commonly known as a question of "contract bar." A similar question is raised when an election is requested among a group of employees for whom a bargaining agent has been certified by the Board in a prior case.¹

In deciding whether or not to hold an election in these cases, the Board must balance two major considerations: (1) The interest of the parties and of the public in stability of labor-management relations, which may require the maintenance of existing bargaining relationships, and (2) the employees' statutory right to select and change their representative. Both considerations carry the weight of announced policies of the act.

In cases where a contract is involved, the Board follows the general rule that a valid written exclusive bargaining agreement for a definite and reasonable period, signed by the parties embodying substantive terms and conditions of employment for employees in an appropriate unit, bars a petition for an election among the employees covered by the contract until shortly before its terminal date.² This rule, which the Board has followed throughout most of its history

⁴⁷ *Lone Star Producing Co.*, 85 NLRB 1131.

⁴⁸ *Kelsey Hayes Wheel Co.*, *supra*

¹ The impact of prior determinations of representatives is discussed at pp. 74-75.

² No bar. *American Can Company*, 89 NLRB No. 126 (oral contract), *Association of Motion Picture Producers, Inc.*, 87 NLRB 657 (unsigned written contract); *Forney Engineering Company*, 88 NLRB No. 57 (contract signed by employees in their individual capacity only); *Hi-Way Lumber Company*, 87 NLRB 468 (contract that does not cover employees mentioned in the petition); *Lockheed Aircraft Corporation*, 90 NLRB No. 113 (contract covering employees in an appropriate unit). See also Fourteenth Annual Report, pp. 22-23.

under both the original act and the amended act,³ applies with equal force to newly executed contracts and contracts providing for automatic renewal.⁴ With the advent of decertification proceedings in the amended act, the Board has followed the policy of applying the same "contract bar" rules to decertification as it applies to certification proceedings.⁵

1. Employees Under Contract

A contract asserted as a bar must, of course, cover the employees mentioned in the election petition or a substantial number of the employees in the unit in which the election is sought.⁶ Thus a contract with a general contractor was held no bar to an election among employees of a subcontractor.⁷ Nor is an election barred by a "members-only" contract.⁸ This is equally true of a contract executed before operations at a plant have begun and a majority of the employees sought in the petition have been hired.⁹ Nor will a contract act as a bar if it places the employees involved in a unit that is inappropriate for the purposes of collective bargaining.¹⁰

2. Effect of Invalid Union-Security Clauses

Another flaw which will destroy an otherwise valid contract as a bar to a representation petition is a union security clause which conflicts with the union-shop provisions of the act, as set forth in the proviso to section 8 (a) (3) or a union-security clause which was not authorized in a Board referendum.

The Board has long followed the policy that a contract which contravenes the basic policies of the act may not serve as a bar to an election of representatives. It has so held regarding contracts with employer-dominated unions and contracts covering bargaining units based solely upon race or sex. Early in the administration of the amended act, the Board applied the same rule to union-security clauses which do not conform to the requirements of the act.¹¹ The Board held that the mere existence of such a clause, whether put into operation or not, makes the contract ineffective as a bar.¹²

³ *National Sugar Refining Co. of N. J.*, 10 NLRB 1410 (1939).

⁴ *Pacific Gamble-Robinson*, 89 NLRB No. 43.

⁵ *The A. & M. Woodcraft, Inc.*, 85 NLRB 322.

⁶ *Hi-Way Lumber Company*, *supra*; *Calaveras Cement Company*, 89 NLRB No. 44.

⁷ *W. B. Willett Company*, 85 NLRB 761.

⁸ *Musell Company*, 89 NLRB No. 39.

⁹ *Westinghouse Electric Corporation*, 87 NLRB 463. Cf. *General Electric Company (Medford Plant)*, 85 NLRB 150.

¹⁰ *Lockheed Aircraft Corporation*, 90 NLRB No. 113.

¹¹ *C. Hager & Sons Hinge Manufacturing Company*, 80 NLRB 163. See *Julus Resnick, Inc.*, 86 NLRB 38, holding that mere execution of such an agreement is not an unfair labor practice and overruling the *Hager Hinge* case to the extent that it is inconsistent.

¹² *Eagle Lock Company*, 88 NLRB No. 180.

Under this rule, the Board has held that a contract containing a union-security clause made with a union which had not won the authorization to make such an agreement from employees voting in a referendum conducted under section 9 (e) of the act is not a bar.¹³ And if the clause exceeds the limits of union security permitted by the act, the contract is not a bar even though the union making it had won a union-shop authorization.¹⁴ Contracts in this category include those providing for preferential hiring on the basis of union membership or for a closed shop.¹⁵ Such a contract is not a bar even though it has not been enforced, or the union has petitioned for a union-shop poll, or a union-shop poll may have been unavoidably delayed by the temporary closing of the plant.¹⁶

The presence of an unauthorized or illegal union-security clause, however, will not invalidate a contract as a bar if the clause is plainly conditioned upon its being legalized, or if it clearly has been rescinded. Thus, a contract with such a clause remains a bar if the contract itself conditions the effectiveness of the clause on the results of a Board referendum.¹⁷ This also applies if the contract provides that an admittedly illegal union-security clause will not become effective until "the law permits" or if it provides that the clause is to become effective "only if and when [such clauses] may take effect in accordance and consistent with provisions of the Federal Laws."¹⁸ However, a contract with a proviso that its unauthorized union-security provisions are effective "to the extent that [they] are lawful under existing conditions" was held no bar.¹⁹

In the case of a rescission of an unauthorized or illegal union-security clause, it must be made before the petition for a representation election is filed.²⁰ Moreover, for contract bar purposes, an oral agreement to abrogate the clause is not enough; it must be in writing and signed by both parties.²¹ Written disavowal by either employer or union does not suffice.²² Nor is it sufficient for either employer or union to agree

¹³ *Penn Paper & Stock Company*, 88 NLRB No. 9; *General Baking Company*, 85 NLRB 1340.

¹⁴ *Hickey Cab Co*, 88 NLRB No. 84; *Atlas Cork Works, Inc.*, 88 NLRB No. 121; *Wire Products, Inc.*, 88 NLRB No. 144.

¹⁵ *Charles E. Hires Co., New York Electric Water Cooler Division*, 85 NLRB 1208; *Hazel-Atlas Glass Company*, 85 NLRB 1305; *Nicholson Transit Company*, 85 NLRB 692; *The Dayton Steel Foundry Company*, 85 NLRB 1499; *Aeroil Products Company, Inc.*, 86 NLRB 59.

¹⁶ *The A & M. Woodcraft Company*, 85 NLRB 322; *Wetlaufer Manufacturing Corporation*, 89 NLRB No. 84; *Tyee Plywood Company*, 88 NLRB No. 158

¹⁷ *Schaefer Body, Inc.*, 85 NLRB 195; *Hazel-Atlas Glass Company, supra*; *Ebasary Gypsum Company*, 87 NLRB 624

¹⁸ *West End Chemical Company*, 89 NLRB No. 86; *Wyckoff Steel Company*, 86 NLRB 1318.

¹⁹ *P H Mallory & Co., Inc.*, 89 NLRB No. 78

²⁰ *All Metal Packing Corporation*, 85 NLRB 857; *Wetlaufer Manufacturing Corporation*, 89 NLRB No. 84; *Anaconda Wire and Cable Company*, 90 NLRB No. 5

²¹ *Champion Blower & Forge Company*, 88 NLRB No. 162; *Flint Lumber Company*, 85 NLRB 943.

²² *Reading Hardware Corporation*, 85 NLRB 610; *Pacific Gas and Electric Company*, 87 NLRB 257.

orally to a written repudiation made by the other party to the contract.²³ Nor does loss of a union-shop authorization poll by the contracting union operate as a rescission of such a clause.²⁴

3. Schism and Changes in Status of Contracting Agent

As reorganizations and splitups have developed in various labor organizations, the Board from time to time throughout its history has been confronted with situations in which all or a large part of the employees covered by a current collective bargaining contract, appear to have repudiated the union named as bargaining agent in the contract and to have formed a new union which claims to represent them.²⁵ Sometimes the shift of employee allegiance takes the form of disaffiliation of a local union from one international union or parent federation and affiliation with another international or federation. In either case, the contracting union usually asserts its contract as a bar to an election among the employees and, consequently, the Board is presented with the problem of whether or not it should apply the contract-bar doctrine in view of the schism within the contracting union.

The Board, early in its history, took the view that it would hold a contract no bar if a substantial doubt as to the identity of the employees' choice of bargaining agent were raised by a defection among the employees which resulted not only in individual transfers of allegiance but formal collective action. A majority of the Board held further that, under such circumstances, a Board certification does not constitute a bar to an election.²⁶

The problem of schism was presented in a number of cases during the past fiscal year. Many of these resulted from the disaffiliation of the United Electrical Radio and Machine Workers of America from the C. I. O. and the establishment by the C. I. O. of the rival International Union of Electrical Workers.²⁷ Some cases had the added factor of a merger of the contracting local's affiliated international

²³ *Evans Milling Company*, 85 NLRB 391 (Chairman Herzog dissenting).

²⁴ *Flint Lumber*, *supra*.

²⁵ *Brewster Aeronautical Corporation*, 14 NLRB 1024; *National Tea Company*, 35 NLRB 340; *Gelatin Products Company*, 49 NLRB 173, *Brenizer Trucking Company*, 44 NLRB 810; *Brightwater Paper Company*, 54 NLRB 1102; *Foley Lumber & Export Corporation*, 70 NLRB 73; *Carson Pirie Scott & Company*, 69 NLRB 935; *Jasper Wood Products Company, Inc.*, 72 NLRB 1306; *Elizabethtown Water Company Consolidated*, 84 NLRB 815; *Hackensack Water Company*, 84 NLRB 842; *Sun Shipbuilding and Dry Dock Company*, 86 NLRB 20.

²⁶ *Carson Pirie Scott & Company* (1946), *supra*. (Board Member Houston dissenting.)

²⁷ A partial list of these cases includes *Boston Machine Works Co.*, 89 NLRB No. 17; *Signal Manufacturing Co.*, 89 NLRB No. 65; *Airtemp Division, Chrysler Corp.*, 89 NLRB No. 61; *The American Pulley Co.*, 89 NLRB No. 37; *Limited Specialties Co.*, 89 NLRB No. 79; *Consolidated Electric Lamp Co. (Champion Lamp Works Division)*, 89 NLRB No. 41; *Ohmer Corp.*, 88 NLRB No. 157; *Champion Rope Co.*, 88 NLRB No. 257; and *General Motors Corp., Frigidaire Division, et al.*, 88 NLRB No. 112.

with another international.²⁸ In the *Boston Machine Works* case, the Board reaffirmed its policy as laid down in the *Carson Pirie Scott* (1946), *Brenizer Trucking* (1942), *Brewster Aeronautical* (1939), and other early decisions. The facts in the *Boston Machine Works* case as found by the Board were that: A current contract between the employer and its affiliated local was in effect. At a regular meeting of the contracting local, publicized several days in advance and attended by a majority of the membership, it was voted unanimously to transfer affiliation to another international union. The principal officers of the old local continued as officers of the new local, and all members of the contracting union signed membership cards in the new local. After the disaffiliation vote, the old local had no members, held no meetings, and processed no grievances.

In an unanimous opinion, the Board said:

On the basis of facts substantially similar, the Board traditionally has held that a current contract between the employer and a preexisting bargaining representative of its employees cannot operate to bar an immediate election for the purpose of resolving the question concerning representation. As a result of the intraunion split revealed by the record in this case, each of two contending unions challenges with some show of right the other's claim to a representative bargaining status. The employer reasonably asserts that it does not know with which union to bargain and requests the Board to redetermine the employees' desires with regard to a bargaining representative. It is apparent that the normal bargaining relationship between the employer and the heretofore exclusive bargaining representative of its employees has become a matter of such confusion, because of the events described above, that the relationship between them no longer can be said to promote stability in industrial relations. Under these circumstances, as we have previously said, to treat the contract as a bar to a present redetermination of representatives would seriously impede rather than encourage the practice of collective bargaining which the Act was designed to foster and protect. We therefore believe that the conflicting claims to representation of the two labor organizations involved can best be resolved by an election.

The Board has also directed elections in schism cases where the vote for disaffiliation was not unanimous,²⁹ and where the disaffiliation vote was taken at a special meeting not attended by a majority of the membership³⁰ and, in numerous cases, where the contracting local was not defunct.³¹

The Board, however, has generally limited its rulings in these cases to the question of representation and declined to adjudicate any subsidiary issues between the parties. Thus, in *Boston Machine Works*, a majority of the Board declined to rule upon the effect of the direc-

²⁸ *International Harvester Co., Tractor Works*, 89 NLRB No. 26; *Link-Belt Speeder Corp.*, 89 NLRB No. 89.

²⁹ *Airtemp Division, Chrysler Corp.*, *supra*.

³⁰ *The Bassick Company*, 89 NLRB No. 129, and *Sun Shipbuilding*, *infra*.

³¹ *Ohmer Corp.*, *supra*, and most of the U. E.-I. U. E. cases.

tion of election upon the status of the existing contract (Board Member Reynolds dissenting). The majority opinion said :

Generally, in cases of this nature the Board has not attempted to rule upon the validity or invalidity of the current contract. It has decided only that the employees should be permitted to determine through an election the identity of the labor organization which they desire to have represent them. In several cases,³² however, it has held that the election would be for the restrictive purpose of determining the representative to administer the current contract. We need not now decide whether the representative to be certified herein must assume the existing contract. To the extent these cases purport to decide that question and are inconsistent with our decision and direction of election herein, they are hereby overruled.

Board Member Reynolds, in his dissent on this point, said that "in the interest of maintaining stable labor relations, neither the employer nor the employees should be enabled by virtue of a proceeding before this Board to discard unilaterally any obligations incurred as a result of their collective bargaining agreement."

In the *Sun Shipbuilding* decision,³³ the Board reaffirmed the rule of the *Brenizer Trucking* case that it would not undertake to determine the legality of any action of disaffiliation under the law or the constitution of the labor organization involved.

However, the Board will not direct an election in every case where the organization or composition of the contracting union has changed during the life of the contract. The fact that the contracting union³⁴ or its parent organization³⁵ has changed its affiliation, that the parent organization has absorbed other locals not representing the employer's employees,³⁶ or that an organizational change in the contracting union is contemplated,³⁷ does not create sufficient doubt as to the identity of the contracting union to remove the contract as a bar. Nor does a vote by some members of the local to select a new bargaining representative create a doubt as to the identity of the bargaining representative sufficient to remove the contract as a bar where the international is the contracting certified union.³⁸ And where the contracting union was not defunct, but was presently functioning as a labor organization on behalf of other employees of various employers in the area, and was willing and able to represent the employees in the unit involved, the Board declined to direct an election in a unit all of whose members had repudiated the contracting union.³⁹

³² *Harbison-Walker Refractories Company*, 43 NLRB 1349; *The Register and Tribune Company*, 60 NLRB 360, cases cited.

³³ *Sun Shipbuilding and Dry Dock Co.*, 86 NLRB 20.

³⁴ *Chesapeake & Potomac Telephone Company*, 89 NLRB No. 129.

³⁵ *Michigan Bell Telephone Company*, 85 NLRB 303; *West End Chemical Company*, 89 NLRB No. 86 (expulsion).

³⁶ *Michigan Bell Telephone Company*, *supra*.

³⁷ *Michigan Bell Telephone Company*, *supra* (amalgamation of contracting unions after expiration of contract).

³⁸ *Hudson Transit Lines, Inc.*, 86 NLRB 120.

³⁹ *Pacific Gamble-Robinson Company*, 89 NLRB No. 43.

The Board also ruled that a contract with an amalgamated local,⁴⁰ affiliated with an international expelled from its parent federation, barred a petition by another international union affiliated with the same parent federation. Although the contracting local's shop committee and steward at the employer's plant had engaged in activity on behalf of the petitioner, the employees had never formally rejected the contracting local's vote against disaffiliation from its international after the international's expulsion, and it did not appear that the contracting local was defunct.⁴¹ A representation petition was likewise held barred by a contract providing that it might inure to the benefit of the successors and assigns of the contracting local under these circumstances: following a special meeting of the members of the contracting local, a new local was established to which a substantial majority of the membership of the contracting local transferred their allegiance, the contract was assigned by the contracting local to the new local, and the employer thereafter recognized the new local rather than the contracting local. It was held immaterial that a faction of the original local later sought to repudiate the contract assignment and to reestablish the original local, and that the local and its international participated in court action for a declaration of its right to union dues, and the local intervened in the Board proceeding claiming a representative interest.⁴² Where a contract covering a plant-wide unit is not operative as a bar because of a schism in the

⁴⁰ An amalgamated local is a local admitting to membership employees of more than one employer.

⁴¹ *Telex, Inc.*, 90 NLRB No. 43. Citing *Pacific Gamble-Robinson Company, supra*, the Board distinguished *J. J. Tourek Manufacturing Co.*, 90 NLRB No. 4, where the "schism" doctrine was applied to a contract with an amalgamated local. In the *Tourek* case, the members of the contracting local at the plant involved had held their own meeting and voted for disaffiliation; the employees at that plant had been given considerable autonomy in the administration of the amalgamated contract; and the amalgamated local was incapable of administering the contract at the plant involved. On August 1, 1950, the Board reversed the regional director's dismissal of a new petition filed by the petitioner in the *Telex* case requesting the same unit (Case No. 18-RC-775). Citing the *Tourek* case, *supra*, the Board observed that the employees may have taken formal action to disaffiliate from the international of the contracting local and to affiliate with the petitioner before the new petition was filed.

For other cases in which the "schism" doctrine was applied to contracts with amalgamated locals, see *Pratt & Letchworth Co., Inc.*, 89 NLRB No. 23 (disaffiliation of partly autonomous shop); *The American Pulley Company*, 89 NLRB No. 37 (disaffiliation of several shops); *Signal Manufacturing Company*, 89 NLRB No. 65 (disaffiliation of entire local); *Airtemp Division, Chrysler Corporation*, 89 NLRB No. 61 (disaffiliation of entire local); *United Specialties Company (Mitchell Division)*, 89 NLRB No. 79 (disaffiliation of single shop).

⁴² *The Louisville Railway Company*, 90 NLRB No. 115. The majority of the Board considered the case analogous to the cases involving mere changes in the contracting union's affiliation. Member Styles dissented. In his opinion, those cases were not controlling since here the original contracting union had not disappeared. In his view, the fact that four unions (the petitioner, the assignor local, the assignee local, and a local resulting from the affiliation of the assignee local with another international) and a complexity of rival claims were involved in the case indicated confusion in the bargaining relationship and the applicability of the "schism" doctrine.

contracting union, it does not bar a petition for a unit of craftsmen covered by the contract.⁴³

4. Change in Bargaining Unit

Another question that arose in connection with the application of the contract-bar rule to a number of cases during the past fiscal year concerned the scope of the bargaining unit covered by the contract. These questions occurred most frequently in situations where a contract was asserted as a bar to an election among employees in a newly established plant or among employees on a new operation.

The Board has ruled generally that a contract covering a discontinued plant will not extend as a bar to an election at a new plant established a considerable distance from the discontinued plant and employing a full new staff of personnel.⁴⁴

In one case, however, an employer closed one plant and established a new and expanded plant 22 miles away. Finding that (1) a majority of the employees at the new plant were formerly employed at the old, (2) the same supervisory and management personnel was being employed, and (3) production processes and products at the new plant were substantially the same, the Board held that a contract covering employees at the old plant was a bar to an election among employees at the new plant.⁴⁵ Although the employer had formally discharged the employees of the old plant before hiring them at the new one, the Board found that the new plant was "essentially nothing more than the [old] operation transferred to a new location." In the same case, the Board held that the expansion of the work force by approximately 50 percent did not destroy the contract as a bar.

In another case, where one department of a plant was expanded into a new plant, the Board held the contract covering the original plant was no bar.⁴⁶ In that case, the Board found that the expansion was tantamount to a new operation because (1) it required removal to a new site 9 miles from the old plant; (2) a relatively minor proportion of employees at the new location was transferred from the old plant; (3) the new plant had its own managerial hierarchy; and (4) there was only brief and intermittent exchange, on a loan basis, of employees and equipment between the two plants.

Nor was a clause providing that the contract would extend to any shop presently or thereafter owned or controlled by the employer

⁴³ *Pratt & Letchworth Company, Inc.*, 89 NLRB No 23. Board Member Reynolds dissented on the ground stated by him in *Boston Machine Works Company*, 89 NLRB No. 17.

⁴⁴ *Sylvania Electric Products, Inc.*, 87 NLRB 597; *Clarostat Manufacturing Co.*, 88 NLRB No 141.

⁴⁵ *Yale Rubber Manufacturing Co.*, 85 NLRB 131.

⁴⁶ *General Electric Co (Medford Plant)*, 85 NLRB 150.

sufficient to make the contract a bar to an election in a new plant staffed by new personnel, when it appeared that the contracting parties did not themselves consider the new plant covered until the petition for election was filed.⁴⁷

5. Duration of Contracts

Originally, in applying the "reasonable period" yardstick, the Board declined to recognize a contract as a bar to an election for more than 1 year except under unusual circumstances or unless contracts for longer periods were customary in the particular industry.⁴⁸ More recently, as collective bargaining relationships began to stabilize, the Board has adopted the 2-year term as its standard for a reasonable period.⁴⁹ In laying down this policy, the Board said:

We think the time has come when stability of industrial relations can be better served, without unreasonably restricting employees in their right to change representatives, by refusing to interfere with bargaining relations secured by collective agreements of 2 years' duration.⁵⁰

During the past fiscal year it has reaffirmed this policy, holding that no contract will operate as a bar for more than 2 years unless there is evidence that longer contracts are customary in the industry involved.⁵¹

Under this rule, the Board generally recognizes a contract of longer than 2 years' duration as a bar to an election during the first 2 years. Thus contracts of indefinite duration constitute a bar during the first 2 years but not thereafter.⁵² The same rule applies to contracts of unreasonable duration.⁵³ Contracts found by the Board during the past fiscal year to be of unreasonable duration included a 6-year contract in the baking industry, a 4-year contract in the construction industry, and 3-year contracts in the building materials and the retail baking industries.⁵⁴ In the case of a contract running more than 2 years, the party urging it as a bar has the task of rebutting the presumption that its duration is an unreasonable curtailment of the employees' right to change representatives. The Board has held that this presumption may be overcome by a showing that contracts of more than 2 years are customary in the industry involved.

A contract which is terminable at the will of the parties, on the other hand, is not a bar at any time.⁵⁵ In this category was a contract

⁴⁷ *Sant-Aqua Shower Curtains, Inc.*, 88 NLRB No. 218.

⁴⁸ *National Sugar Refining*, *supra*

⁴⁹ *Reed Roller Bit Company*, 72 NLRB 927 (1947).

⁵⁰ *Ibid.*, p. 930.

⁵¹ *Cushman's Sons, Inc.*, 88 NLRB No. 49; *Paraffine Companies, Inc.*, 85 NLRB 325.

⁵² *Association of Motion Picture Producers, Inc.*, 88 NLRB No. 102.

⁵³ *Paraffine Companies, Inc.*, 85 NLRB 325.

⁵⁴ *Rheinsteil Construction Co., Inc.*, 88 NLRB No. 16; *Paraffine Companies, supra*; *Cushman's Sons, Inc.*, 88 NLRB No. 49.

⁵⁵ *Container Corp. of America*, 87 NLRB 1345.

for an 18-month term which could be terminated by either party upon 40 days' notice.⁵⁶ The Board held also that a contract containing a wage reopening clause which gave the union the right to cancel the contract if no wage agreement were reached within 60 days after reopening, was tantamount to a contract terminable at will and therefore did not bar a petition filed 3 days after execution of the contract.⁵⁷

An expired contract, or one which is about to expire, does not constitute a bar to a new selection of representatives by the employees.⁵⁸ Similarly, an abandoned contract does not bar a petition.⁵⁹

6. Reopening Clauses

A contract containing a clause providing for reopening with respect to specified matters also will bar a representation petition. Reopening of the contract or the execution of an amendment pursuant to such a clause will not remove the contract as a bar, provided the negotiations or amendment do not go beyond the scope of the clause. Also, the clause must not be so broad as to make the contract actually terminable at will.

The Board has held that this principle applies even when negotiations during the contract term concern wage increases, severance pay, a pension plan, and group insurance, if those subjects properly come within scope of the reopening clause.⁶⁰ It also held a contract still a bar where it had been reopened under a wage modification provision and negotiations had resulted in adoption of a profit-sharing plan.⁶¹ But when the negotiations or amendment pertain to subjects outside the scope of the reopening provisions, the Board has held, the contract is removed as a bar.⁶²

In two cases, the Board found that the reopening clauses were so broad as to make the contracts terminable at will. In one such case, a wage reopening clause gave the union the right to cancel the contract if no wage agreement were reached in 60 days.⁶³ In the other, the clause reserved to the parties the right to modify the contract at any time.⁶⁴

⁵⁶ *The Broderick Co. (Header-Press Division)*, 85 NLRB 708.

⁵⁷ *Container Corp. of America*, *supra*.

⁵⁸ *Scranton Battery Corporation*, 89 NLRB No. 85; *Westinghouse Electric Corporation*, 89 NLRB No. 11.

⁵⁹ *Standard Bag Company*, 87 NLRB 300; *Northern Redwood Lumber Company*, 88 NLRB No. 32; *W. & W. Pickle & Canning Company*, 85 NLRB 262; *Farm Tools, Inc.*, 88 NLRB No. 124.

⁶⁰ *West End Chemical Co.*, 89 NLRB No. 86.

⁶¹ *Lake Shore Manufacturing Corp.*, Case No. 8-RC-858 (unpublished, decided June 6, 1950).

⁶² *Gay Games, Inc.*, 88 NLRB No. 66; *Himes Brothers Dairy Co.*, 89 NLRB No. 71.

⁶³ *Container Corp. of America*, 87 NLRB 1345.

⁶⁴ *Sterling Tool & Mfg. Co.*, 89 NLRB No. 9.

7. The 10-Day Rule

A claim for recognition as majority representative of the employees involved also may forestall a contract as a bar under certain conditions. Under the rule commonly known as the *General Electric X-Ray* or 10-day rule,⁶⁵ a bare, unsupported claim for recognition will forestall contract bar only if a petition for an election is filed within the 10-day period by the candidate bargaining representative making the claim. The 10 days begin with the employer's receipt of the claim, not the date of mailing.⁶⁶ This rule applies to any contract executed or renewed after the claim was made. During the 1950 fiscal year, the Board applied this rule in a number of cases by dismissing the election petition on grounds of contract bar, where the petitioner did not file until more than 10 days after making its claim and the employer and a rival union had executed or renewed a contract in the meantime.⁶⁷ But if a petition filed within the 10 days is withdrawn for the purpose of filing a new petition, the new petition must be filed within the 10-day period dating from the original claim of recognition.⁶⁸

The 10-day rule, however, does not apply where the petitioner's claim of majority representation is not merely a bare claim but has a substantial basis. Thus the Board has declined to apply the rule where the petitioner was an active incumbent bargaining representative and the employer made a contract with a rival union.⁶⁹ Nor did the rule apply to the petition of an incumbent representative in a case where an employer, on the basis of a schism in the ranks of the incumbent, made a contract with the rival union.⁷⁰ Citing these precedents, the Board held in a case decided this fiscal year that the rule did not foreclose a petition filed nearly 6 months after the claim of majority by a union which the employer had recognized in negotiations over terms of a proposed contract.⁷¹ The Board, in that decision, made this statement of the general rule: "where * * * the claim of majority was not a mere naked one but was substantial and had a recognizable foundation, we have not applied the 10-day rule."

8. Renewal of Contracts

When two or more labor organizations are competing for the right to represent a group of employees, the Board frequently is confronted also with the question of the proper time for filing of a petition for a

⁶⁵ 67 NLRB 997 (1946).

⁶⁶ *Himes Brothers Dairy*, 89 NLRB No. 71; *Shopwell Foods, Inc.*, 87 NLRB 1112.

⁶⁷ E. g. *U. S. Time Corporation*, 86 NLRB 724; *Brink's Inc.*, 89 NLRB No. 150.

⁶⁸ *Brink's, Inc.*, *supra*

⁶⁹ *Acme Brewing Co.*, 72 NLRB 1005.

⁷⁰ *McLeod Veneer Co.*, 73 NLRB 859.

⁷¹ *Chicago Bridge & Iron Co.*, 88 NLRB No. 75. (Opinion contains discussion of cases cited above.)

determination of bargaining representative. This problem is often complicated by the fact that one of the labor organizations has a current contract with the employer.

The rule is that ordinarily an election petition may be filed before a contract has been executed or renewed, or shortly before a current contract expires, or after it has expired. Also, in general, notice to terminate or modify a contract, after the first certification year, removes the contract as a bar to an election,⁷² and the filing of a petition forestalls any contract or renewal executed during pendency of the petition from operating as a bar.⁷³ A contracting union, however, may file a petition without terminating its existing contract.⁷⁴

Exceptions to this rule involve the first year after certification of a bargaining representative by the Board and, in certain cases, contracts containing automatic renewal or reopening clauses. These exceptions are discussed elsewhere in this chapter.

For the purpose of determining whether a petition is barred by a contract renewal, the petition will be considered filed on the day it is docketed by the Board's regional or subregional office receiving it.⁷⁵

Once notice of modification or termination has been given or negotiations for a new contract have begun, the original contract cannot be restored as a bar by any agreement to continue its terms.⁷⁶ Thus the Board held that a memorandum to continue the original contract until "such time as current negotiations are either concluded or broken off by either party" converted the original contract into a contract terminable at will and, therefore, no bar.⁷⁷ Nor was it any bar, although a strike intervened, when the parties orally agreed to continue the contract in effect pending future negotiations.⁷⁸ Nor was a rival petition barred by the execution of an agreement to reinstate the original contract after a rival claim for recognition was made, where the rival claim was followed by timely filing of a petition after the "reinstatement" agreement was executed.⁷⁹

The Board has indicated that it will not construe an ambiguous request "for a new contract" as opening the contract to an election, where negotiations are limited to the scope of the contract's reopening clause and no intent actually to make a new contract is shown.⁸⁰

⁷² Reaffirming: *Pittsburgh Plate Glass Co.*, 90 NLRB No. 60; *Standard Paper Manufacturing Co.*, 90 NLRB No. 61; *International Harvester Co.*, 88 NLRB No. 134, *John Oster Manufacturing Co.*, 86 NLRB 147.

⁷³ Reaffirming: *Forney Engineering Co.*, 88 NLRB No. 57; *Bunker Hill and Sullivan Mining and Concentrating Co.*, 89 NLRB No. 8.

⁷⁴ *Lone Star Producing Co.*, 85 NLRB 192.

⁷⁵ *Hickey Cab Co.*, 88 NLRB No. 84.

⁷⁶ *Kimsey Mfg Co.*, 87 NLRB 651.

⁷⁷ *Springfield Mill Co.*, 88 NLRB No. 7.

⁷⁸ *Castle & Cooke Terminals, Ltd.*, 88 NLRB No. 74.

⁷⁹ *Humes Brothers Dairy Co.*, 89 NLRB No. 71.

⁸⁰ *The Racquette River Paper Co.*, 85 NLRB 835.

A contract executed in the face of a rival petition may also be inoperative as a bar to subsequent petitions. Thus a contract executed after the timely filing of a decertification petition does not bar a subsequent certification petition.⁸¹ Nor does a contract executed after the filing of an original petition bar the filing of an amended petition which makes no substantial change in the claim of representation, or which merely adds other employees in the same craft as those sought in the original petition.⁸²

Another question commonly raised by the filing of a petition in a situation where a collective bargaining agreement nears expiration is: How early may a petition be filed? In a number of cases decided during the past fiscal year, the Board has held that a petition may be timely filed 2 months or more before the expiration or automatic renewal date.⁸³ However, the case is somewhat different with a contract containing an automatic-renewal clause, because the date of automatic renewal is the touchstone rather than the contract's anniversary date.

9. Premature Extension

In order to assure employees the right to challenge the representative status of an incumbent bargaining agent at "predictable and reasonable intervals," the Board has long followed the doctrine that where a contract is prematurely extended before its expiration, the extended contract will not constitute a bar to a petition timely filed before the expiration date of the original contract.⁸⁴

This doctrine of premature extension applies even though the extension was made in good faith and there was a lapse of as much as 7 months between the execution of the extension and the filing of the rival petition.⁸⁵ It also applies where the employees ratified the extension agreement and received substantial benefits under it.⁸⁶ Nor does the fact that the extension was negotiated in the course of a wage modification permitted by the original contract make it a bar.⁸⁷

For the premature extension doctrine to apply, however, the rival representation claim must be made before expiration date of the original contract.⁸⁸ Otherwise, the extension agreement, if it is for a

⁸¹ *Monroe Co-Operative Oil Company*, 86 NLRB 95.

⁸² *Tennessee Copper Company*, 88 NLRB No. 258; *International Harvester Company, Melrose Plant*, 87 NLRB 1101.

⁸³ *Rudolph Wurlitzer Co.*, 88 NLRB No. 188; *Sylvania Electric Products, Inc.*, 89 NLRB No. 52; *The Riverside Metal Co. (Keystone Watch Case Division)*, 88 NLRB No. 204.

⁸⁴ *American Steel Foundries*, 85 NLRB 19.

⁸⁵ *American Steel Foundries*, *supra*.

⁸⁶ *Gumbel Brothers, Inc.*, 87 NLRB 449; *Radio Corporation of America (Victor Division)*, 89 NLRB No. 172.

⁸⁷ *American Steel Foundries*, *supra*; *Western Electric Co.*, 87 NLRB 544.

⁸⁸ *Aluminum Corporation of America*, 86 NLRB 189.

fixed and reasonable term, becomes the current contract and operates as a bar under the same conditions as a valid current contract.

However, the Board has held that the premature extension doctrine does not apply where the original contract was terminable at will and, therefore, not a bar at the time the agreement purporting to extend it was made.⁸⁹ But to qualify, the new agreement, of course, must be for a fixed and reasonable term. This rule also was followed where the original contract had been in effect an unreasonable period.⁹⁰

10. Automatic Renewal

In the case of contracts which provide for automatic renewal unless notice is given at a stated time, the general rule is that a rival petition must be filed before the automatic renewal date⁹¹ unless renewal has been forestalled by notice.⁹² This also applies to decertification petitions.⁹³ However, under the 10-day rule, the Board will act on a petition filed after the automatic renewal date if the rival representation claim was made before the automatic renewal date and the petition was filed within 10 days after the claim was made.⁹⁴

A question was raised during the past year as to whether section 8 (d) (1) had created a new statutory "Mill B" date for petition filers to observe by, in effect, requiring the filing of all petitions involving automatic renewal contracts at least 60 days before the contract's anniversary date. The Board ruled that it did not.⁹⁵ The section provides that, in order to fulfill the duty to bargain, a party who desires to amend or terminate a collective bargaining agreement must serve notice of such intent on the other party 60 days before the expiration date of the agreement. The Board ruled that this provision does not require that a petition be filed 60 days before the anniversary date of the contract in a case where the automatic renewal date occurs less than 60 days before the anniversary date.

In another case, an automatically renewable contract was held no bar where, before the renewal date, the contracting union became defunct and hence was incapable of renewing the contract.⁹⁶

⁸⁹ *The Broderick Company*, 85 NLRB 708.

⁹⁰ *Cushman's Sons*, 88 NLRB No. 49 (Chairman Herzog dissenting).

⁹¹ Often called the "Mill B" date, taking the name from the case in which the Board first announced the principle that the renewal date would be controlling in determining the timeliness of petitions in relation to automatic-renewal contracts, *Mill B, Inc.*, 40 NLRB 316.

⁹² *Strong Co.*, 86 NLRB 687; *The Heekin Can Co.*; 89 NLRB No. 94; *Standard Paper Mfg. Co.*, 90 NLRB No. 61. Petitions before Mill B: *The Beattle Mfg. Co.*, 86 NLRB 694; *International Harvester Co.*, 85 NLRB 1260; *Sangamo Electric Co.*, 90 NLRB No. 20.

⁹³ *The Louisville News Co.*, 87 NLRB 27.

⁹⁴ *United States Time Corp.*, 86 NLRB 724.

⁹⁵ *Lockheed Aircraft Corp.*, 87 NLRB 40; *Lone Star Producing Co.*, 85 NLRB 1137.

⁹⁶ *W. & W. Pickle & Canning Co.*, 85 NLRB 262.

11. Effect of Waiver and Other Factors

In some cases, a contract bar may be effectively waived. Thus a contract with the petitioning union was held no bar where both parties declined to urge it,⁹⁷ where all parties waived any right to raise an existing contract as a bar.⁹⁸ The Board also directed an election when an intervenor dropped its contention that a contract to which it was a party barred a rival petition.⁹⁹ In another case, a petition filed by the contracting union itself before the automatic-renewal date was held not to be barred by the failure to give notice to prevent renewal of the contract.¹ A contract made expressly subject to the Board's ruling on the petition involved, and a contract providing that it will cease to be effective as to employees for whom another union is thereafter certified, were both held not to bar an election.²

12. Impact of Prior Determinations

A Board certification of a bargaining representative generally is an absolute bar to a new determination of representatives for 1 year. This long-standing Board policy is reinforced by section 9 (c) (3) of the amended act, which prohibits the holding of a representation election less than 12 months after a prior valid representation election has been held in the same unit.

In order to enable a newly certified union to establish bargaining relations, the Board seeks to assure it a year free of rival claims or decertification proceedings in which to negotiate a contract. Therefore, if litigation over bargaining rights or unfair labor practices intervenes and prevents the certified agent from enjoying such a year immediately after certification, it is entitled to a year after termination of the litigation.³ This year runs from the effective date of the final court decree.

Nor does the bargaining agent lose the protection of its certification during this year by the execution of a contract or by a renewal. Thus the Board dismissed a representation petition filed during the certification year even though it was timely in relation to the terms of a contract which the bargaining agent had obtained.⁴ In that decision, the Board said:

⁹⁷ *Great Lakes Pipe Line Company*, 88 NLRB No. 225.

⁹⁸ *Ohio Bell Telephone Co.*, 87 NLRB 1555.

⁹⁹ *National Broadcasting Co.*, 89 NLRB No. 165.

¹ *Lone Star Producing Co.*, 85 NLRB 1137.

² *Gabriel Steel Company*, 88 NLRB No. 54; *Potash Company of America*, 88 NLRB No. 73.

³ *Semi-Steel Castings Co.*, 88 NLRB No. 128.

⁴ *Cooperative Industries, Inc.*, 85 NLRB 1258.

Although the petition was timely filed in relation to the terms of the contract, we have recently reaffirmed the long-established policy that a union is ordinarily entitled to a year from the date of its certification to bargain collectively, free from intrusion upon that process by early rival-union or decertification petitions. Nor should the fact that the bargaining was successful and a contract was executed during the first certificate year detract from the certified union's right to a year of undisturbed bargaining relations.

This bar prevails even though the bargaining agent and the employer have been notified of a rival claim to recognition before execution of the contract.⁵ One exception, however, is a contract which excludes from its coverage a substantial number of employees in the certified unit. The Board has ruled such a contract is no bar even though executed within the certification year.⁶ In this case, the certified union excluded about 30 employees, out of 200 in the Board-designated unit, from coverage of the contract and urged them to join another union. The Board ordered a new election in the whole unit. Should the certified agent fail to achieve a contract during the certification year but obtain one afterward, its contract then will operate as a bar only if it was timely executed before any rival claims for recognition were made or any petitions filed.⁷

Recognition of the bargaining agent by the employer, however, does not carry the immunity of a Board certification. A majority of the Board rejected a proposal that an employer's voluntary recognition should be a bar to the filing of rival petitions for 1 year, even though the recognition was in writing and it induced the union to withdraw a representation petition it had filed.⁸

Moreover, the Board has held, a certified union may waive the protection of the certification year by signing a consent-election agreement with other unions.⁹ In this case, the Board ruled that the execution of a contract with the certified union, even during the certification year, was an unfair labor practice because the contract was made in the face of a genuine question of representation.

13. The 12-Month Limitation

Section 9 (c) (3) also acts as a 1-year bar to a new determination of representatives. This section, included in the act by the 1947 amendments, prohibits the holding of a representation election less than 12 months after a prior valid representation election has been held in the same bargaining unit. This section does not prohibit

⁵ *Hudson Transit Lines, Inc.*, 86 NLRB 709.

⁶ *Calaveras Cement Company*, 89 NLRB No. 44

⁷ *Semi-Steel Castings Co.*, *supra*; *Reedley Ice Co.*, 85 NLRB 1205

⁸ *Monroe Co-operative Oil Co.*, 86 NLRB 95 (Board Members Murdock and Gray dissenting).

⁹ *International Harvester Co., Canton Works*, 87 NLRB 1123.

the holding of both a representation election and a union-shop poll in the same unit during one 12-month period.¹⁰

The 12-month period is computed from the date of the conclusion of balloting in the last valid representation election in the unit to the conclusion of balloting in the new election.¹¹ This ruling was made in a case involving a seasonal industry in which a majority of the Board found that any other interpretation would restrict employees in multiemployer units in a seasonal industry, where employers start and stop operations on a staggered basis, to one election every 2 years. The Board had held previously that the limitation does not affect the Board's discretion with respect to the time of issuance of a direction of election.¹² In the Board's opinion, neither the legislative history nor the intent of Congress required a construction of this section which "would necessarily fix the limitation period between the holding of elections at more than 12 months."

The bar effect of the 12-month limitation applies equally to the period after a valid election in which no bargaining representative has been chosen.¹³ Thus the Board held that a petition filed less than 8 months after a valid election in which no representative was chosen was barred by a contract executed 2 days after filing of the petition. Because no new election could be held until at least 4 months after filing of the petition, the Board held the petition was prematurely filed.

Nor does a great expansion of the unit suspend the limitation. In the case of a unit which had expanded 11 times since the holding of the last valid election, the Board held that a petition filed 3 months after the election was still barred, even though the petitioning union did not participate in the election.¹⁴ However, the limitation does not preclude an election among categories of employees excluded from the voting group in the earlier election.¹⁵

The Board also is confronted at times with a contention that it is prevented from holding an election because an election has been held less than 12 months earlier by a private agent or a State agency. The question of an election conducted by a State agency arose in one case during the past fiscal year. In that case, a majority of the Board held that, since jurisdiction in the case had not been ceded to the State pursuant to the proviso to section 10 (a), the State-conducted election did not effectively resolve the question of representation. The majority rejected the view that the petitioning union, which at

¹⁰ *Flint Lumber Co.*, 85 NLRB 943; see also Thirteenth Annual Report, p. 44.

¹¹ *Alaska Salmon Industry, Inc.*, 90 NLRB No. 13 (Board Member Murdock dissenting).

¹² *Fruitvale Canning Co.*, 85 NLRB 684.

¹³ *American Zinc Company of Illinois*, 87 NLRB 1550.

¹⁴ *Fedders-Quigan Corporation*, 88 NLRB No. 106.

¹⁵ *Modern Heat & Fuel Co.*, 89 NLRB No. 171.

the time of submitting the question of representation to the State agency withdrew its petition before the Board, should not be permitted to circumvent the prohibition of section 9 (e) (3) by resubmitting the same question to the Board. The majority held that the prohibition is not concerned with elections conducted by other public or private agencies.¹⁸

D. The Conduct of Representation Elections

An election by secret ballot is the sole statutory method of resolving an existing question of representation arising under section 9 (c) of the act. However, in general, the act leaves to the Board's discretion the mechanics of conducting elections, the determination of the eligibility of employees to vote, and the certification of election results. The principal exceptions to this general discretion limit the frequency of elections and prohibit voting by strikers legally and permanently replaced. In conducting elections during the past year, the Board has substantially adhered to the principles established in previous decisions and its published rules and regulations.¹

1. Eligibility to Vote

As a general rule, eligibility to vote in a Board-directed election is limited to employees who were employed in the appropriate unit during the payroll period immediately preceding the date of issuance of the direction of election. This includes employees who did not work during such period because they were ill, on vacation, or temporarily laid off. Not eligible to vote are employees who quit or were discharged for cause and had not been reinstated prior to the date of election, and "employees on strike who are not entitled to reinstatement," as specifically provided in section 9 (c) (3) of the amended act.

Strikers engaged in a strike for economic objective, such as a wage increase or a new contract, are not eligible to vote under the foregoing provision if they have been permanently replaced by other workers, unless the strike was caused by the employer's unfair labor practices.²

¹⁸ *Punch Press Repair Corporation*, 89 NLRB No. 83.

Chairman Herzog and Board Member Murdock dissented on the ground that a redetermination within 1 year was inconsistent with the policies of the act.

The *Punch Press* case overruled, so far as it was inconsistent, *National Container Corporation, Kraft Pulp and Board Division*, 87 NLRB 1065, where a contract executed 7 months after the contracting union's victory in a privately conducted election was held to bar a petition, filed prior to the execution of the contract by a rival union which had agreed to the private election and had been defeated therein.

¹ See sec. 203.61, Rules and Regulations, Series 5, as amended.

² See Fourteenth Annual Report, p. 27, and previous reports cited there.

Where, at the time of the direction of election, it cannot be accurately determined which strikers have been validly replaced and which are entitled to reinstatement, both strikers and replacements are presumed eligible and are permitted to vote subject to challenge. Should the challenged ballots be sufficient to affect the election result, the Board will determine the eligibility of the challenged voters.³ Employees of one department, whose employment is affected by a strike in another department of the plant, may be permitted to vote, where the termination of the strike is indefinite.⁴

Voting eligibility may depend upon the actual or alleged presence of unfair labor practices. Thus an employee discriminatorily discharged before the election, for the purpose of rendering unlawful assistance to a favored union, was eligible to vote, whereas members of an unlawfully assisted union who were hired as replacements were held ineligible.⁵ Where the question of the unlawful nature of a discharge⁶ or layoff⁷ is still the subject of pending charges, the employee may vote under challenge.

In order to determine eligibility, the Board must frequently pass upon the question whether the termination of an employee for legitimate business reasons is of a permanent nature or constitutes a temporary layoff. An employee is considered laid off for the purpose of his voting eligibility if, as of the election date, he has a reasonable expectancy of reemployment.⁸ On this basis, laid-off employees who retain their seniority and are customarily recalled have been held eligible to vote.⁹ But rehiring preferences¹⁰ and retention on the employer's payroll¹¹ or seniority list¹² have been held not to establish conclusively a reasonable expectation of reemployment. If the prospect of reemployment in the near future is indefinite and speculative, laid-off employees are ineligible to vote.¹³ In cases where the employment status¹⁴ or the nature of the layoff¹⁵ cannot be determined at the time of the direction of election, laid-off employees are permitted to vote subject to challenge.

³ *The Pipe Machinery Co.*, 76 NLRB 247; *Indianapolis Cleaners and Launderers Club*, 87 NLRB 472.

⁴ *Chicago Journal of Commerce, Inc.*, 85 NLRB 482.

⁵ *Sioux City Brewing Co.*, 85 NLRB 1164.

⁶ *F. C. Mason Co.*, 86 NLRB 71.

⁷ *Rookwood Pottery, Division of Sperti, Inc.*, 89 NLRB No. 151; *Keystone Electric Mfg. Co.*, 89 NLRB No. 181.

⁸ *Clippard Instrument Laboratory, Inc.*, 86 NLRB 424.

⁹ *Scott-Atwater Mfg. Co., Inc.*, 90 NLRB No. 9; see also *American Transformer Co.*, 89 NLRB No. 102.

¹⁰ *United States Rubber Co.*, 86 NLRB 338.

¹¹ *Clippard Instrument Laboratory, Inc.*, *supra*.

¹² *Lima Hamilton Corp.*, 87 NLRB 455.

¹³ *Beaver Machine & Tool Co., Inc.*, 90 NLRB No. 73. (See also *Lima Hamilton Corp.*, *supra*, in which laid-off employees as a group were held ineligible to vote where recall of a large number was speculative.)

¹⁴ *Mathews Lumber Co.*, 89 NLRB No. 2.

¹⁵ *Auto-Lite Battery Corp.*, 85 NLRB 1034.

Similarly, probationary employees with a reasonable expectation of acquiring permanent status are eligible to vote,¹⁶ whereas temporary employees having no expectation of permanent tenure are ineligible.¹⁷

Part-time and extra employees are eligible to vote provided they perform, regularly and under identical conditions, the same general duties as comparable full-time employees.¹⁸ Where evidence regarding employment conditions of "extras" was insufficient, the Board held that only those "extras" who are employed on the date of the direction of election shall be eligible to vote.¹⁹ Part-time supervisors have been held eligible to vote if they spend more than 50 percent of their time as rank-and-file employees, but not otherwise.²⁰

Because voting eligibility must be determined on the facts as they exist on the election date,²¹ an employee who at that time was on a 30-day leave of absence was held eligible, although at the end of his leave he did not return to work.²² While employees in the armed services who present themselves in person at the polls are eligible to vote,²³ employees on military leave have been held ineligible in the absence of any indication when, if at all, they would apply for reinstatement.²⁴ As the Board previously pointed out, aliens are not precluded from voting in Board elections, since the act does not make eligibility dependent upon citizenship.²⁵

2. Timing of Elections

The Board customarily directs that an election be held within the 30-day period following the date on which the direction of election issues. However, certain situations require that the choice of the election date be left to the discretion of the regional director.

In the case of seasonal industries, for instance, the Board directs that the election be held during the peak employment period, on a date to be determined by the regional director. Voting eligibility in

¹⁶ *Oklahoma Gas and Electric Co.*, 86 NLRB 437. Cf. *Shelburne Shirt Co., Inc.*, 86 NLRB 1308, where probationary employees were held ineligible since less than 50 percent of them eventually acquired permanent status in the particular plant.

¹⁷ See *Kelsey Hayes Wheel Co.*, 85 NLRB 666, where students were involved. Cf. *Sioux City Brewing Co.*, 85 NLRB 1164, holding eligible an employee who held a temporary work permit from the union with which the employer had entered into a union-security agreement.

¹⁸ *Bakers Shoe Store*, 86 NLRB 1305; *Bettendorff's Select Foods, Inc.*, 85 NLRB 919 (students).

¹⁹ *National Broadcasting Co., Inc., et al.*, 89 NLRB No. 165

²⁰ *Bear Creek Orchards, et al.*, 87 NLRB 1348.

²¹ See *Glenn L. Martin Co.*, 76 NLRB 755

²² *Sioux City Brewing Co.*, 85 NLRB 1164. (See also *Tyre Brothers Glass & Paint Co.*, 85 NLRB 910 [injured employees whose reinstatement was uncertain]; and *Shelburne Shirt Co., Inc.*, 86 NLRB 1308 [employees on sick leave])

²³ *Frank Ix & Sons Pennsylvania Corp.*, 85 NLRB 492.

²⁴ *Oklahoma Gas and Electric Co.*, 86 NLRB 437.

²⁵ *Cities Service Oil Co of Pennsylvania (Marine Division)*, 87 NLRB 324; *Logan and Paxton*, 55 NLRB 315.

such cases is determined as of the payroll period immediately preceding the date of issuance of notice of election by the regional director.²⁶ This practice was followed in connection with an election at a seasonal food processing plant where both seasonal and regular employees were involved.²⁷ In the Board's opinion, the fact that this procedure made it impossible to consummate a contract in time to become effective during the current year was "a lesser evil than not permitting the seasonal employees any voice in the selection of their bargaining representative." However, in the case of another plant of the same employer,²⁸ which had two seasonal employment peaks, the Board took into consideration "the relative interest in their employment of those employed during the various peaks, as measured by their return from year to year." Since a large percentage of employees with seniority rights worked during the earlier season, an election was directed at or near the peak of that season, on a date to be determined by the regional director, even though a greater number of workers were employed during the later season. On the other hand, in cases where the permanent employees comprised 50 percent or more of the peak employment,²⁹ or where the personnel complement did not vary considerably,³⁰ immediate elections were directed.

The question of the appropriate time for elections has also arisen where plants were temporarily shut down. Thus, where after cessation of production the employer retained a limited number of employees for experimental and maintenance purposes, the Board instructed the regional director to conduct the election whenever it appeared that the plant was operating with a representative group of employees.³¹ In another case, the Board directed an election to be held within 30 days of the reopening of the shutdown plant, unless it had been reopened as of the time of the direction of election.³²

The related problem of fixing the appropriate date or period by which eligibility to vote is determined has confronted the Board where the usual payroll date immediately preceding the direction of election was unsuitable because of the type of industry or the special circumstances involved. In the case of stevedore operations, where employees are hired from a labor pool on a day-to-day basis, the Board has held eligible all employees in the unit whose names appeared on eight or more payrolls during the 8-month period immediately preceding the date of the Board's direction of election,³³ or during the

²⁶ See *California Walnut Growers Association*, 86 NLRB 28.

²⁷ *Libby, McNeill & Libby*, 90 NLRB No. 89.

²⁸ *Libby, McNeill & Libby*, 90 NLRB No. 42.

²⁹ *Arkport Dairies, Inc.*, 86 NLRB 319; *The Borden Co., Hutchison Ice Cream Division*, 89 NLRB No. 31.

³⁰ *Jacksonville Linen Service*, 89 NLRB No. 180 (variation 22 percent).

³¹ *Waite Carpet Co.*, 85 NLRB 595.

³² *The Full-Back Co.*, 85 NLRB 959; see also *Penn-Hadley Mills, Inc.*, 85 NLRB 1130.

³³ *B. & C. Stevedoring Co., Inc.*, 88 NLRB No. 77.

6-month period prior to the filing of the union's petition.³⁴ In one case involving the motion picture industry, the Board directed that set decorators, whose periods of employment with a particular producer are usually brief, were eligible to vote if they were employed by the producers involved at any time within the 60-day period immediately preceding the date of the election.³⁵ In the case of a plant not currently in operation, eligibility was directed to be determined on the basis of the payroll immediately preceding the temporary shutdown of the plant.³⁶ In cases of repeat elections,³⁷ and where considerable time has elapsed between an original and a supplemental decision and direction of election,³⁸ the current rather than the original eligibility period has been used.

As a rule, the Board does not direct an election during the pendency of unfair labor practice charges affecting the bargaining unit involved unless there is a waiver by the charging party.³⁹ However, an election is not barred where the charges are based on conduct covered by previous charges which were dismissed,⁴⁰ or where disaffiliation from the charging union, which is not the result of the alleged unfair labor practices, leaves the identity of the bargaining representative in doubt.⁴¹

3. Standards of Election Conduct

Board elections are conducted in accordance with strict standards designed to assure that the participating employees have an opportunity to register a free and untrammelled choice for or against a bargaining representative. Timely objections⁴² filed by any party⁴³ to a representation proceeding, except a noncomplying union which is barred from the ballot or a person or organization found to be acting in behalf of a noncomplying union,⁴⁴ will be investigated by the Board.⁴⁵ Nor

³⁴ *American Fruit and Steamship Co.*, 88 NLRB No. 64. See also *Orenshaw Bros. Produce Co.*, 88 NLRB No. 16, and *Tampon Trading Co., Inc.*, 88 NLRB No. 108.

³⁵ *The Independent Motion Picture Producers Association, et al.*, 88 NLRB No. 214.

³⁶ *Penn-Hadley Mills, Inc.*, 85 NLRB 570.

³⁷ *Merrimac Hat Corp.*, 85 NLRB 329 (second election under consent agreement); *Special Machine and Engineering Co.*, 85 NLRB 1332, and *Gary Enterprises, Inc.*, 86 NLRB 431 (first election set aside because of interference).

³⁸ *Utah-Idaho Sugar Co.*, 85 NLRB 1090 (lapse of 7 months).

³⁹ *Olin Industries, Winchester Repeating Arms Company Division*, 85 NLRB 396; *Newport News Children's Dress Co.*, 89 NLRB No. 58. The question of whether a waiver has been filed is an administrative matter which is not litigable in the representation hearing. *Tennessee Packers, Inc.*, 87 NLRB 90; *Sioux City Brewing Company*, 85 NLRB 1164.

⁴⁰ *Association of Motion Picture Producers, Inc., and its Members, et al.*, 88 NLRB No. 102.

⁴¹ See *New York Shipbuilding Corp.*, 89 NLRB No. 128, following *Carson Pirie Scott & Co.*, 69 NLRB 935.

⁴² Objections must be filed within 5 days after the tally of the ballots has been furnished to the parties. See sec. 203.61 and sec. 203.87 of the Rules and Regulations.

⁴³ See sec. 203.8, Rules and Regulations.

⁴⁴ See *supra*, pp 22-23 and 25-28

⁴⁵ *Merrimac Hat Corp.*, 85 NLRB 329. Exceptions on the ground that objections were investigated by the same Board agent who conducted the election were denied, absent a showing of prejudice. *The Ann Arbor Press*, 88 NLRB No. 115; *Nicholson Transit Co.*, 89 NLRB No. 155.

need the investigation be confined to specific objections made. If the investigation reveals any substantial defect or irregularity in the conduct of the balloting, the Board will void the election. It will also void the election if it finds that eligible voters were restrained, coerced, or in any other manner prevented from exercising a free choice in selecting a bargaining representative.⁴⁶

In determining whether conduct warrants the setting aside of an election, the Board will not be guided by the number of instances of interference or the number of employees directly involved, since all employees must be given an equal opportunity to register their free and uncoerced choice.⁴⁷ Thus questions, threats, and warnings addressed to a single employee concerning his union activities were held sufficient to void an election.⁴⁸ Nor is it material that employees who participated in the election testify that their vote was not influenced by coercive conduct which accompanied the election. "The test is whether the conduct charged was reasonably calculated to interfere with the employees' free choice."⁴⁹ And it is not necessary that threats or promises be express. If the statement implies a threat of reprisal⁵⁰ or promise of benefit,⁵¹ the election will be vacated. However, an election will not be vacated because of activities which are in the nature of "campaign propaganda"⁵² or too remote in time to have affected the election results.⁵³

The Board, in passing upon the validity of an election, thus applies principles which coincide largely with those upon which the existence of unlawful coercion under section 8 (a) (1) is determined.⁵⁴ However, in a case decided shortly after the close of the fiscal year, it was held that unlike in unfair labor practice proceedings, the Board in a representation case is not prevented by section 8 (c)⁵⁵ from taking

⁴⁶ See Fourteenth Annual Report, pp. 29-30.

⁴⁷ *U. S. Rubber Co. (Scottsville Plant)*, 86 NLRB 3.

⁴⁸ *Id.*, *Wilson & Co., Inc.* 88 NLRB No. 25; *F. W. Woolworth Co.*, 90 NLRB No. 41.

⁴⁹ See *Lane Drug Stores, Inc.*, 88 NLRB No. 113, where the employer's conduct was held to have "created an atmosphere which made impossible a free and untrammelled expression by employees at the election." See also, *Bloomingtondale Bros., Inc.*, 87 NLRB 1326.

⁵⁰ See *Smith Rice Mill, Inc., et al.*, 88 NLRB No. 184, where panel majority held that a circular distributed by the employer to employees just before election, stating that employees who do not like their boss should be working elsewhere and that a "No" vote would be a vote of confidence in the boss and mark the employee as loyal, was coercive since it carried an implication that employees voting for the union would be discharged (Board Member Reynolds dissenting) See also, *Schwarzenbach Huber Co.*, 85 NLRB 1490, involving an election-eve statement that employer had planned to close the plant 3 or 4 years ago but failed to do so because of the employees' "response and increased performance."

⁵¹ See *Schwarzenbach Huber Co.*, *supra*, where an election-eve statement that the employer was "considering" a pension plan in which employees were vitally interested held, by Board majority, not privileged (Board Members Reynolds and Gray dissenting)

⁵² See, for example, *Western Electric Co., Inc.*, 87 NLRB 183. See also, *Gate City Table Co., Inc.*, 87 NLRB 1120.

⁵³ See, e. g., *Greater New York Broadcasting Co., Radio Station WNEW*, 85 NLRB 414, involving coercive conduct of a union representative 4 months before election

⁵⁴ See, *infra*, pp. 92-100.

⁵⁵ See, *infra*, pp. 98-99.

into consideration noncoercive expressions of "views, argument, or opinion." The Board therefore will determine whether such expressions have in fact interfered with an election and have "created an atmosphere incompatible with freedom of choice by [the] employees" so as to require that the election be set aside.⁵⁶

Forms of interference by unions and employers, other than the foregoing types of utterances, which led to the setting aside of elections during the past year included: Conduct which prevented the employees from fully exercising their voting rights, such as the employer's failure to post election notices in a new plant division within the election unit, and the advancing of quitting time without notice to the Board; ⁵⁷ employer conduct which tended to influence the election outcome, such as the granting of purchase discounts in one case,⁵⁸ and the removal of machinery following upon threats of a plant shut-down in another case; ⁵⁹ and threats and violence on the part of a union and its officers, coupled with misrepresentations as to the time when the polls would close.⁶⁰ On the other hand, elections were held not to have been invalidated by such conduct as preelection letters to employees referring to the employer's preference for dealing with employees directly,⁶¹ or to possible disadvantages which would result from a union victory; ⁶² the furnishing of transportation to the polls in a vehicle carrying a sign encouraging a vote for the employer; ⁶³ or the mere presence of union representatives near the polling area.⁶⁴

Circumstances connected with the conduct of the election by the Board's own representatives likewise may be cause for setting aside an election on the ground that the procedure employed did not create conditions under which the employees had a fair opportunity to vote or to express their uninhibited desires in the election. Setting aside an election in one case because the polls were permitted to be closed prematurely over the repeated objections of the union, the Board held that it was not—

incumbent upon the Union to establish that any of the allegedly eligible laid-off employees were, in fact, prevented from voting by the premature closing of the polls. It is sufficient that one of the parties had contended that the laid-off

⁵⁶ See *Metropolitan Life Insurance Co.*, 90 NLRB No 129, decided July 12, 1950 (Chairman Herzog dissenting).

⁵⁷ *Special Machine and Engineering Co.*, 85 NLRB 1332.

⁵⁸ *F. W. Woolworth Co.*, 90 NLRB No. 41.

⁵⁹ *Boland Mfg. Co.*, 90 NLRB No. 35.

⁶⁰ *Stern Bros.*, 87 NLRB 16.

⁶¹ *Q-F Wholesalers, Inc.*, 87 NLRB 1085. See also *Charroin Mfg. Co.*, 88 NLRB No. 11 (preelection speeches during working hours); *S & S Corrugated Paper Machinery Co., Inc.*, 89 NLRB No. 178, following *Babcock & Wilcox*, 77 NLRB 577 (addressing assembled employees during working hours and denying union equal opportunity to use employer's facilities and time).

⁶² *Cleveland Plastics, Inc.*, 85 NLRB 513.

⁶³ *Id.*

⁶⁴ *Cities Service Oil Co. of Pennsylvania (Maritime Division)*, 87 NLRB 324

employees were eligible to vote, that the number of laid-off employees who had not voted at the time the polls were closed was sufficient to affect the results of the election, and that one of the parties had apprised the temporary election examiner that such allegedly eligible employees had not voted and had, on that basis, objected to the premature closing of the polls.⁶⁵

In the same case, the Board reiterated its position, which was previously stated in the *General Shoe* case,⁶⁶ as follows:

In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees. It is our duty to establish these conditions; it is also our duty to determine whether they have been fulfilled. When in the rare extreme case, the standard drops too low, because of our fault or that of others, the requisite laboratory conditions are not present and the experiment must be conducted over again.

During the past year an election was set aside for the same reasons where the polls were set up in a small room where company and union representatives were present and no voting booth was provided,⁶⁷ and where, because of an error in determining eligibility, employees hired after the true eligibility date were permitted to vote and a tie vote resulted.⁶⁸

However, a majority of the Board declined to set aside an election because the payroll period upon which eligibility was determined had been omitted from election notices. The majority pointed out that the election notices correctly apprised the employees as to the unit coverage, and that the omission of the eligibility date, being only a limitation, might have led noneligible employees to vote but could not have caused eligible voters to stay away from the polls.⁶⁹ In *J. I. Case Company*,⁷⁰ while criticizing a Board agent who examined and destroyed a ballot because it was improperly marked, the Board did not set aside the election, because the employee was permitted to cast another ballot and secrecy of the ballot was not affected. Nor was the regional director's failure to segregate ballots cast in a residual group by ineligible craft employees held sufficient to void the election, where the union had a clear majority even after deducting from its vote the number of ineligible votes cast. Likewise, an objection to an election, on the ground that ballot boxes arrived at the Board's office with seals broken and containing fewer ballots than they should have contained, was rejected. In this case, the Board found that a representative of the objecting union had examined the boxes before they were opened; tampering would have been difficult, if not impossible;

⁶⁵ *Bonita Ribbon Mills and Brewton Weaving Co.*, 87 NLRB 1115.

⁶⁶ 77 NLRB 124.

⁶⁷ *Gary Enterprises, Inc.*, 86 NLRB 303.

⁶⁸ *Yarbrough Motor Co.*, 85 NLRB 1298.

⁶⁹ *Boeing Airplane Co.*, 88 NLRB No. 72 (Board Member Houston dissenting).

⁷⁰ 80 NLRB No. 104.

and the election results would have remained unchanged, even if all ballots contained in the particular boxes had been cast for the complaining union.⁷¹

In connection with elections conducted during the past year, the Board was repeatedly called upon to determine whether the designation of a union on the ballot by a particular name would tend to confuse the employees in selecting a bargaining representative and, therefore, should not be permitted.⁷² In the absence of a possibility of confusion, the Board permitted local unions, which had transferred their affiliation to a newly formed international union, to use the same numerical designation by which they were known before their secession.⁷³ In one case, the fact that a United States district court had enjoined the union from using the particular designation was held not controlling.⁷⁴

E. The Union-Shop Referendum

The purpose of proceedings under section 9 (e) of the act¹ is to determine by a secret ballot referendum whether employees wish to authorize their bargaining representative to enter into the type of union-security agreement with the employer which is permissible under the proviso to section 8 (a) (3). This section also provides for secret ballot polls by which employees may rescind this authority.

In union-security balloting, commonly called "union-shop polls," the Board has continued to utilize a form of referendum ballot which permits employees to vote for or against any kind of union-security permissible under the act,² rather than for such specific kinds as

⁷¹ *Pacific Gas and Electric Co.*, 89 NLRB No. 118.

⁷² In the Board's opinion, its exclusive power over representation questions necessarily includes the power to make such determinations. *Radio Corporation of America (Victor Division)*, 89 NLRB No. 107.

⁷³ *General Motors Corp., Frigidaire Division, et al.*, 88 NLRB No. 112; *Electric Products Co.*, 89 NLRB No. 24; *Anaconda Wire and Cable Co.*, 90 NLRB No. 5. Cf. *Rudolph Wuritzer Co.*, 88 NLRB No. 188, and *Columbia Rope Co.*, 88 NLRB No. 257.

⁷⁴ *Radio Corporation of America (Victor Division)*, *supra*.

¹ "(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer."

² See *Hudson Motor Car Company*, 82 NLRB 402; Fourteenth Annual Report, p. 46.

“union-shop” or “maintenance-of-membership” agreements.³ The Board’s certification of the results of a referendum is similarly phrased.⁴

Union-shop referendum proceedings are governed by the rules which the Board applies to certification and decertification election proceedings under section 9 (c), insofar as identical or related matters are concerned.⁵ The statute requires that a union seeking a union-security referendum must first make a showing that at least 30 percent of the employees involved have indicated a desire to grant it such an authorization.

In view of the statutory provision that a union-shop referendum may be held only “if no question of representation exists,” the Board sustained the regional director’s dismissal of a referendum petition where bona fide claims of several rival organizations raised a valid question of representation,⁶ but reversed a dismissal where the question concerning representation had not been raised in good faith.⁷ In *Baker Ice Machine Co.*,⁸ the Board was called upon to determine the existence of a representation question in an unusual setting. Three days before a union-shop referendum in a multiple-employer unit, a rival union filed separate representation petitions seeking single-employer units with respect to the employees involved. On the day before the referendum, the union presented its claims to the employer. In view of these claims, the regional director impounded the ballots cast in the referendum, and then dismissed the rival union’s separate representation petitions on the ground that the units sought were inappropriate. Following the Board’s approval of this action, the union renewed its petition, seeking certification for the multiple-employer unit which was determined appropriate in the referendum proceeding. A majority of the Board was of the opinion that the union’s single-employer petitions had raised no valid question concerning representation and therefore did not bar the referendum. Nevertheless, the majority held the impounding of the referendum ballots was reasonable in view of the union’s vigorous prosecution of its claim of representation. The Board directed, therefore, that the ballots remain impounded pending the resolution of the representation question raised by the union’s second petition. In this connection, the

³ See *Lima Hamilton Corporation*, 87 NLRB 455; *Hudson Motor Car Company*, 87 NLRB 452; *Fuller Manufacturing Company*, 88 NLRB No. 30; *Northern Pacific Transport Company*, 89 NLRB No. 209.

⁴ *Fairmont Mills, Inc.*, 87 NLRB 21; *The Root Store*, 88 NLRB No. 97.

⁵ In *Lima Hamilton Corp.*, 87 NLRB 455, for instance, the Board had occasion to determine that the eligibility of temporarily laid-off employees to vote in a union-security election depends upon the employees’ reasonable expectancy of reemployment in the near future.

⁶ *Louisville Railway Company*, 9-UA-1323, decided November 22, 1949.

⁷ *Grand Haven Brass Foundry*, 7-UA-1751, decided October 18, 1949.

⁸ 86 NLRB 385 (Board Members Murdock and Gray dissenting).

majority pointed out that the lesser authority given to a union by its members in a union-shop referendum does not necessarily include the greater authority to serve as exclusive bargaining agent. The union's special authority to make a union-security contract is supplementary to and dependent upon its general authority to represent the employees for purposes of collective bargaining, the majority said.

This case also raised a question concerning the impact of the so-called "1-year rule" on employee elections under the act. These rules are contained in section 9 (c), which provides for representation elections, and in section 9 (e), which provides for union-security polls. Section 9 (c) (3) states: "No election shall be directed in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election shall have been held." Subsection (3) of section 9 (e), the union-shop referendum provision, states: "No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election shall have been held." In the *Gilchrist Timber* case⁹ (1948), the Board had held that, on the basis of the legislative history of the section and "on its face, section 9 (e) (3) was intended to preclude either two union-shop elections within 12 months, or an election within 12 months to rescind the authority granted in a union-shop election, and not to preclude a union shop election at any time after a representation election." Applying this rule to the *Baker Ice Machine* case, the majority held that these provisions "do not preclude the direction of both a union-security referendum and a representation election within 1 year's time."

As in the case of representation proceedings, the Board declined to set aside a union-security election because of preelection campaign statements which were not coercive and did not have the effect of depriving employees of an opportunity to express their uncoerced wishes.¹⁰

⁹ 76 NLRB 1233.

¹⁰ *The Red Store*, 88 NLRB No. 97.

IV

Unfair Labor Practices

SECTION 10 of the act empowers the Board "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce."

As unfair labor practices, section 8 (a) forbids an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of their rights to organize and bargain collectively, or to refrain from any or all such activity, except under a duly authorized union shop.

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

(3) To discriminate with regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization.

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

(5) To refuse to bargain collectively with the representative chosen by a majority of his employees in an appropriate bargaining unit.

Also as unfair labor practices, section 8 (b) forbids a labor organization or its agents—

(1) To restrain or coerce employees in the exercise of their rights to organize and bargain collectively and to refrain from any or all such activity, or to restrain or coerce an employer in the choice of his bargaining representative.

(2) To cause or attempt to cause an employer to discriminate against an employee because of his membership or lack of membership in a labor organization, except under a duly authorized union-shop agreement made in conformance to provisions of the act.

(3) To refuse to bargain collectively with an employer if it is a representative of his employees.

(4) To engage in, or induce or encourage the employees of any employer to engage in, a strike or concerted refusal in the course of employment to handle goods or perform services with an object of:

(a) forcing an employer or self-employed person to join any labor or employer organization, or to cease doing business with any other person;

(b) forcing any other employer to recognize or bargain with a labor organization which has never been certified by the Board as the representative of his employees;

(c) forcing any employer to recognize or bargain with a labor organization when another bargaining agent has been certified by the Board as the representative of his employees; or

(d) forcing any employer to assign particular work to employees in a particular labor organization, trade, craft, or class.

(5) To require employees covered by a duly authorized union-shop agreement to pay initiation fees which the Board finds excessive or discriminatory under all the circumstances.

(6) To cause or attempt to cause any employer to pay money or other things of value in the nature of an exaction, for services not performed or not to be performed.

To prevent the commission of these unfair labor practices and to remedy situations in which they have already been committed, the Board is empowered to issue orders requiring an employer or a labor organization found to have engaged in such unfair practices "to cease and desist from such unfair labor practices, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

Unfair labor practice proceedings before the Board are initiated by the filing of charges by an employer, an employee, a labor organization, or other private party. Such charges are filed with the regional offices of the Board in the area where the unfair labor practice allegedly was committed. Formal proceedings before the Board itself, however, are initiated only upon issuance of a formal complaint after investigation of the charges filed by the private parties. Final authority over the investigation of charges and the issuance of formal complaints, on behalf of the Board, is conferred upon the General Counsel. Once a formal complaint is issued, the act provides for hearing of testimony and evidence in the case by the Board, or by a Board Member or by a trial examiner designated by the Board. In practice, hearings on all unfair labor practice complaints are conducted by trial examiners for the Board. The act requires a trial examiner, at conclusion of the hearing, to issue a proposed report and recommended order, which shall become an order of the Board unless exceptions to it are filed by the parties within 20 days after it has been served on them.

To enforce its orders, the Board is empowered to petition any United States court of appeals for an order of enforcement. The act provides that such petitions for enforcement shall be filed with the court of appeals for the area where the unfair labor practice in question occurred or where the person found to have violated the act resides or

transacts business. "Any person aggrieved by a final order of the Board" also may petition the courts of appeals for review of the Board's order. The courts of appeals may enforce, modify, or set aside in whole or in part the order of the Board. The rulings of the courts of appeals are subject to review by the Supreme Court of the United States. The act, however, provides that:

No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

The findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole shall be conclusive.¹

1. The 6-Month Limitation

A proviso to section 10 (b) of the amended act requires that the charge in an unfair labor practice case be filed within 6 months of the occurrence of the conduct alleged to be an unfair labor practice. The proviso states:

No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charges with the Board and the service of a copy thereof upon the person against whom such charge is made * * *

Questions on precise interpretation to be given this proviso arose in a number of cases decided by the Board during the past fiscal year. In general, the Board has ruled that the proviso is "a statute of limitations and no more," which governs the time for the filing of unfair practice charges.² The Board has held further that it is not a rule of evidence and therefore does not operate to preclude consideration of evidence dating back more than 6 months before the filing of the charge, when such evidence is necessary for background purposes, to explain or clarify events occurring within the 6-month period.³ However, the proviso does prohibit a finding that any act or conduct occurring more than 6 months before the filing and service of the charge is, in itself, an unfair labor practice.

A major question also was raised as to whether the proviso had changed the function of the charge in a Board proceeding. The term "charge" refers to the document filed by the private parties to initiate a Board unfair practice proceeding. In one case,⁴ the contention was made that the formal complaint issued by the General Counsel after his investigation of the charge could not include any allegation of unfair practices which was based on conduct not specifically set forth

¹ Sec. 10 (e).

² *Cathey Lumber Company*, 86 NLRB 157.

³ *Awelson Manufacturing Company*, 88 NLRB No. 155.

⁴ *Cathey Lumber Company*, *supra*.

in the charge filed by the complaining party. Rejecting this contention, the Board held that the amended act does not change the function of the charge, which, the Supreme Court has said, "merely sets in motion the machinery of inquiry * * * [and] does not even serve the purpose of a pleading."⁵ The Board concluded that the primary function of the charge in a Board proceeding is to enable the Board to "enter intelligently upon the exercise of its exploratory powers,"⁶ and to set in motion the Board's investigation. The Board held that any other interpretation "would emasculate the Board's long recognized investigatory power and would put the onus of investigation on private parties, a situation hardly consistent with the public nature of the Act and the agency created to administer it."⁷ The Board held that the purpose of the amended act's requirement that the charge be served upon the person charged is to notify him that the date at which his liability for unfair labor practices might commence had been established. In the same decision, the Board summarized the impact of the proviso as follows:

the proviso to Section 10 (b) merely extinguishes liability for those unfair labor practices which were committed more than 6 months prior to the filing and service of the charge initiating the case, and * * * a complaint may lawfully enlarge upon a charge if such additional unfair labor practices were committed no longer than 6 months prior to the filing and service of such charge.

This conclusion is consonant with the proclaimed public policy of the Act. Were we to require that each unfair labor practice to be litigated be made the subject matter of a charge, which may be filed only by a private party, we would be leaving to private parties the complete responsibility for ferreting out violations of the Act, and determining what conduct constitutes violations.

In ruling that section 10 (b) does not preclude the consideration of events occurring more than 6 months before the filing of charges for background purposes, the Board held that a trial examiner properly received evidence on the origin of an organization allegedly dominated by an employer, inasmuch as he did not base a finding of unfair labor practice on this evidence.⁸

Similarly, the Board admitted evidence of questioning of employees and threats which occurred more than 6 months before the charges were filed, but only for the purpose of showing employer's knowledge of union activities and of the identity of union leaders.⁹

Questions about the amendment of charges and the time for issuance of complaints also were raised in a number of cases. The

⁵ *N. L. R. B. v. Indiana and Michigan Electric Company*, 318 U. S. 9, 18.

⁶ *Consumers Power Company v. N. L. R. B.*, 113 F. 2d 38 (C. A. 6).

⁷ *Cathy Lumber Company*, *supra*. See also *Rex Manufacturing Company, Inc.*, 86 NLRB 470.

⁸ *Axelson Mfg. Co.*, 88 NLRB No. 155.

⁹ *Lucerne Hide & Tallow Co.*, 89 NLRB No. 119.

Board ruled in several cases that section 10 (b) does not operate as a statute of limitations on the issuance of formal complaints by the General Counsel.¹⁰ In a number of cases, where the General Counsel based his complaint upon amended charges, it was contended that the 6-month limitation should be computed from the date of the filing of the last amended charge. The Board rejected this contention, saying:

* * * Section 10 (b) does not prohibit the issuance of a complaint based on an amended charge filed and served after the running of the limitation period if, in fact, such amended charge alleges no new matter and is substantially a re-statement of the original and previously amended charges which had been timely filed and served.¹¹

The Board has continued to limit its findings to the allegations of the complaint. Thus, in one case, the Board made a finding of violation only as to section 8 (a) (1), although the conduct also violated section 8 (a) (3), but the complaint alleged violation only of section 8 (a) (1).¹²

A. Unfair Labor Practices of Employers

1. Interference With Employees' Rights

Section 8 (a) (1) of the act forbids employers to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.¹ Although conduct which violates subsections (2), (3), (4), and (5) of section 8 (a) ² may also violate subsection (1), the discussion here is concerned with conduct violating only section 8 (a) (1), commonly known as an "independent 8 (a) (1) violation."

The forms of unlawful employer interference, restraint, and coercion of employees in the cases decided by the Board during fiscal year 1950 for the most part paralleled those noted in previous annual reports, e. g., interrogation of employees concerning their union mem-

¹⁰ *Brookville Glove Co.*, 85 NLRB 928; *Jaques Power Saw Co.*, 85 NLRB 440; *Sussex Hats, Inc.*, 85 NLRB 399; *Peerless Yeast Co.*, 86 NLRB 1098; *H & H Mfg. Co.*, 87 NLRB 1373; *B F. Goodrich Co.*, 88 NLRB No. 117.

¹¹ *Jaques Power Saw Co.*, 85 NLRB 440. See also *Lily-Tuhy Cup Co.*, 88 NLRB No. 170; *Mason & Hughes, Inc.*, 86 NLRB 848; and *Kansas Milling Co. v. N. L. R. B.* (C. A. 10, No. 4036, decided November 9, 1950), affirming Board's ruling on nature of charge.

¹² *Precast Slab & Tile Co.*, 88 NLRB No. 23.

¹ Sec. 7 of the act provides:

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

² See Fourteenth Annual Report (1949) p. 50.

bership and activities;³ surveillance of union activities;⁴ threats that organizational activities would result in economic detriments such as the closing of the plant or wage cuts or demotions;⁵ threats of loss of privileges;⁶ promising or granting wage increases or other benefits to discourage organizational activities;⁷ attempts to influence employees to vote against union representation by gifts and promises of concessions,⁸ and to discourage employee organizations by lowering working conditions;⁹ inducing and assisting employees to revoke their union memberships;¹⁰ and dealing individually with striking employees in disregard of their exclusive bargaining agent.¹¹

a. Questioning of Employees

The questioning of employees in these cases concerned their reasons for joining a union; their attendance at union meetings; the identity of other employees who attended meetings or were union leaders or officers; the employees' intentions in connection with scheduled representation hearings or elections. The Board ruled in one of the cases that the employer's statement that the employees were free to answer or not to answer the employer's questions did not dissipate the coercive effect of the employer's conduct.¹² Nor was it held a valid

³ *Standard-Coosa-Thatcher Company*, 85 NLRB 358; *Premier Worsted Mills*, 85 NLRB 985; *The Ann Arbor Press*, 85 NLRB 58; *Morristown Knitting Mills, Inc.*, 86 NLRB 342; *Linde Air Products Co., Inc.*, 86 NLRB 1333; *Stainless Ware Company of America*, 87 NLRB 138; *Alside, Inc.*, 88 NLRB No. 101; *W. C. Nabors Co.*, 89 NLRB No. 48; *Eastman Cotton Mills*, 90 NLRB No. 3; *A. J. Siris Products Corp. of Virginia*, 90 NLRB No. 33; *Marr Knitting, Inc.*, 90 NLRB No. 63.

⁴ *Premier Worsted Mills*, 85 NLRB 985; *Morristown Knitting Mills, Inc.*, 86 NLRB 342; *E. A. Laboratories, Inc.*, 86 NLRB 711; *H. & H. Manufacturing Company, Inc.*, 87 NLRB 1373; *Cleveland Veneer Company*, 89 NLRB No. 74; *Inter-City Advertising Company of Greensboro, N. C., Inc.*, 89 NLRB No. 127.

⁵ *Premier Worsted Mills*, 85 NLRB 985; *New York Steam Laundry, Inc.*, 85 NLRB 1470; *Dixie Mercerizing Company*, 86 NLRB 285; *Westinghouse Pacific Coast Brake Co.*, 89 NLRB No. 16; *A. J. Siris Products Corp. of Virginia, Inc.*, 90 NLRB No. 33; *Crosby Chemicals, American National Insurance Company*, 89 NLRB No. 19.

⁶ *Standard-Coosa-Thatcher Co.*, 85 NLRB 358.

⁷ *Rutter-Rea Manufacturing Company, Inc.*, 86 NLRB 470, where a wage increase and vacation plan was announced by the employer on the day of a Board election; and *Jasper National Mattress Company*, 89 NLRB No. 7. See also *The Valley Broadcasting Company*, 87 NLRB 1144, where the employer granted wage increases upon learning of the advent of the union.

⁸ *J. J. Newberry Company*, 88 NLRB No. 198.

⁹ *Cleveland Veneer Company*, 89 NLRB No. 74.

¹⁰ See *Chicopee Manufacturing Corporation of Georgia*, 85 NLRB 1439; *W. C. Nabors*, 89 NLRB No. 48; *Goodall Company*, 86 NLRB 14; *Dixie Culvert Manufacturing Company*, 87 NLRB 193.

¹¹ See *E. A. Laboratories, Inc.*, 86 NLRB 711; *Cincinnati Steel Castings Company*, 86 NLRB 592; *Kansas Milling Company*, 86 NLRB 925; *Crosby Chemicals, Inc.*, 85 NLRB 791.

However, eviction proceedings against striking employees who rented living quarters from the employer were held not to violate sec. 8 (a) (1). *Anchor Rome Mills*, 86 NLRB 1120. Nor was the employer held to have violated the act by encouraging the arrest of strikers for alleged threats of violence to nonstrikers. *Cathey Lumber Company*, 86 NLRB 157.

¹² *Joy Silk Mills, Inc.*, 85 NLRB 1263.

defense that the employer intended to ascertain whether or not the union involved had engaged in unfair labor practices.¹³ Attempts to secure information regarding current organizational activities which were held unlawful included instructions to an employee to find out the identity of fellow employees who distributed and signed union cards during rest periods.¹⁴

In the *Standard-Coosa-Thatcher* case,¹⁵ a novel defense for the interrogation of employees was raised in a contention that, by wearing union buttons, employees openly profess their union sympathies and therefore may be properly interrogated on union matters. The Board rejected this argument, saying:

Whenever an employer directly or indirectly attempts to secure information concerning the manner in which or the extent to which his employees have chosen to engage in union organization or other concerted activity, he invades an area guaranteed to be exclusively the business and concern of his employees.

In this decision, the Board reviewed the nature and rationale of the Board's long-established policy of holding the questioning of employees about their organizational activities to be a violation of the statute. The opinion, which was unanimous,¹⁶ said further:

The express purpose of the Act is 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." Consonant with this objective, Section 7 of the Act declares that employees have the "right" to engage in organization and association, and Section 8 (a) (1) makes it an unfair labor practice for employers to "interfere with, restrain, or coerce" employees in the exercise of that right.

The language and the legislative history of Section 8 (a) (1) show that Congress intended the terms "interfere," "restrain," and "coerce" to have separate and distinct meanings. In banning "interference" Congress clearly meant to proscribe any employer activity which would tend to limit employees in the exercise of their statutory rights. Inherent in the very nature of the rights protected by Section 7 is the concomitant right of privacy in their enjoyment—"full freedom" from employer intermeddling, intrusion, or even knowledge.

* * * * *

This Board, with the approval of the courts, has long recognized this right to privacy in condemning as unlawful interference such indirect attempts by an employer to secure information about the union activities of employees as resort to espionage or surveillance. When espionage is successfully concealed, "restraint" and "coercion" may perhaps be absent, but the conduct is nevertheless vulnerable on the ground of "interference," if on no other. So it is in the

¹³ *Meier & Frank Co., Inc.*, 89 NLRB No. 114.

¹⁴ *Goodall Company*, 86 NLRB 814. However, no violation of sec. 8 (a) (1) was found where the duties of a master mechanic, accused of spying on union activities, required him to travel about the village in order to attend to the employer's property. *B. F. Goodrich Company*, 88 NLRB No. 117.

¹⁵ 85 NLRB 1358.

¹⁶ The decision was signed by Chairman Herzog and Board Members Houston, Reynolds, and Murdock. Board Member Gray did not participate.

case of interrogation. The employer may not legally seek information on those subjects which the statute makes the sole concern of his employees.

Interrogation by an employer not only invades the employee's privacy and thus constitutes interference with his enjoyment of the rights guaranteed to him by the Act. Its effect on the questioned employee, like that of open surveillance of union activity, is to "restrain" or to "coerce" the employee in the exercise of those rights. The employee who is interrogated concerning matters which are his sole concern is reasonably led to believe that his employer not only wants information on the nature and extent of his union interests and activities but also contemplates some form of reprisal once the information is obtained. The finger which espionage might merely direct to him is actually pointed at him by the inquiry from his employer. He fears that a refusal to answer or a truthful answer may cost him his job. He is also in effect warned that any contemplated union activity must be abandoned, or he will risk loss of his job. Weighing these "subtle imponderables," the Board early characterized direct interrogation as "a particularly flagrant form of intimidation of individual employees." The Board assumed the violation "obvious." Many courts did likewise.¹⁷

* * * * *

Our experience demonstrates that the fear of subsequent discrimination which interrogation instills in the minds of employees is reasonable and well-founded. The cases in which interrogated employees have been discharged or otherwise discriminated against on the basis of information obtained through interrogation are numerous. These cases demonstrate conclusively that, by and large, employers who engage in this practice are not motivated by idle curiosity, but rather by a desire to rid themselves of union adherents. In prohibiting interrogation, therefore, we are not only preserving the employees' right to privacy in their union affairs; we are not only removing a subtle but effective psychological restraint on employees' concerted activities; but we are also seeking to prevent the commission of the further unfair labor practice of discrimination by condemning one of the first steps leading to such discrimination.

The Respondent contends, however, that when, as here, employees openly profess their union sympathy by wearing union buttons, they have demonstrated that they have no fear of disclosing their union sympathies and affiliation and may therefore properly be interrogated on union matters. This argument loses sight of the essential character of the restraint involved. The subtle pressure created by interrogation results from the realization by the interrogated employee that his employer is concerned with his union affiliation or activities and will, therefore, act to the employee's detriment. The restraint and coercion are in no way dissipated because the employee knows that, by observing the union button, the employer, if he cared to, might have obtained some information without direct interrogation. In any event, the scope of the Respondent's inquiries went beyond the fact of union membership and into the realm of other matters not voluntarily disclosed by the display of union buttons.

Finally, we again reject the contention that interrogation is protected by Section 8 (c) of the amended Act. Interrogation cannot be considered an ex-

¹⁷ The following cases were cited as examples: *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 518, 520; *N. L. R. B. v. Botany Worsted Mills, Inc.*, 106 F. 2d 263, 267 (C. A. 3); *N. L. R. B. v. Norfolk Southern Bus Corp.*, 159 F. 2d 516, 518 (C. A. 4), certiorari denied 330 U. S. 844; *N. L. R. B. v. Harris-Woodson Co., Inc.*, 162 F. 2d 97, 100 (C. A. 4); *N. L. R. B. v. Brown Paper Mill Co.*, 133 F. 2d 988, 989 (C. A. 5); *N. L. R. B. v. National Plastic Products Co.*, 175 F. 2d 755 (C. A. 4), enforcing 78 NLRB 699.

pression of "views, arguments, or opinion," within the meaning of that provision. Moreover, the purpose of that section is to permit an employer to express his views, not to license him to extract those of his employees. The employer is explicitly accorded a right to "influence" his employees by verbal appeals to reason, but not to fear.

In determining whether an employer's conduct amounts to interference, restraint, or coercion within the meaning of section 8 (a) (1), the Board continued to be guided, not by the employer's intent or the effectiveness of his actions, but by whether the conduct is reasonably calculated, or tends to, interfere with the free exercise of the rights guaranteed employees by the act.

b. Rules Against Solicitation of Employees

Other conduct which the Board found to violate section 8 (a) (1) in the cases decided during the 1950 fiscal year included the promulgation or application of rules restricting union activities on the employer's property. While recognizing the employer's right to prohibit solicitation and other union activities during working hours in the interest of plant efficiency and discipline,¹⁸ the Board held that a plant rule unlawfully interferes with the employees' organizational rights if it is discriminatorily applied so as to impede prounion activity while antiunion activity, or activity in behalf of a favored organization, is tolerated or encouraged.¹⁹ Conversely, the Board adheres to the principle that, in the absence of a discriminatory purpose, a rule against union activity on company time will be presumed to be valid.²⁰ On the other hand, rules which extend the prohibition to the employees' own time are presumed to infringe unlawfully upon the organizational rights of employees unless it appears that special circumstances, peculiar to the employer's operations, require such a rule.²¹ Such circumstances are usually held to prevail in the case of the selling floors of department stores.²² In *Meier & Frank Company, Inc.*,²³ the Board again took cognizance of the fact that department

¹⁸ See Fourteenth Annual Report (1949) pp. 52-53 and previous reports cited there.

¹⁹ *Goodall Company*, 86 NLRB 814; *W. C. Nabors*, 89 NLRB No. 48; *Sun Oil Company*, 89 NLRB No. 104.

²⁰ *Jaques Power Saw Company*, 85 NLRB 440; *Citizens News Company, Inc.*, 88 NLRB No. 246

²¹ See *Jacksonville Motors, Inc.*, 88 NLRB No. 48, where the Board found that a no-solicitation rule of general scope was not required to forestall trade-solicitation since other measures had been taken to exclude outside solicitors from the premises. See also *Olin Industries, Inc.*, 86 NLRB 203, where the Board rejected the employer's contention that lunch and rest periods are "company time" because employees received pay for these periods

²² See Fourteenth Annual Report (1949) p. 52; Thirteenth Annual Report (1948) p. 52.

²³ 89 NLRB No. 114 (Board Members Houston and Styles dissented from majority ruling that the employer did not discriminatorily enforce its no-solicitation rule when it refused to allow a union organizer to invite employees on the selling floor to lunch in order to discuss union organization).

stores, unlike industrial establishments, are frequented by customers and that solicitation, even during the employees' off-duty time, may disrupt the employer's business. In the opinion of a majority of the Board, the management of the store could, therefore, lawfully refuse to permit union organizers to make engagements with employees on the selling floor for the purpose of discussing union matters during the employees' lunch period. However, in the same case, the extension of the employer's prohibition to union solicitation off the selling floors and during the employees' free time was held to bear no reasonable relation to the employer's operations and to interfere unduly with the employees' organizational rights under the act.

c. Contracts While Representation Petition Pending

Other findings of violations of section 8 (a) (1) during the past year were predicated upon the Board's view, first expressed in the *Midwest Piping Company* case,²⁴ that the execution by an employer of an agreement granting exclusive recognition to a union at a time when a valid question concerning the representation of the employees is pending constitutes interference with their freedom to make their own choice of a bargaining representative,²⁵ and usurps the Board's exclusive function to determine questions of representation.²⁶ In the *International Harvester* case,²⁷ a majority of the Board held that the *Midwest Piping* rule applied in a case where the employer renewed his exclusive recognition contract with a certified union, even though the employer and the incumbent union had previously acknowledged the existence of a question concerning representation by consenting to an election. The Board majority pointed out that, by agreeing to the election, the employer and incumbent union had waived whatever protection the Board's certification might have afforded and, implicitly, had agreed to refrain from executing any new collective bargaining contract pending determination of the representation question. The majority held further that the employer's conduct was not immunized by the fact that bargaining negotiations were pending which contemplated the execution of a master contract for several similar units, including the unit as to which the contracting union's representation rights were in dispute. This circumstance was held not to have extinguished or qualified the right of the employees in that unit to change their incumbent representative. Moreover, the majority held that, insofar as it would have been necessary for the employer to suspend contract negotiations pending the election, the right of the employees to select

²⁴ *Midwest Piping and Supply Co., Inc.*, 63 NLRB 1060; Eleventh Annual Report (1946) p. 53.

²⁵ *International Harvester Co.*, 87 NLRB 1123 (Board Member Gray dissenting).

²⁶ *Sun Oil Company*, 89 NLRB No. 104.

²⁷ *Supra*, footnote 25.

their representatives freely was paramount to any considerations as to the desirability of uninterrupted bargaining.

Another type of violation of section 8 (a) (1) was found where an employer executed contracts granting exclusive recognition to a union other than the employees' freely chosen representatives when the latter's status had been undermined by the employer's unfair labor practices.²⁸ The execution of contracts containing union-security provisions which were not within the purview of section 8 (a) (3) or had not been authorized in an election under section 9 (e)²⁹ also was held a violation of this section.

d. Questions of Free Speech

In determining whether an employer has violated section 8 (a) (1) by addressing his employees, orally or in writing, about matters pertaining to their organizational activities, the Board frequently must pass upon the employer's assertion that his utterances came within the free speech guarantees of the Constitution and of section 8 (c). Section 8 (c) specifically permits the expression of "any views, argument, or opinion" so long as such expressions are not accompanied by any "threat of reprisal or force or promise of benefit."

In the cases in which the protection of section 8 (c) was invoked during the past year, the Board has continued to apply principles it had announced since 1947.³⁰ Statements which lacked coercive content in the statutory sense were held to be privileged even where they revealed an antiunion attitude and hostility to employee organization on the part of the employer,³¹ disparaged union organizers, or accused unions of communism or otherwise vilified them.³² The Board also held that the protection of section 8 (c) extended to the distribution of a letter and the oral repetition of its contents in anticipation of a strike, advising employees of the employer's position during unsuccessful bargaining negotiations.³³ However, in another case, the Board pointed out that the solicitation of individual strikers to return

²⁸ *Jasper National Mattress Company*, 89 NLRB No. 7. Compare *Granite City Steel Company*, 87 NLRB 894, where the execution of a contract with a rival union was held not to violate sec. 8 (a) (1) since the incumbent union had lost its majority status for reasons other than the employer's unfair labor practices.

²⁹ *Salant and Salant, Inc.*, 87 NLRB 215; *Pacific Maritime Association*, 89 NLRB No. 115. *Precast Slab and Tile Company*, 88 NLRB No. 231. Compare the cases dealing with the union-security provisions of the act, discussed *infra*, at pp. 112-116 and 131-138.

³⁰ See Thirteenth Annual Report (1948) pp. 49-50; Fourteenth Annual Report (1949) pp. 54-55.

³¹ *H & H Manufacturing Co., Inc.*, 87 NLRB 1373; *Meier & Frank Co., Inc.*, 89 NLRB No. 114.

³² *E. A. Laboratories, Inc.*, 88 NLRB No. 140; *Morristown Knitting Mills, Inc.*, 86 NLRB 342.

³³ *Anchor Rome Mills, Inc.*, 86 NLRB 1120. In the same case, it was also held that the employer's refusal to permit the union to reply via the public address system which had been installed was not unlawful.

to work was not, as contended, an "expression of views, argument, or opinion" within the meaning of section 8 (c), and was therefore not privileged, regardless of the absence of any contemporaneous threats or promises.³⁴ In a number of cases the Board adhered to its previously expressed view that section 8 (c) was not intended to sanction the interrogation of employees as to union activities and affairs,³⁵ nor to permit employers to express or imply threats that the advent of a union would result in closing of the plant or otherwise in the loss of employment or of benefits and privileges,³⁶ nor promises that in case of the union's defeat higher wages and other concessions would be granted.³⁷

e. Activities of Supervisors

The question whether the act has been violated requires, at times, not only an appraisal of the particular conduct in the light of the prescription of section 8 (a) (1), but also a determination of whether acts committed by the employer's subordinates or other persons may be imputed to the employer. Ordinarily, the employer is held responsible for the conduct of supervisors because of their position as management representatives.³⁸

Acts of nonsupervisory employees are likewise imputed to the employer if their apparent relation to management, or the employer's conduct, tends to lead rank-and-file employees to believe that they are in a position to express the policies and wishes of management. Employers were held accountable for antiunion conduct of members of their personnel departments,³⁹ and of rank-and-file employees through whom the employer had obtained information as to current organization activities of his employees.⁴⁰ Similarly, the employer was held responsible for acts of an employee who owned one-third of the company's capital stock⁴¹ and the acts of a bookkeeper who owned one-fourth of the company's closely held stock and was held out to the employees as having some managerial powers.⁴² However, the employer was not held responsible for the antiunion activities of an employee in a case in which the employer neither paid the

³⁴ *Cincinnati Steel Castings Co.*, 86 NLRB 592.

³⁵ *Standard-Coosa-Thatcher Co.*, 85 NLRB 1385; *Dixie Mercerizing Co.*, 86 NLRB 285; *River Falls Co-operative Creamery*, 90 NLRB No. 56.

³⁶ See *Premier Worsted Mills*, 85 NLRB 985; *Dixie Culvert Mfg. Co.*, 87 NLRB 554; *International Shoe Co.*, 87 NLRB 589; *Florida Telephone Corp.*, 88 NLRB No. 251; *F. W. Woolworth Co.*, 90 NLRB No. 41.

³⁷ See *Cleveland Veneer Co.*, 89 NLRB No. 74; *River Falls Co-operative Creamery*, 90 NLRB No. 56.

³⁸ See *The Ann Arbor Press*, 85 NLRB 58; *River Falls Co-operative Creamery*, 90 NLRB No. 56; cf. *C. Ray Randall Mfg. Co.*, 88 NLRB No. 18.

³⁹ *Ohn Industries, Inc.*, 86 NLRB 203, and *International Shoe Co.*, 87 NLRB 479.

⁴⁰ *Jaques Power Saw Co.*, 85 NLRB 440; *Stainless Ware Co.*, 87 NLRB 138.

⁴¹ *Anchor Rug Mill*, 85 NLRB 764.

⁴² *Thomaston Cotton Mills*, 87 NLRB 278; *H & H Manufacturing Co.*, 87 NLRB 1373.

employee for the time spent on such activities nor encouraged or approved them.⁴³

The Board has consistently held that in order to avoid liability for the acts of subordinates it is not sufficient for an employer to instruct its supervisors to maintain a neutral attitude in organizational matters, without communicating the instructions to the rank-and-file employees themselves.⁴⁴ Nor was the employer held relieved of liability by a declaration of neutrality in general terms which did not repudiate or refer to the antiunion manifestations on the part of supervisory employees.⁴⁵

f. Acts of Outsiders

Similar to the employer's liability for the conduct of management representatives and subordinates is his accountability for acts of outsiders which tend to interfere with the exercise by his employees of their rights under the act. In the cases decided during the past year, the Board has assessed the employer's liability on the basis of his business or other relations with the outsider or his ratification of, or acquiescence in, the acts in question. Thus, antiunion conduct was imputed to the employer in the case of a local banker who previously had been instrumental in effecting a strike settlement and was known to the employees as a member of the employer's board of directors;⁴⁶ where an attorney, engaged to defend unfair labor practice charges pending before the Board, questioned employees in a manner not required by the preparation of the employer's case;⁴⁷ and where a "Good Citizen's League," formed and administered by supervisory employees, was used by the employer for the purpose of antiunion demonstrations.⁴⁸

On the other hand, liability for the utterance of a speaker was held to have been effectively avoided where, at the time of introducing the speaker to the employees, the employer made clear its neutrality.⁴⁹ Nor was the employer held accountable for the antiunion statements of a private physician who at irregular intervals treated employees and whose remarks were not known to, or condoned by, the employer.⁵⁰

⁴³ *Joy Silk Mills, Inc.*, 85 NLRB 1263.

⁴⁴ *J. H. Rutter-Rex Mfg. Co., Inc.*, 86 NLRB 470; *Cincinnati Steel Castings Co.*, 86 NLRB 592.

⁴⁵ *Chicopee Mfg. Co. of Georgia*, 85 NLRB 1439. See also *Jaques Power Saw Co.*, 85 NLRB 440, and *Wilson & Co., Inc.*, 88 NLRB No. 25.

⁴⁶ *Eastman Cotton Mills*, 90 NLRB No. 3.

⁴⁷ *Central Wisconsin Motor Transport*, 89 NLRB No. 143; cf. *South Jersey Coach Lines*, 89 NLRB No. 156.

⁴⁸ *Dixie Mercerying Co.*, 86 NLRB 285. See also *Jasper National Mattress Co.*, 89 NLRB No. 7; *H. & H. Manufacturing Co., Inc.*, 87 NLRB 1373.

⁴⁹ *Empire Pencil Co., Division of Hassenfeld Bros., Inc.*, 86 NLRB 1187.

⁵⁰ *Lily-Tulip Cup Corp.*, 88 NLRB No. 170.

2. Domination and Support of Employee Organizations

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

For the purpose of appropriate remedial orders in all cases of section 8 (a) (2) violations, the Board has continued to differentiate between cases in which the employer's unlawful conduct amounted to domination and cases which involved only unlawful support of a labor organization.⁵¹ As heretofore, upon a finding of domination, the Board's policy has been to order the employer to disestablish the dominated organization and to cease dealing with it. Upon a finding of unlawful support only, the Board has ordered the employer to refrain from recognizing or dealing with the organization until it is certified as bargaining representative by the Board after an election among the employees.

During the past year, in determining whether employer conduct constituted unlawful domination or support, or both, the Board again has been guided by the extent and nature of the conduct. Thus, domination as well as support was found where the employer not only granted financial assistance or use of plant facilities, or a checkoff of dues but, in addition, one or more of the following factors were present: the labor organization was formed at the employer's suggestion; supervisory personnel participated in the formation and administration of the organization, or the union bylaws enabled management to exercise effective control over the organization.⁵²

On the other hand, support, but not domination, was found where the employer recognized one labor organization while another union's petition for certification was pending before the Board.⁵³ Illegal support was found also where the employer agreed to union-security clauses which had not been ratified by a union-shop election⁵⁴ and, in another case, where the employer granted a union-security clause which exceeded that permitted by section 8 (a) (3).⁵⁵ However, where the employer was shown solely to have permitted an election of committee members to be held on its time and property, a panel

⁵¹ See *Carpenter Steel Co.*, 76 NLRB 670; Thirteenth Annual Report (1948) pp. 50-51; Fourteenth Annual Report (1949) p. 57.

⁵² *Madix Asphalt Roofing Corp.*, 85 NLRB 26; *Crosby Chemicals, Inc.*, 85 NLRB 791; *C. Ray Randall Manufacturing Company*, 88 NLRB No. 18; *Awelson Manufacturing Company*, 88 NLRB No. 155; *Florida Telephone Corporation*, 88 NLRB No. 251; *Sun Oil Company*, 89 NLRB No. 104.

⁵³ *Crowley's Milk Company, Inc. (Paterson Division)*, 88 NLRB No. 187. Cf. *Sun Oil Company*, 89 NLRB No. 104.

⁵⁴ *Salant & Salant, Inc.*, 87 NLRB 215, 88 NLRB No. 156.

⁵⁵ *Juhus Resnick, Inc.*, 86 NLRB 38.

majority of the Board found the evidence insufficient to warrant a finding of unlawful support.⁵⁶

a. Checkoff for Dominated Union

While the Board found in the *Randall Manufacturing* case⁵⁷ that the checkoff of dues on behalf of the dominated organization constituted unlawful assistance and support, it restated in *Salant & Salant, Inc.*, 88 NLRB No. 156, that a checkoff agreement is not illegal *per se* and becomes an unfair labor practice only where the benefited organization is dominated or otherwise does not represent an uncoerced majority of the employees.⁵⁸ In the *Salant* case the Board also held that the legality of a checkoff agreement under section 8 of the act was not affected by the provision of section 302 which requires written assignments from employees from whose wages dues are to be deducted. The Board held that the legislative history of section 302, its position in the act, and the provision for criminal sanctions in case of its violation indicated that congressional intent was lacking to create a new unfair labor practice or to require consideration of the section in determining the validity of a checkoff agreement under section 8.

b. Successor to Dominated Union

The recurring question of the status of the successor to an employer-dominated organization was involved in the *Sun Oil Company* case.⁵⁹ In determining the issue, the Board applied the principle that an organization is tainted with the illegality of its predecessor unless the employer, prior to formation of the successor organization, has established a clear line of fracture between the two organizations, by publicly and unequivocally disestablishing the old organization and by assuring the employees of their freedom from further employer interference with their choice of bargaining representatives. Holding that the successor organization in the case was employer-dominated, the Board declined to give weight to evidence of the employees' subjective intent in becoming members of the organization and rejected

⁵⁶ *Tennessee Knitting Mills, Inc.*, 88 NLRB No. 194.

In *Porto Rico Container Corporation*, 89 NLRB No. 205, the Board held that there was no sufficient basis for a finding of either domination or support where the principal organizers and officers of an independent union, while related or intimately associated with management representatives, did not themselves have or appear to have supervisory status, and where the employer had not recognized the organization or otherwise injected itself into its affairs.

⁵⁷ *Supra*, footnote 52.

⁵⁸ Compare *Precast Slab and Tile Co.*, 88 NLRB No. 231, where the Board found that the employer violated sec. 8 (a) (1) by requiring employees to authorize deductions of union dues although it was not contractually obligated to check off such dues.

⁵⁹ 89 NLRB No. 104, *supra*, footnote 53.

the contention that the organization's successful bargaining history cured its initial infirmities.

c. Definition of "Labor Organization"

Since section 8 (a) (2) prohibits employer domination and support only insofar as "labor organizations" within the definition of section 2 (5)⁶⁰ are concerned, the Board at times must determine whether the organization involved in a given case comes within the definition. In *Florida Telephone Corporation*, 88 NLRB No. 251, the Board held that a "Junior Management Board," the employee-component of a "Joint Management Board" was "a labor organization" within the statutory definition. The Board found that, as required by section 2 (5), employees had "participated" in the functions of the junior board by electing its members, and that the junior board had been "dealing with" the employer in the statutory sense by discussing and presenting to the employer-controlled joint board matters concerned with grievances and working conditions. Moreover, the junior board had been held out to the employees as the equivalent of a bargaining representative.

3. Discrimination Against Employees to Encourage or Discourage Union Membership

In section 8 (a) (3), the amended act forbids an employer to discriminate against employees to encourage or discourage membership in any labor organization. This section outlaws discrimination for this purpose "in regard to their hire or tenure or any term or condition of employment."

The Board continues to be vigilant in the enforcement of this section because the protection of employees' right to organize is the foundation of the statutory policy of promoting industrial peace through collective bargaining. To remedy discrimination against an employee, the Board customarily orders restoration to the employee of his former job or job rights and reimbursement for the wages he lost as a result of the discriminatory action, to safeguard the rights of other employees in the same plant. The Board also usually orders the employer to refrain from any other such conduct in the future.⁶¹

The protection of employees under this section has been held by the Board not to be limited merely to the formal activities of union mem-

⁶⁰ Sec. 2 (5) provides:

"The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

⁶¹ Remedial orders against employers and against labor organizations are discussed in part C of this chapter.

bership, but to extend as well to other concerted activities taken in connection with their employee status, such as the circulation of a petition asking a wage raise⁶² or a meeting of employees to draft a letter of complaint and recommendation about a matter affecting their pay.⁶³

Section 8 (b) (2) forbids a labor organization or its agents to "cause or attempt to cause" an employer to engage in such discrimination.⁶⁴

A proviso to section 8 (a) (3), however, permits an employer, under certain limited circumstances, to discharge an employee who fails to join a union with which he has a valid union-shop agreement made in accordance with certain conditions specified by the proviso. The combination of the provisions of these sections outlaws the "closed shop," under which a prospective employee is required to become a member of a union before obtaining employment.

Discrimination against employees because of their union membership or lack of it continues to be the most common charge of unfair labor practice levelled against employers. Violations of 8 (a) (3) were charged in 72 percent of the cases against employers during the past fiscal year.⁶⁵

In administering section 8 (a) (3), however, the Board recognizes that the act does not circumscribe the right of an employer to select, discharge, or discipline his employees, or to otherwise alter their employment status, for reasons other than those forbidden by the act.⁶⁶ In each case, therefore, the Board scrutinizes the facts to determine whether or not the treatment of the employee involved was motivated by a desire on the part of an employer to encourage or discourage union membership or other activities protected by the statute. For the Board to find a violation of this section, a preponderance of the evidence must show that the employer acted from an illegal motive.⁶⁷ A "strong presumption" is not enough.⁶⁸ And, except when an employer seeks to justify a discharge or other change in employment status by allegations of misconduct in concerted activities, the burden of proving unlawful motivation rests with the General Counsel.⁶⁹ "While the Board will consider any relevant conduct of an employer in determining whether or not a discharge was illegally motivated,

⁶² *Morristown Knitting Mills*, 80 NLRB 731.

⁶³ *Phoenix Mutual Insurance Co.*, 73 NLRB 1463 (1947), enforced 167 F. 2d 983 (C. A. 7), certiorari denied by the Supreme Court, 69 S. Ct. 68.

⁶⁴ Board rulings on this unfair practice of unions are discussed in section 3 of part B of this chapter.

⁶⁵ See Statistical Table No. 3A, appendix B.

⁶⁶ *Dial Mercantile Co.*, 86 NLRB 285.

⁶⁷ *Punch and Judy Togs, Inc.*, 85 NLRB 299; *Louisville Title Agency*, 85 NLRB 1344; *Strachen Shipping Co.*, 87 NLRB 431; *Pacific Telephone & Telegraph Co.*, 88 NLRB No. 221; *W. C. Nabors Co.*, 89 NLRB No. 48.

⁶⁸ *Punch and Judy Togs, Inc.*, *supra*.

⁶⁹ *W. C. Nabors*, *supra*. To justify discharge or discipline of an employee because of violence or other misconduct in the course of a strike or other concerted activity, the employer must "establish affirmatively" to the satisfaction of the Board that the employee actually engaged in the misconduct alleged. (*Porto Rico Container Corp.*, 89 NLRB No. 205.)

the General Counsel at all times has the burden of establishing illegal motivation."⁷⁰ Thus, the Board found no violation when the evidence established that an employer discharged employees for refusal to obey normal orders of a supervisor,⁷¹ or solely on the belief that they had falsified time cards,⁷² or, in another case, because the employees, after warnings, violated a company rule against leaving the work floor without permission of their supervisors.⁷³ Nor did proof of a general antiunion attitude establish illegal motivation for a mass layoff when the employer was able to show economic justification for the layoffs.⁷⁴ Nor does an employee's known prominence in union activities "afford him immunity against discipline."⁷⁵

The existence of a cause for discharge or discipline, however, does not excuse such action if the real purpose is to discourage or encourage union activities of employees.⁷⁶ The Board said in one unanimous decision: "We have repeatedly held that where anti-union considerations precipitate a discharge, such discharge is discriminatory and prohibited by the Act, *even though valid* reasons exist which would have warranted this action. In this respect a discharge is not different from a refusal to reinstate after an unfair labor practice strike. Such a refusal equally serves to penalize employees for their concerted or union activity and is clearly a violation of the rights guaranteed in the Act."⁷⁷

In a number of cases the Board rejected as pretext the alleged causes for discharge asserted by the employer.⁷⁸ In one case, the Board found that the employer, by later actions, had condoned the cited misconduct as the reason for discharge.⁷⁹ In two other cases, the Board found that the employers, because of favoritism to one of two rival unions, discriminated against employees on the basis of their activities on behalf of the unfavored union.⁸⁰

To determine whether or not an employer's motive was unlawful, the Board first must determine whether or not the employer knew of the employees' concerted activities.⁸¹ However, a finding of illegal discrimination does not require that the employer be shown to have had

⁷⁰ *W. C. Nabors, supra.*

⁷¹ *Forest Oil Corporation*, 85 NLRB 85. Insubordination is no defense if the order to employees is "unreasonably difficult, if not impossible, to obey." *Cleveland Veneer Co.*, 89 NLRB No. 74.

⁷² *Kallaher & Mee, Inc.*, 87 NLRB 410.

⁷³ *Dixie Mercerizing Co.*, *supra.*

⁷⁴ *W. C. Nabors, supra.*

⁷⁵ *Chance Vought Aircraft Division*, 85 NLRB 183.

⁷⁶ *Precast Slab & Tile Co.*, 88 NLRB No. 231.

⁷⁷ *Kansas Milling Co.*, 85 NLRB 925 (emphasis by the Board).

⁷⁸ *Premier Worsted Mills*, 85 NLRB 985; *El Paso-Ysleta Bus Line, Inc.*, 85 NLRB 1149; *Stainless Ware Co. of America*, 87 NLRB 138.

⁷⁹ *Jaques Power Saw Co.*, 85 NLRB 440.

⁸⁰ *Peerless Yeast Co.*, 86 NLRB 1098; *Citizen-News Co.*, 88 NLRB No. 246.

⁸¹ *Madix Asphalt Roofing Corp.*, 85 NLRB 26; *Inter-City Advertising Co.*, 89 NLRB No. 127.

accurate, or even truthful, information. Unlawful motivation may be found where it is shown that the employer acted only on suspicion or belief that an employee had engaged in concerted activities.⁸² In the *New York Telephone* case,⁸³ the Board said: "We have always held that when an employee is discharged because his employer believes him to be engaged in concerted activity, the discharge is violative of the Act, whether or not such belief is well founded." Knowledge of concerted activities may be inferred from such circumstances as the smallness of the plant or community where the particular activities could not have escaped the employer's attention.⁸⁴ It also may be inferred from such conduct as espionage and surveillance of employees.⁸⁵ However, an undercover investigation of a plant was held insufficient in one case to sustain an inference that the employer was aware of the activities of "unobtrusive union adherents."⁸⁶

In view of the limitations of section 8 (c), however, the Board in appraising the employer's motives will not take into consideration any statements which are merely expressions of opinion containing no threats of reprisal or promise of benefit.

a. Forms of Discrimination

Illegal discrimination in many cases involves disparity of treatment between union members or adherents and nonunion employees, but disparity of treatment is not required to establish illegal discrimination. Discriminatory action in violation of the act, for instance, may be taken against employees without regard to union affiliation, as in a lockout of all employees because of an organizational campaign in the plant.

As in previous years, discriminatory action most commonly has taken the form of discharges or layoffs or refusals to reinstate strikers. In other cases, the discriminatory treatment consisted of locking out employees,⁸⁷ the transfer of employees to other locations or less remunerative work;⁸⁸ cancellation of a wage increase;⁸⁹ removal of equipment resulting in hardship and physical suffering of employees;⁹⁰

⁸² *Kallaher & Mee, Inc*, *supra*.

⁸³ *New York Telephone Co.*, 89 NLRB No. 45.

⁸⁴ *Kallaher & Mee, Inc.*, *supra*; *Standard Service Bureau*, 87 NLRB 1405; *H & H Mfg. Co., Inc.*, 87 NLRB 1373; *Houston and North Texas Motor Freight*, 88 NLRB No. 252; *Jasper Mattress Co.*, 89 NLRB No. 7; *Central Motor Transport Co.*, 89 NLRB No. 143; *F. W. Woolworth Co.*, 90 NLRB No. 41.

⁸⁵ *Stainless Ware Co.*, 87 NLRB 138; *Cleveland Veneer Co.*, 89 NLRB No. 74.

⁸⁶ *Jaques Power Saw Co.*, 85 NLRB 440.

⁸⁷ *The L B Hosiery Co., Inc., et al.*, 88 NLRB No. 193; see also, *B & Z Hosiery Products Co.*, 85 NLRB 633; *Olin Industries, Inc.*, 86 NLRB 36.

⁸⁸ *Inter-City Advertising Company of Greensboro, N. C., Inc.*, 89 NLRB No. 127. In *Standard-Coosa-Thatcher Company*, 85 NLRB 1358 no discrimination was found where the transfer of an employee was accompanied neither by a reduction in pay nor by substantial differences in the work.

⁸⁹ *Cleveland Veneer Company*, 89 NLRB No. 74.

⁹⁰ *Cleveland Veneer Company*, *supra*.

and the withholding of retroactive wage payments from nonunion employees for the purpose of illegally encouraging membership in a union.⁹¹ The Board also had occasion to reaffirm the principle that the refusal to hire job applicants because of their union affiliations is discriminatory within the meaning of section 8 (a) (3).⁹²

In a number of cases, employers were found to have violated section 8 (a) (3) by "constructively" discharging employees; i. e., by bringing about their resignation or discharge through assignments or changes in working conditions which they were incapable of performing or unwilling reasonably to accept.⁹³ In another case, the Board applied the established principle that "an employer will be regarded as having constructively discharged employees in violation of Section 8 (a) (3) if he *knowingly* permits the ouster of such employees from his plant by a union or antiunion group."⁹⁴

b. Protected Employee Activities

The determination of whether the treatment of an employee violates section 8 (a) (3) often turns upon the question of whether the employee's activities, which gave rise to the employer's action against him, were "concerted activities" for any of the purposes which the act protects.⁹⁵ Formal union activities such as joining or urging others to join, of course, are normally protected. So also, the Board has held, are concerted employee efforts to discuss the employer's discharge practices or policies affecting working conditions;⁹⁶ a concerted refusal to accept a reduction in wages;⁹⁷ a work stoppage for the purpose of presenting grievances;⁹⁸ and an employee's report to fellow employees of the testimony presented at a representation hearing.⁹⁹

⁹¹ *Reliable Newspaper Delivery, Inc.*, 88 NLRB No. 135.

⁹² *Rome Lincoln-Mercury Corp.*, 86 NLRB 397; *The Warren Company, Incorporated*, 90 NLRB No. 96.

⁹³ See e. g., *Virtue Bros. Mfg. Co.*, 87 NLRB 1518; *Houston & North Texas Motor Freight*, 88 NLRB No. 252; *Rome Lincoln-Mercury Corp.*, *supra*; *Empire Pencil Company*, 86 NLRB 1187; *Pinkerton's National Detective Agency, Inc.*, 90 NLRB No. 39.

⁹⁴ *Randolph Corporation*, 89 NLRB No. 194.

⁹⁵ The Board has held that activities are not "concerted" within the meaning of the act unless participated in by two or more "employees" and that the protection of sec. 8 (a) (3) therefore does not extend to an employee who engaged in union activities exclusively with "non-employees," viz, agricultural workers who are excluded from the operation of the act. *Panaderia Sucesion Alonso*, 87 NLRB 877 (Chairman Herzog and Board Member Houston dissenting).

⁹⁶ *Panaderia Sucesion Alonso*, *supra* (one employee acting on behalf of nonemployees was held unprotected); *Nu-Car Carriers, Inc.*, 88 NLRB No. 24.

⁹⁷ *Panaderia "La Reguladora"*, 88 NLRB No. 95.

⁹⁸ *Ohn Industries, Inc.*, *supra*.

⁹⁹ *Stocker Manufacturing Company*, 86 NLRB 666.

See Fourteenth Annual Report (1949) p. 61, for a discussion of cases in which the Board heretofore held that a group engaged in spontaneous protected "concerted activities" constitutes a "labor organization" for the purpose of sec. 8 (a) (3), and other cases in which the Board ruled that it is immaterial whether a given instance of discrimination on account of "concerted activities" be regarded as a violation of sec. 8 (a) (1) or 8 (a) (3), because in either case reinstatement and back pay are the normal remedy. See also *Kallaher and Mee, Inc.*, 87 NLRB 410.

A strike instituted by an erroneous belief that an employee was discriminatorily discharged was held protected because "it may reasonably be assumed that the strikers acted on their own behalf, anticipating similar reprisals against themselves."¹

In many cases decided during the past year in which unlawful discrimination was alleged, the concerted activities of the employees concerned consisted in their participation in strikes. According to well-established principles,² the extent of the protection of employees who engage in lawful strikes depends upon the cause of the strike. Thus, where the concerted refusal to work is caused by unfair labor practices on the part of the employer, the strikers have an unconditional right to be reinstated to their jobs.³ On the other hand, in the case of a concerted cessation of work in connection with economic demands the employer may replace the strikers permanently. In connection with this distinction, the Board has consistently applied various principles. Thus, a strike does not lose its character as an unfair labor practice strike because economic motives are also present.⁴ However, where the employer showed to the Board's satisfaction that a work stoppage for economic reasons would have occurred even if there had been no unfair labor practices, the Board treated the stoppage as an economic strike.⁵ The Board also reaffirmed the principle that intervening unfair labor practices which have the effect of prolonging an economic work stoppage convert it into an unfair labor practice strike,⁶ unless "proof of a causal relation between the unfair labor practices and the prolongation of a strike is lacking."⁷ A strike in protest against the nondiscriminatory discharge of an employee is an economic strike.⁸

In the cases involving refusals to reinstate economic strikers, the Board must determine whether the employer actually exercised his right to replace the strikers for the purpose of carrying on his business, and not merely to rid himself of employees who were objectionable because of their participation in concerted activities.⁹

¹ See *Kallaher and Mee, Inc.*, *supra*.

² See Twelfth Annual Report (1947) p. 31.

³ *Crosby Chemicals, Inc.*, 85 NLRB 791; *Cathey Lumber Company*, 86 NLRB 908; *Deena Artware, Inc.*, 86 NLRB 732; *Pacific Gamble-Robinson Company, supra*; *Bradley Washfountain Co.*, 89 NLRB No. 215.

⁴ *Julian Frierich Co.*, 86 NLRB 542; see also *Northeastern Indiana Broadcasting Co., Inc.*, 88 NLRB No. 238.

⁵ *Crowley's Milk Company, Inc.*, 88 NLRB No. 187.

⁶ *Crowley's Milk Co., Inc., supra*; *Crosby Chemicals, Inc.*, 85 NLRB 791; *Cathey Lumber Co.*, 86 NLRB 157; *Kansas Milling Co.*, 86 NLRB 925; *Pacific Gamble-Robinson Co.*, 88 NLRB No. 100; *Illinois Bell Telephone Company*, 88 NLRB No. 191.

⁷ *Anchor Rome Mills*, 86 NLRB 1120.

⁸ *Globe Wireless, Ltd.*, 88 NLRB No. 211.

⁹ See *Ann Arbor Press*, 85 NLRB 58. In *Kallaher and Mee, Inc.*, 87 NLRB 410, the Board held that the employer unlawfully discriminated against economic strikers by sending them discharge notices at a time when they had not yet been replaced. Cf. *Pacific Gamble-Robinson Co.*, 88 NLRB No. 100, where the hiring of replacements at wages higher than those offered the union was held an unfair labor practice which deprived the strike of its economic character and entitled the strikers to reinstatement.

However, the right of strikers to be reinstated, unless lawfully replaced in the case of an economic strike, is not absolute. It depends upon whether the strike itself is protected by the act. Also, the individual striker, by misconduct, may lose the act's protection.¹⁰

A strike is not protected if at the time a valid no-strike agreement is in existence. However, "whether a union has surrendered the right to strike, and the extent to which it may have done so, are questions of fact to be determined in each instance."¹¹ Thus, in one case,¹² the Board found that a work-schedule agreement which contained a no-strike clause could properly be considered a part of the striking union's basic contract with the employer and that, pursuant to its terms, the union was not only required to exhaust the contractual grievance procedure but also to endeavor in good faith to agree on a method of settlement in case of the failure of those procedures. Because the union had not complied with these provisions, the Board found that the employer did not violate section 8 (a) (3) by discharging employees who participated in the strike called by the union.¹³ On the other hand, in the *Illinois Bell Telephone Co.* case,¹⁴ the Board held that a short-term extension of an expired contract, pending negotiation of a new agreement, implied no agreement by the union not to strike where the expired contract did not contain a no-strike clause. In another case,¹⁵ the Board held that a contractual no-strike clause was no longer in effect, where the contract had expired and where the employer had expressly repudiated the terms of the contract.¹⁶

In cases in which the legality of strikes was questioned because of their object, the Board reaffirmed the rule that a strike is not removed from the protection of the act because its purpose was to protest against the nondiscriminatory discharge of a fellow employee,¹⁷ or where a minority group engaged in a sympathetic strike by refusing to cross the picket line of a union other than their own representative.¹⁸ The Board in this case again pointed out—

The general concern of employees with mutual aid and support in their efforts to improve their working conditions, even when not directed to the immediate achievement of economic benefit for themselves, has long been regarded as such a protected interest. This concern is traditionally expressed in the form of respect for the picket lines of striking unions, and a refusal to cross such picket

¹⁰ *Porto Rico Container Corp.*, *supra*.

¹¹ See *Illinois Bell Telephone Company*, 88 NLRB No. 191.

¹² *Granite City Steel Co.*, 87 NLRB 894.

¹³ But see *Olin Industries, Inc.*

¹⁴ *Supra*, footnote 11.

¹⁵ *Globe Wireless, Ltd.*, 88 NLRB No. 211.

¹⁶ Cf *E. A. Laboratories, Inc.*, 86 NLRB 711, where the Board did not decide whether a no-strike agreement actually existed, since the employer in any event condoned the conduct of the employees who participated in the strike.

¹⁷ *Kallaher & Mee, Inc.*, 87 NLRB 410. See *Globe Wireless, Ltd.*, 88 NLRB No. 211.

¹⁸ *Illinois Bell Telephone Company*, 88 NLRB No. 191.

lines has repeatedly been held by the Board and the courts to be a kind of concerted activity against which an employer may not retaliate by discriminatory measures.

c. Misconduct in Strikes

Misconduct in the course of strikes, such as acts of violence and destruction of property, as heretofore was held to justify the discharge of the particular strikers,¹⁹ but not the discharge of other strike participants.²⁰ In those cases in which employers sought to justify the discharge of strikers during the past year on the ground that the strikers had engaged in unlawful "sit-downs," the Board found that, in fact, the particular activities did not fall within the prohibited category. In one such case,²¹ the employees stood idly by their machines after a union leader had turned off the electric power, but left the plant when requested to "work or leave." In another case,²² the employees stood around a supervisor's desk for an hour while protesting against the discharge of a fellow employee. In the latter case, the Board rejected the contention that the employees' conduct curtailed international radio communications in violation of the Federal Communications Act and therefore was unlawful under the rule of the *Southern Steamship Company* case,²³ in which the Supreme Court had held that employees who engaged in mutiny on shipboard in violation of the Criminal Code forfeited their rights under the National Labor Relations Act.

d. Reinstatement of Strikers

A number of cases decided during the past year were concerned with the obligations of employers under section 8 (a) (3) to reinstate strikers. In connection with the right of strikers to be reinstated upon their unconditional application, the Board had occasion to hold that economic strikers who reported back to work at the usual time on the morning following the day of the strike unmistakably indicated their desire to return to their jobs.²⁴ In another case, the Board reaffirmed the right of strikers to be reinstated as a group upon their unconditional request.²⁵ In several cases, the Board applied the principle that

¹⁹ E. g., *Porto Rico Container Corporation*, 89 NLRB No. 205; *Bradley Washfountain Co.*, 89 NLRB No. 215.

²⁰ *Deena Artware, Incorporated*, 86 NLRB 732.

²¹ *Andrews Company*, 87 NLRB 448.

²² *Globe Wireless, Ltd.*, 88 NLRB No. 211.

²³ *Southern Steamship Co. v. N. L. R. B.*, 316 U. S. 31.

²⁴ *Andrews Company, supra*

²⁵ *Houston and North Texas Motor Freight*, 88 NLRB No. 252, where back pay was ordered from the date the application of an individual unfair labor practice striker was accepted, despite the fact that this employee went out on strike again because the employer discriminatorily refused to reinstate his fellow strikers. See also *Luzerne Hide and Tallow Company*, 89 NLRB No. 119, where four economic strikers made application for reinstatement, even though only one position was vacant at the time. The denial of reinstatement to all four applicants was found discriminatory.

the employer's obligation is not fulfilled unless employees entitled to reinstatement are offered full reinstatement, including all rights and privileges incident to their former employment. Thus it was held that the statutory requirements were not met by an offer to reinstate unfair labor practice strikers as *new* employees;²⁶ or by an offer of "partial reinstatement" to economic strikers, i. e., reinstatement without full seniority rights; or an offer to reinstate economic strikers conditioned upon their abandoning their statutory bargaining representative.²⁷

e. Discharge of Supervisors as Instrument of Discrimination

In the *Inter-City Advertising Company* case,²⁸ the Board was concerned with the rights of supervisors, in view of their exclusion from the definition of the term "employee" in section 2 (3) of the amended act. The question arose in connection with the discharge of a supervisory employee who had failed to obey the employer's instructions to report union activities of rank-and-file employees. Holding that the employer's action interfered with the statutory rights of those employees, and that the supervisor was therefore entitled to reinstatement with back pay, the Board observed—

* * * It is true that the amended Act changed the definition of the term "employee" to exclude, among others, "any individual employed as a supervisor." The legislative history makes it clear, however, that in considering this amendment, Congress was concerned only with the relative advisability of barring or continuing the statutory protection formerly accorded to supervisors who wished to join unions and bargain collectively. By its enactment, Congress did no more than effectuate the decision to remove any compulsion upon employers to bargain collectively with unions of supervisors or to respect the right of supervisors to organize.

* * * * *
 In this case, [the supervisor] was not discharged for engaging in union activities in behalf of supervisors. It is therefore immaterial that such activities by a supervisor are no longer within the protection of the Act.

On the other hand, there is nothing in the amended Act that changes the rights of nonsupervisory employees in any respect here relevant. Nor is there anything in the legislative history to indicate that Congress intended to make any change in the law heretofore applied in situations such as this, where the discharge of a supervisor constitutes an invasion of the rights guaranteed to *nonsupervisory* employees. We are therefore convinced that in such cases the Board continues to have power under the amended Act, as it clearly had before its enactment, to require the reinstatement with back pay of a supervisor discharged for refusing to assist in the commission of unfair labor practices. (Footnotes omitted.)

The Board thus held the case governed by the same rules which it had applied to similar situations prior to the amendment of the act.²⁹ On

²⁶ *Houston and North Texas Motor Freight, supra*

²⁷ *E. A. Laboratories, Inc.*, 86 NLRB 711.

²⁸ *Inter-City Advertising Company of Greensboro, N. C., Inc.*, 89 NLRB No. 127 (Board Member Reynolds dissented in part).

²⁹ See *N. L. R. B. v. Vail Mfg. Co.*, 158 F. 2d 664 (C. A. 7), certiorari denied 334 U. S. 345.

the other hand, the Board held in several cases that supervisors who participated in lawful concerted activities of rank-and-file employees were not protected by the amended act.³⁰

In those cases decided during the past year in which the legality of the discriminatory treatment of supervisory employees before August 1947, had to be determined under the provisions of the Wagner Act, the Board applied previously established principles. In one such case,³¹ the discharge of a supervisor because of his participation in a foremen's strike was held a violation of section 8 (3), while in another case³² it was held that the employer could lawfully discharge a supervisory employee who, contrary to instructions, had engaged in activities which compromised the employer's neutrality.

In the *New York Telephone Company* case,³³ the Board held that the discharge of a supervisor who refused to cross a rank-and-file picket line was discriminatory within the meaning of section 8 (3). Unlike the situation in *Carnegie-Illinois Steel Company* case,³⁴ the supervisor's conduct here was not shown to have endangered the employer's property.

A supervisor who struck in sympathy with a rank-and-file unfair labor practice strike was held entitled to reinstatement in one case,³⁵ while in another case,³⁶ a majority of the Board found that a foremen's strike did not constitute protected activity where its sole purpose was to assist rank-and-file employees who struck in breach of contract.

f. Discrimination Under Union-Security Agreements

The act's prohibition against discrimination for the purpose of encouraging or discouraging membership in any labor organization is limited by the proviso to section 8 (a) (3), which specifically permits an employer to make an agreement with a labor organization

to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later.

But for such an agreement to be lawful, the proviso further requires that the contracting union (1) must be free from employer domina-

³⁰ However, no violation was found of sec. 8 (a) (3) of the amended act, which removed supervisors from the definition of "employee" entitled to the protection of the statute. See *New York Telephone Company*, 89 NLRB No. 45; *Pacific Gamble-Robinson Company*, 88 NLRB No. 100; *Lily-Tulip Cup Corporation*, 88 NLRB No. 170.

³¹ *E. A. Laboratories, Inc.*, 87 NLRB 233.

³² *Salant & Salant, Inc.*, 88 NLRB No. 38.

³³ 89 NLRB No. 45

³⁴ 84 NLRB 99; Fourteenth Annual Report, p. 68. Cf. *Illinois Bell Telephone Company*, 88 NLRB No. 191, where the Board observed that even if the employees had been supervisors, their refusal to cross a picket line would have been protected under the Wagner Act, absent emergency circumstances requiring the presence of the supervisors in the plant as in the *Carnegie-Illinois Steel* case.

³⁵ *Cummer-Graham Company*, 90 NLRB No. 114.

³⁶ *The Granite City Steel Company*, 87 NLRB 894 (Board Member Murdock dissenting in part).

tion or assistance within the meaning of section 8 (a) (2); (2) must be the lawful representative of the employees in the appropriate bargaining unit covered by the contract as provided in section 9 (a); and (3) must have been authorized to make the contract by a majority of the eligible employees in a referendum conducted by the Board under section 9 (e).

In those cases in which employers, charged with unlawful discrimination against employees, alleged that the discrimination was the result of the enforcement of a union-security agreement, the Board had to determine whether the agreement, if it existed, was valid under the foregoing provisions of the act.³⁷ In several cases during the past year, the Board found that the agreement relied on by the employer was not a valid defense, because the terms of the agreement exceeded the extent of union security permitted by section 8 (a) (3). Thus, in the *Pinkerton's* case,³⁸ a preferential hiring arrangement was held to exceed the scope permitted by the proviso to section 8 (a) (3).³⁹ In the *Reliable Newspaper Delivery* case,⁴⁰ the Board concluded that the union-security provisions of the act only permit the conditioning of continued employment upon union membership but do not make union membership a proper basis of disparate wage treatment of employees. The employer in this case had agreed with the union to apply a newly adopted wage scale retroactively to employees who were members of the union.

Similarly, the discharge of employees was held not protected where the employer acted under a contract which had not been authorized in a section 9 (e) referendum,⁴¹ or where the contract, in fact, did not condition employment upon union membership.⁴²

A majority of the Board, in the latter case, reiterated the rule that union-security provisions will not be read into a contract where the parties have failed to "express the essentials of such provisions in unmistakable language."⁴³ In *Don Juan Co., Inc.*,⁴⁴ the Board further pointed out that

³⁷ Compare the cases, discussed in section 3 of part B of this chapter, in which unions were charged with causing employers to discriminate against employees in violation of sec. 8 (b) (2).

³⁸ *Pinkerton's National Detective Agency, Inc.*, 90 NLRB No. 39.

³⁹ The agreement in question provided, *inter alia*, that "Preference of employment shall be given to members of the Union who are available, willing and able to work."

See also *Pacific Maritime Association*, 89 NLRB No. 115. In this case the Board held that a contract granting hiring preference to members of the contracting union exceeded the conditions prescribed in sec 8 (a) (3) and violated sec 8 (a) (1) of the act. No 8 (a) (3) violation based on the execution of the contract, as alleged in the complaint, was found.

⁴⁰ 88 NLRB No. 135.

⁴¹ See e. g., *H. M. Newman*, 85 NLRB 725, *Clara-Val Packing Co.*, 87 NLRB 703; cf. *Guy F. Atkinson Co.*, 90 NLRB No. 27.

⁴² *Hammond Lumber Co.*, 85 NLRB 1320 (Board Member Reynolds dissenting).

⁴³ See *Iron Fireman Mfg. Co.*, 69 NLRB 19, 20.

⁴⁴ 89 NLRB No. 191.

The result of a mistake in construing ambiguous provisions of a supposed union-security contract should reside with the party who misinterprets the contract, rather than with the employees against whose interest the contract has erroneously been thought to run.

In two cases, employers were held to have violated section 8 (a) (3) by applying union-security provisions retroactively.⁴⁵ The Board, in the *New York Shipbuilding* case, pointed out that employees could not lawfully be required to maintain union membership during the period between contracts, particularly since section 8 (a) (3) "specifically defers the lawful application of a union-security agreement" for 30 days following the beginning of employment or the effective date of the contract, whichever is later.⁴⁶

The question of whether employers were under any contractual obligation to discharge the employees who claimed discrimination was involved in the *Lloyd A. Fry Roofing Co.* case.⁴⁷ The employers in this case claimed protection under the union-security provisions of a contract between a building trades council and a general contractor, who advised the council by letter that the owners of the construction project involved assured him that certain work on the project "would be done on a basis fair to the Council." The Board rejected the employers' defense because they had in no way authorized the general contractor's statement and were clearly not parties to the union-security agreement in question.

While section 8 (a) (3) permits the execution of a certain type of union-security agreements, it also provides

That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

In *Union Starch & Refining Company*,⁴⁸ the Board had occasion to construe the foregoing provision for the purpose of determining "whether an employee who tenders to a union holding a valid union-shop contract an amount equal to the initiation fees and accrued dues thereby brings himself within the protection from discharge contained in the provisos of Section 8 (a) (3) and in Section 8 (b)

⁴⁵ *New York Shipbuilding Corp.*, 89 NLRB No. 197; *General American Aerocoach*, 90 NLRB No. 36

⁴⁶ The Board held that its reasons for condemning the retroactive application of a union-security agreement under the Wagner Act [*Colonie Fibre Co., Inc.*, 69 NLRB 589, 71 NLRB 354, enforced 163 F. 2d 65 (C. A. 2)] were equally applicable today.

⁴⁷ 89 NLRB No. 93.

⁴⁸ 87 NLRB 779.

(2).” The employer in this case, complying with the union’s request, discharged three employees who had tendered their dues but were denied union membership because of their failure to meet other requirements, i. e., attendance at a regular union meeting at which their membership applications were to be voted on, and applicants were to “take the obligation to the union.”⁴⁹ A majority of the Board⁵⁰ concluded that the discharge of the employees concerned violated section 8 (a) (3)⁵¹ of the act because, under the proviso of that section, a union-security agreement may not be used to bring about the discharge of employees who have tendered periodic dues and initiation fees without being accorded membership. The Board observed

As we read the statutory language, the provisos to Section 8 (a) (3) spell out two separate and distinct limitations on the use of the type of union-security agreements permitted by the Act. Proviso (A) protects from discharge for non-membership in the contracting union any employee to whom membership is not available for some discriminatory reason; i. e., any reason which is not generally applicable. Proviso (B) protects employees who have tendered the requisite amount of dues and initiation fees and been denied membership for *any other reason, even though* that reason be non-discriminatory.

* * * * *

We therefore read proviso (B) as extending protection to any employee who tenders periodic dues and initiation fees without being accorded membership. If the union imposes any other qualifications and conditions for membership with which he is unwilling to comply, such an employee may not be entitled to membership, but he is entitled to keep his job. Throughout the amendment to the Act, Congress evinced a strong concern for protecting the individual employee in a right to refrain from union activity and to keep his job even in a union shop. Congress carefully limited the sphere of permissible union security, and even in that limited sphere accorded the union no power to effect the discharge of nonmembers except to protect itself against “free rides.”

* * * * *

Nor does the legislative history which Respondent Company urges upon us call for a different result. Quite the contrary. Although the legislative history does establish that Congress wanted to protect from discharge an employee “unreasonably” denied membership. Congress specified what it regarded as reasonable—the failure of the employee to tender the dues and initiation fees. (Footnotes omitted.)

In several cases, the validity of the discharges involved depended upon union-security agreements entered into before the 1947 amendment of the Wagner Act. In these cases, the Board had to determine whether the particular agreement had survived in view of the savings

⁴⁹ Two of the three discharged employees refused to comply with these requirements because of religious scruples.

⁵⁰ Board Members Houston and Reynolds dissenting.

⁵¹ It was also held that the union in causing the discharge violated sec. 8 (b) (2); see section 3 of part B of this chapter.

provision of section 102 of the amended act.⁵² Where the contract had been automatically renewed the Board found that the exception in section 102 applied and that the contract could not be relied on by the employer.⁵³ On the other hand, where the contract was within the savings provision, its availability as a defense to discrimination charges had to be determined by the Board under the "closed-shop" proviso of the Wagner Act.⁵⁴ In the *Public Service Company* case, the Board held that the employer was protected by a contract which required that certain employees, not subject to its maintenance-of-membership provisions, should as a condition of employment, make monthly payments "for the support of the bargaining unit." In the Board's opinion, the proviso to section 8 (3) of the Wagner Act was intended to be permissive and not exclusive, and to protect not only membership guarantees but also such lesser concessions as support money provisions. However, in the *Atkinson* case, a contract was held invalid under the proviso to section 8 (3) where it was entered into with a union which was not the representative of the employees in an appropriate unit. Rejecting the employer's defense that the contract was made in accordance with the custom prevailing in the construction industry, the Board pointed out that

In writing the proviso to Section 8 (3), and even its counterpart in the amended Act, Congress made no exception based upon custom in any industry. We must, therefore, apply the Act as written, without engrafting administrative exceptions upon it.

4. Discrimination for Filing Charges or Testifying Under the Act

Section 8 (a) (4) of the act provides that it shall be an unfair labor practice for an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the act. In the past year, only three cases involving alleged violations of this section were presented to the Board.

In *Stocker Mfg. Co.*,⁵⁵ it was held that the discharge of an employee for reporting to fellow employees testimony given at a hearing in a

⁵² Section 102 provides that:

* * * the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

⁵³ *Clara-Val Packing Company*, 87 NLRB 703; *Salant & Salant, Inc.*, 88 NLRB No. 156; cf. *Salant & Salant, Inc.*, 87 NLRB 215

⁵⁴ See *Public Service Company of Colorado*, 89 NLRB No. 51; *Guy F. Atkinson Co.*, 90 NLRB No. 27.

⁵⁵ 86 NLRB 666.

representation case, violated section 8 (a) (3). The discharge, however, was found not to come within the scope of section 8 (a) (4) because it was related to the reporting of testimony given by a person other than the discharged employee. In the other 1950 cases,⁵⁶ the Board affirmed the trial examiners' conclusions that the employer's action was motivated by valid causes, rather than the employee's participation in Board proceedings.

5. Refusal to Bargain

Under section 8 (a) (5) of the act, it is an unfair labor practice for an employer to refuse to bargain collectively with the representative designated or selected by a majority of his employees in an appropriate collective bargaining unit.

a. Majority Status

In cases arising under this section, the Board must first determine whether the complaining union^{56a} in fact made a valid request upon the employer under authorization of a majority of the employees in an appropriate bargaining unit. If the union's majority status has previously been established and certified in a representation proceeding, the Board generally affirms the prior determination⁵⁷ and does not permit the parties to relitigate the representation issues⁵⁸ in the complaint proceeding. However, an exception may be made in case of special circumstances. Thus, in one case,⁵⁹ the Board enlarged the unit previously found so as to conform to current practice. The

⁵⁶ *Morristown Knitting Mills, Inc.*, 86 NLRB 342; *The Pacific Telephone & Telegraph Co.*, 88 NLRB No. 221.

^{56a} Since the close of the 1950 fiscal year, the Board has reconsidered the question of the effect on an employer's duty to bargain of the incumbent union's noncompliance with the non-Communist affidavit requirements of sec. 9 (h). See *New Jersey Carpet Mills, Inc.*, 92 NLRB No. 122, decided December 11, 1950. In this case, a majority of the Board (Members Reynolds and Murdock dissenting in this respect) held that the employer's refusal to bargain with the incumbent union, at a time when it was not yet in compliance—although it had complied long before the complaint issued—violated sec. 8 (a) (5), because the employer's refusal was not based upon “the unasserted and purely coincidental fact of the union's noncompliance” but upon other, and unlawful, grounds. The Board overruled the earlier *Andrews Company* case (87 NLRB, December 6, 1949), to the extent that it was inconsistent with the present decision.

Chairman Herzog in the *New Jersey Carpet* case expressed the additional view that a refusal to bargain with a noncomplying union, however, should not be considered a violation of the act whenever the employer contemporaneously notifies the incumbent union that its demonstrated noncompliance is the reason for the employer's refusal to negotiate. Chairman Herzog asserted that application of this principle would effectuate the congressional policy of encouraging compliance with the affidavit requirements of sec 9 (h). The other members of the majority (Members Houston and Styles) declined to pass on this issue, saying that it was not before the Board in this case.

⁵⁷ *John Deere Killefer Company*, 86 NLRB 1073; *Conlon Brothers' Manufacturing Co.*, 88 NLRB No. 23; *Clark Shoe Company*, 88 NLRB No. 178.

⁵⁸ *S. H. Kress & Company*, 88 NLRB No. 79; *General Armature & Mfg. Co.*, 89 NLRB No 50.

⁵⁹ *Inter-City Advertising Co. of Greensboro, N. C., Inc.*, 89 NLRB No. 127.

Board pointed out that, in the absence of any bargaining history on the basis of the former unit, it was not precluded from finding a broader unit which had not been previously shown to be inappropriate.

Ordinarily, the majority status of a bargaining agent which has been certified by the Board is conclusively presumed to continue for at least 1 year.⁶⁰ The Board in one case⁶¹ pointed out that

Since the statute now provides procedures available to both employees and employers whereby the vitality of the [union's] status may be tested, the mere passage of time is not, in the absence of more concrete factors, a circumstance affecting the presumption.

In another case,⁶² the Board held that a petition filed by employees expressing their desire to repudiate the union which had been certified as their representative only 3 weeks earlier did not justify the employer's refusal to bargain. In no event, as the Board has consistently held, is an employer relieved of his statutory duty to bargain if the bargaining agent has lost its majority status because of the employer's unfair labor practices.⁶³ But where the complaining union lost its majority status due to legitimate discharges arising out of a strike called in violation of a no-strike agreement, the employer's refusal to bargain was held not to violate the act.⁶⁴

Where the complaining union's majority status has not been certified or where the continuation of its certified status, in the Board's opinion, is in doubt, the union's bargaining rights at the time of the employer's alleged refusal to bargain will be determined on the basis of the evidence in the complaint proceeding. In the *Valley Broadcasting Company* case,⁶⁵ the Board concluded that the complaining union was the majority representative of the employees concerned where each of them had signed a membership application card. It was considered immaterial that they had not been accepted and did not consider themselves as union members at the time that the bargaining request was made. In another case,⁶⁶ where the union's majority status depended on the union adherence of certain employees, the Board determined on the basis of their conduct during a strike that they had failed to indicate a desire for union representation. Consequently, the Board held that the union had not demonstrated its majority status and that the employer had not unlawfully refused to bargain.

⁶⁰ See e g, *S. H. Kress & Company*.

⁶¹ *Bethlehem Steel Co., Shipbuilding Div.*, 89 NLRB No. 33.

⁶² *Vulcan Forging Company*, 85 NLRB 621.

⁶³ *West Texas Utilities Company, Inc.*, 85 NLRB 1396, enforced 184 F. 2d 233 (C. A., D. C.); *Cathy Lumber Co.*, 86 NLRB 157; *Weaver Wintark*, 87 NLRB 351, *West Boylston Mfg. Co. of Alabama*, 87 NLRB 808; *Eva-Ray Dress Manufacturing Co., Inc.*, 88 NLRB No. 94; *Pacific Gamble-Robinson Company*, 88 NLRB No. 100, *Jasper National Mattress Co.*, 89 NLRB No. 7.

⁶⁴ *Granite City Steel Company*, 87 NLRB 894.

⁶⁵ 87 NLRB 1144.

⁶⁶ *Porto Rico Container Corp.*, 89 NLRB No. 205.

b. Request to Bargain

Whenever it is alleged that an employer has violated section 8 (a) (5), the complaining union must show not only that it is the majority representative of the employees concerned but also that it has requested the employer to enter into bargaining negotiations.¹ The request to bargain need not be formal, nor made in any particular manner. It is sufficient that the employer is clearly aware of the employees' desire to enter into negotiations through the designated bargaining agent. In one case,⁶⁷ the Board concluded that the request was sufficient where a union representative in a telephone conversation (1) advised the employer that the union was the majority representative and (2) inquired whether the employer would recognize it as such. And in another case,⁶⁸ a majority of the Board held that a clear bargaining demand was made by employees who during a meeting requested the employer to deal with their union rather than discuss individual contracts with them. The majority took into consideration that other employees in the unit were present at the meeting and by their silence indicated their continued interest in the union and their acquiescence in the bargaining demand.

While the employer is under a duty to honor the bargaining request of the representative of his employees, he may nevertheless, if acting in good faith, challenge the union's majority and demand that the union establish its status in a Board election. Thus, the Board, in the *Joy Silk Mills* case, observed

We have previously held that an employer may in good faith insist on a Board election as proof of the Union's majority but that it "unlawfully refuses to bargain if its insistence on such an election is motivated, not by any *bona fide* doubt as to the Union's majority, but rather by a rejection of the collective bargaining principle or by a desire to gain time within which to undermine the union." In cases of this type the question of whether an employer is acting in good or bad faith at the time of the refusal is, of course, one which of necessity must be determined in the light of all relevant facts in the case, including any unlawful conduct of the employer, the sequence of events, and the time lapse between the refusal and the unlawful conduct. [Footnotes omitted.]⁶⁹

However, the Board found in this case that the employer insisted upon an election not because of a good faith doubt as to the union's majority but for the purpose of gaining time within which to undermine the union's support. In the *Van Kleeck* case,⁷⁰ the Board likewise concluded that the employer unlawfully refused to bargain since its demand for an election was motivated by the employer's desire to avoid its statutory duty to bargain. In the *Cathey Lumber Co.*

⁶⁷ *Joy Silk Mills, Inc.*, 85 NLRB 1263.

⁶⁸ *The Valley Broadcasting Co.*, *supra*, footnote 65 (Board Member Murdock dissenting).

⁶⁹ Cf. *Houston and North Texas Motor Freight*, 88 NLRB No. 252.

⁷⁰ *Van Kleeck Co., Inc.*, 88 NLRB No. 138.

case,⁷¹ the Board held that the employer could not lawfully defer bargaining by questioning the union's majority after unfair labor practice strikers were refused reinstatement and were replaced for the specific purpose of destroying the union's majority status.

c. Extent of the Duty to Bargain

The employer's duty to bargain with a union whose representative status is established is defined in section 8 (d) as

the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

The question whether an employer has refused to bargain in the above sense at times calls for a determination whether the matters submitted by the representative of the employees concerned are bargainable within the meaning of the act. Thus, in *Weyerhaeuser Timber Company*,⁷² the Board was confronted with the employer's contention that meals furnished employees at its sawmill and logging camps were not "conditions of employment" and "wages" in the statutory sense and that the employer was not required to bargain regarding the price to be charged for those facilities. A majority of the Board was of the view that under the circumstance the employees were dependent upon the meals served and that the services supplied by the company were part of the conditions under which the employees were required to work and concerning which the employer was under duty to bargain. The Board observed

If these employees are to work, the circumstances of employment created by the Respondent require them to use the Respondent's living and eating facilities. The net result is that such facilities not only represent a necessary condition of employment as it affects these employees, as found by the Trial Examiner, but one that exerts the same force and effect as a condition that is *expressly* made a necessary part of employment. This type of condition, which is a necessary aspect of employment, is clearly a condition under which certain of the Respondent's employees are compelled to work, and therefore constitutes a "condition of employment" within the meaning of Section 9 (a) of the Act. [Footnotes omitted.]

The majority also held that the employer's meal service constituted "wages," inasmuch as it saved employees transportation expenses and since meals were served below the retail price that they would have to pay elsewhere.

⁷¹ 86 NLRB 157.

⁷² 87 NLRB 672 (Board Member Gray dissenting).

In *Tidewater Associated Oil Co.*,⁷³ the Board, in view of its previous conclusions,⁷⁴ that pension and retirement plans are proper subjects for collective bargaining, held that the employer unlawfully insisted that it was not required to bargain regarding its "Retirement Allowance Plan" and pension policies. The Board again pointed out "that practical difficulties encountered by an employer about a pension plan with the representative of a portion of his employees, all of whom are covered by a company-wide pension plan, do not eliminate his duty to bargain within an appropriate unit."

Another type of case presents the question whether the employer was relieved of his bargaining obligation by the acts or conduct of the bargaining representative. In two such cases during the past year, the employer asserted that the union had waived its statutory bargaining rights. Rejecting the contention in the *Tidewater Associated Oil* case that the union's waiver regarding the employer's retirement plan was embodied in a contractual "Management Function" clause, the Board stated:

We are reluctant to deprive employees of any of the rights guaranteed them by the Act in the absence of a clear and unmistakable showing of a waiver of such rights. We cannot, therefore, predicate a specific waiver of the rights to bargain collectively concerning pension plans upon the [union's] agreement, particularly in view of the vagueness of the "Management Functions" clause and the omission from the contract of any of the terms and conditions of the Retirement Allowance Plan. [Footnotes omitted.]

Moreover, the Board observed that the employer did not in fact rely on the alleged waiver but at all times maintained the position that its pension plan was not bargainable. In the *General Controls Co.* case,⁷⁵ the Board, referring to the *Tidewater* case, similarly held that the complaining union's acquiescence in the automatic renewal of a contract after the filing of the complaint did not constitute a "clear and unmistakable waiver" of the union's right to information regarding merit wage increases which had been regulated in the original contract.

In one case,⁷⁶ the Board rejected the employer's contention that its unilateral action in determining the basis for recalling laid-off employees was justified by the anticipation of the union's opposition to the contemplated action. In another case,⁷⁷ the Board restated the rule that the filing of unfair labor practice charges by the union does not relieve the employer of its continuing duty to bargain.

The Board also had occasion to reaffirm certain rules which govern the effect of a strike upon the employer's duty to bargain. Thus, it

⁷³ 85 NLRB 1096.

⁷⁴ See *Inland Steel Co.*, 77 NLRB 1, enforced 165 F. 2d 766 (C. A. 7), certiorari denied 326 U. S. 860; *W. W. Cross and Co.*, 77 NLRB 1126, enforced 174 F. 2d 875 (C. A. 1); see Fourteenth Annual Report, pp. 117-119.

⁷⁵ 88 NLRB No. 242.

⁷⁶ *West Boylston Mfg. Co.*, 87 NLRB 808.

⁷⁷ *Mason & Hughes, Inc.*, 86 NLRB 848.

was held that a strike by which the union sought to enforce economic demands did not suspend the employer's bargaining obligation so as to permit unilateral offers of higher wages to individual employees.⁷⁸ In another case,⁷⁹ the Board reiterated the well-established principle that a strike in violation of a no-strike agreement suspends the employer's duty to bargain only during the continuance of the strike and that the bargaining obligation becomes operative again upon the voluntary termination of the strike and the strikers' return to work.

The Board had occasion in one case⁸⁰ during the past year to apply the provisions of section 8 (d) according to which the statutory bargaining duty does not require the parties to an agreement

to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract.

As in *Allied Mills, Inc.*,⁸¹ the Board again pointed out that section 8 (d) in this respect relieves the employer from bargaining only as to

terms and conditions which have been integrated and embodied into a writing. Conversely it does not have reference to matters relating to "wages, hours and other terms and conditions of employment," which have not been reduced to writing. As to the written terms of the contract either party may refuse to bargain further about them, under the limitations set forth in the paragraph, without committing an unfair labor practice. With respect to unwritten terms dealing with "wages, hours and other conditions of employment," the obligation remains on both parties to bargain continuously.

d. Unilateral Action

The employer's duty to bargain with the statutory representative of his employees includes the duty to refrain from taking unilateral action with respect to matters which are proper subjects for collective bargaining.⁸² Thus, a general wage increase to all employees, including those in a unit concerning which the complaining union had unsuccessfully sought to bargain, was held by the majority of the Board to have constituted *per se* a violation of section 8 (a) (5).⁸³ Similarly, the inauguration of a piecework plan and the granting of a week's vacation with pay without consulting the union with which the employer was under obligation to bargain were held to constitute unlawful unilateral changes in working conditions.⁸⁴ A violation of section 8 (a) (5) was likewise found where the employer uni-

⁷⁸ See *Pacific Gamble-Robinson Co.*, 88 NLRB No 100.

⁷⁹ *Higgins, Inc.*, 90 NLRB No 31.

⁸⁰ *Tidewater Associated Oil Co.*, 85 NLRB 1096.

⁸¹ 82 NLRB 854, Fourteenth Annual Report, p. 78.

⁸² See *West Boylston Mfg Co.*, 87 NLRB 808.

⁸³ *Landis Tool Company*, 89 NLRB No 47. Member Murdock found it unnecessary to find that the company's unilateral wage action *per se* violated the act. See also *Dwight Culvert Mfg Co.*, 87 NLRB 554; *Valley Broadcasting Co.*, 87 NLRB 1144.

⁸⁴ *Mason & Hughes, Inc.*, 86 NLRB 848.

laterally recalled laid-off employees on an alleged basis of merit ratings contrary to its assurances to the employees' representative that seniority would be observed.⁸⁵

In several cases, employers sought to justify unilateral action on the ground that an impasse had been reached in negotiations. In each case the Board scrutinized the history of the negotiations with great care to see that the collective bargaining policy of the act was not thwarted, and in none did it find that the state of negotiations justified unilateral action. In *Bradley Washfountain Company*,⁸⁶ where the employer on three separate occasions announced wage increases and payment for holidays during vacation periods the Board held that there was at no time "such hardening in the attitudes of the negotiators as is customarily recognized as a bargaining impasse, and which, under certain circumstances, may justify unilateral action."⁸⁷ The Board pointed out that the employer's unilateral action occurred, in one instance, immediately after the first occasion on which the union's demands were discussed and no inflexible positions were taken by either party, and in another case at a time when "there was mutual give and take" bargaining. In finding that the employer's action was not justified, the Board held significant the fact that the employer resorted to unilateral action three times in the course of negotiations, thereby indicating its intent to undermine the union's prestige. In *Landis Tool Co.*,⁸⁸ the Board likewise rejected the employer's contention that an impasse had occurred which justified the unilateral granting of a wage increase. In the Board's opinion, the employer's responses to the union's request for counter-proposals covering all provisions of an agreement and to the union's demand for a wage increase did not indicate an absence of a "reasonable possibility of reaching agreement on wages through the normal processes of collective bargaining."⁸⁹

The question whether unilateral action of an employer violates section 8 (a) (5) depends at times upon the provisions of an existing collective bargaining agreement. Thus, in *General Controls Co.*,⁹⁰ individual merit wage increases were granted under a contract which provided for both minimum and maximum wage rates and pursuant to a merit rating system agreed upon by the parties. The Board held that the contractual arrangement distinguished the situation from that in the *Allison* case,⁹¹ and found that the employer did not violate

⁸⁵ *West Boylston Mfg Co.*, *supra*.

⁸⁶ 89 NLRB No. 215.

⁸⁷ See also *W. W. Cross and Co., Inc.*, 77 NLRB 1162 (June 17, 1948) enforced 174 F. 2d 875 (C. A. 1); *Exposition Cotton Mills Co.*, 76 NLRB 289 (April 9, 1948).

⁸⁸ 89 NLRB No. 47.

⁸⁹ See also *West Boylston Mfg. Co.*, 87 NLRB 808.

⁹⁰ 88 NLRB No. 242.

⁹¹ *N. L. R. B. v. Allison & Co.*, 165 F. 2d 766 (C. A. 6), certiorari denied 335 U. S. 814, 905, enforcing 70 NLRB 377; see Thirteenth Annual Report, p. 68.

the act because the union had agreed that the employer should have the right to determine unilaterally each employee's claim to periodic merit increases. The union's intention, the Board concluded, was evidenced by its silence over a long period of time during which the employer unilaterally granted numerous merit increases.

e. Demands for Illegal Contract Provisions

Section 8 (a) (5) is violated where the employer, as a condition of further bargaining, insists on the surrender by the union of rights guaranteed by the act. Thus, in the *Bethlehem Steel Company* case,⁹² the Board found an unlawful refusal to bargain where the employer declined to execute a contract except upon condition that the union agree to a clause permitting a union steward to be present at the initial adjustment of grievances by foremen only if the aggrieved employee so elected. The Board pointed out that section 9 (a) of the act guarantees the bargaining representative the *unqualified* right to be present at the adjustment of grievances regardless of the particular managerial representative to whom the grievance may be referred. The Board observed

Grievances are usually more than mere personal dissatisfactions or complaints of employees and their adjustment frequently involves the interpretation and application of the terms of a contract or otherwise affects the terms and conditions of employment not covered by a contract. For this reason, these matters are unquestionably the concern of the bargaining representative.

Congress, in enacting the provisos to Section 9 (a), must have recognized the bargaining representative's interest in the administration of its contract, as well as in the general disposition of grievances. For not only did Congress require that the adjustment conform with the terms of the collective agreement, but also expressly provided in the second proviso that the bargaining representative be given an opportunity to attend the adjustment. [Footnotes omitted.]

In *American National Insurance Company*,⁹³ the Board similarly held that it was *per se* a violation of section 8 (a) (5) for the employer to insist, as a condition of agreement, on a "prerogative clause" by which the employer sought to reserve to itself the exclusive right to determine unilaterally such terms and conditions of employment as working rules, work schedules, extra shifts, layoff policy, lunch periods, leave of absence, and overtime. The employer's demand, the Board found, was in derogation of the union's right under section 9 (a) to bargain concerning all matters which are proper subjects for collective bargaining.

f. Refusal to Furnish Information

In the *General Controls Co.* case,⁹⁴ the Board held that the employer in violation of section 8 (a) (5), refused to furnish the union informa-

⁹² *Bethlehem Steel Company, Shipbuilding Division*, 89 NLRB No. 33.

⁹³ 89 NLRB No. 19.

⁹⁴ 88 NLRB No. 242.

tion on the merit rating score of each employee and the merit increases actually granted. The Board pointed to its consistent, and judicially approved,⁹⁵ ruling that an employer may not withhold information of this type where the union needs it to police an existing contract effectively or to bargain intelligently with respect to future contracts. Nor, the Board concluded, was it sufficient for the employer to grant the union's request with respect to specific employees without furnishing the union the necessary information on an over-all basis. On the other hand, no refusal to bargain was found where the employer was willing to furnish necessary information orally, though not in written form.⁹⁶ The Board observed

we have not held, nor do we now hold, that the employer is obligated to furnish such information in the exact form requested by the representative. It is sufficient if the information is made available in a manner not so burdensome or time-consuming as to impede the process of bargaining.⁹⁷

g. Good Faith Bargaining

The bargaining provisions of the act, while not requiring the making of concessions, impose upon the parties the duty "to confer *in good faith* with respect to wages, hours and other terms and conditions of employment."⁹⁸ This section, the Board has declared, "substantially codifies the bargaining standards developed under the Wagner Act."⁹⁹ In a number of cases in which employers were charged with unlawfully refusing to bargain, the Board had to determine whether negotiations with the complaining unions were conducted in good faith within the meaning of section 8 (d). Applying traditional tests, the Board in several cases found that the required good faith was absent. Thus, in *West Boylston Manufacturing Company*,¹ the contention that the employer performed its statutory obligation by merely conferring with the union was rejected. The Board found that the employer, by dilatory and evasive tactics had sought to avoid an agreement with the union; had failed to fulfill various promises concerning the reopening of the plant, the renewal or extension of an expiring contract,

⁹⁵ See e. g. *Allison & Co.*, *supra*.

⁹⁶ *Cincinnati Steel Castings Co.*, 86 NLRB 592.

⁹⁷ For other forms of refusals to bargain, see e. g. *Ozark Dam Construction Co.*, 86 NLRB 520 (insistence that the union furnish a large performance bond); *Pacific Gamble-Robinson Co.*, 88 NLRB No. 100 (offer of higher wages to strikers and replacements). Compare the following cases in which no violation of sec 8 (a) (5) was found: *Mason & Hughes, Inc.*, 86 NLRB 848 (refusal of the employer to accept contract provisions which it was previously willing to accept. In this case the Board observed that the union did not recede from certain other positions as proposed and that the employer could not be regarded as being forever after bound to accept provisions to which it did not previously object); *Cincinnati Steel Castings Co.*, 86 NLRB 592 (refusal to sign contract where union conditioned acceptance of contract terms on reinstatement of economic strikers).

⁹⁸ See sec 8 (d), *supra* (emphasis supplied); *American National Insurance Co.*, 89 NLRB No. 19.

⁹⁹ *American National Insurance Co.*, *supra*.

¹ 87 NLRB 808.

and the eviction of employees from company houses; had unilaterally determined the basis on which laid-off employees were to be recalled and had refused to meet with the union to discuss nonrecalled employees and finally had refused to resume negotiations on the ground that the union lost its majority status. In *Deena Artware, Inc.*,² the Board similarly held that the employer failed to fulfill its legal obligation to deal with the union with an open mind and in good faith. The Board specifically noted the following circumstances: The employer refused to permit the union's most experienced agent to participate in the negotiations, threatened employees for having "chosen sides," maintained a continuous state of uncertainty respecting the authority of its representatives to make definite commitments, made counterproposals of wage schedules so incomplete and complex that even management representatives were in disagreement as to their meaning, and finally proposed to reduce vacations as an obvious reprisal for the employees' union adherence. In *Rex Manufacturing Co.*,³ the Board found the employer refused to incorporate in a contract its prevailing wage rates, caused protracted delays in arranging for meetings with the union, passively waited for the union to make requests for meetings, and refused all union offers without making any counterproposals. By this conduct, the Board held, the employer "manifested an intention to go 'through many of the motions of collective bargaining' which were 'not intended to lead to the consummation of an agreement with the union, but merely to preserve the appearance of bargaining.'" In *Ozark Dam Construction Company*,⁴ the employer's failure to bargain in good faith was held amply evidenced "by its 'take it or leave it' attitude, its failure to invest real authority in its only negotiator, and its insistence upon sole control over matters affecting wages, hours, and other conditions of employment." In *Cathey Lumber Co.*,⁵ the Board found that the employer's bad faith was indicated by the delay in commencing negotiations, attempts to destroy the union's majority, and repeated questioning of its majority status, as well as by the submission of unacceptable counter offers.

B. Unfair Practices of Unions

1. Restraint or Coercion of Employees

Section 8 (b) (1) (A) of the act makes it an unfair labor practice for a labor organization or its agents—

² 86 NLRB 732.

³ 86 NLRB 470.

⁴ 86 NLRB 520.

⁵ 86 NLRB 157.

to restrain or coerce employees in the exercise of the rights guaranteed in section 7 * * *¹

In determining violations of section 8 (b) (1) (A) during the past year, the Board continued to construe the terms "restraint" and "coercion" by limiting their application to "situations involving actual or threatened economic reprisals and physical violence by unions or their agents against specific individuals or groups of individuals in an effort to compel them to join a union or to cooperate in a union's strike activities."²

a. Violence and Threats of Violence

The question whether conduct amounts to unlawful restraint or coercion frequently arises in connection with strike activities. The types of conduct which were found to violate section 8 (b) (1) (A) included: assaults and batteries on nonstriking employees;³ stoning, clubbing, and attempting to overturn automobiles of nonstrikers;⁴ threats of physical violence;⁵ and erecting barriers to plant entrances during picketing.⁶ On the other hand, the Board found that the following strike activities did not come within the statutory proscription: picketing in substantial numbers—up to 100—in the absence of actual restraint or force;⁷ preventing, without violence, supervisory and managerial personnel from entering the plant where no rank-and-file employees were present;⁸ a union practice of following the employer's trucks to delivery points where the trailing union members did not threaten or intimidate the truck drivers;⁹ picket-line activities such as calling nonstrikers "finks" and "scabs"¹⁰ and engaging in "horseplay" such as locking the employer's gate but unlocking it when requested to do so.¹¹

b. Threats of Economic Reprisal

Union conduct not connected with strikes was held violative of section 8 (b) (1) (A) where it was found to have been reasonably

¹ Sec. 7 provides:

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

² See *National Maritime Union (The Texas Co.)*, 78 N. S. A. 3.971 (Fourteenth Annual Report, p. 81), enforced 175 F. 2d 686 (C. A. 2).

³ *Conway's Express*, 87 NLRB 972.

⁴ *Irwin-Lyons Lumber Company*, 87 NLRB 54.

⁵ *Conway's Express*, *supra*.

⁶ *Irwin-Lyons Lumber Company*, *supra*.

⁷ *Ibid.*

⁸ *Ibid.*, cf. *Smith Cabinet Company*, 81 NLRB 886

⁹ *Santa Ana Lumber Company*, 87 NLRB 937.

¹⁰ *Irwin-Lyons Lumber Company*, *supra*.

¹¹ *Ryan Construction Company*, 85 NLRB 417.

calculated to coerce employees in maintaining or refraining from acquiring union membership. Thus, the Board found coercion where a union agent, in the presence of an employee, told an employer that the employee could not work until he had paid his union dues, and where the union agent then warned the employee, "You know the union is stronger than you. You cannot fight a union and win."¹² The Board similarly held coercive: a speech in front of an employer's store informing the audience that the union intended to organize the store and "that wives and children of employees had better stay out of the way if they didn't want to get hurt";¹³ a union president's warning to rival union supporters not to come to work, accompanied by such threats as that there would be "trouble out there, guns, knives, and blackjacks";¹⁴ assaults and batteries on nonunion employees during an organizational campaign;¹⁵ and a union official's remark to an employee, in the course of an organizational drive, that "there may be trouble later" if the employees refused to sign a dues checkoff authorization.

In *Pinkerton's National Detective Agency, Inc.*,¹⁶ the Board found that section 8 (b) (1) (A) was violated by a union which, in the absence of a valid union-security agreement, (1) addressed letters to employees calculated to coerce them to retain their union membership; (2) threatened an employee with loss of work unless he joined the union or paid union dues; and (3) engaged in a strike for the primary purpose of compelling the employer to discriminate against employees who failed to maintain membership in good standing in the union.

The Board had occasion during the past year to reaffirm its conclusion in the *MMU* case¹⁷ that "restraint" and "coercion" within the meaning of sections 8 (b) (1) (A) are not automatically present where other subsections of 8 (b) are violated. Thus, the Board held in the *ITU* cases¹⁸ that union conduct which contravened section 8 subsections (b) (2) and (b) (3) was not *per se* violative of 8 (b) (1) (A).¹⁹ In the *Di Giorgio* case,²⁰ 8 (b) (4) (A) secondary boycott activities

¹² *H. M. Newman*, 85 NLRB 725.

¹³ *Union Supply Company*, 90 NLRB No. 38.

¹⁴ *Randolph Corporation*, *supra*. In this case the union's conduct caused the constructive discharge of rival union supporters who stayed away from work. The Board found the conduct violative of both sec. 8 (b) (2) and sec. 8 (b) (1) (A).

¹⁵ *Union Supply Company*, *supra*.

¹⁶ 90 NLRB No. 39.

¹⁷ *National Maritime Union (The Texas Co.)*, 78 NLRB 971, Fourteenth Annual Report, p. 81, enforced 175 F. 2d 686 (C. A. 2).

¹⁸ *International Typographical Union (ANPA)*, 86 NLRB 951; *Chicago Newspaper Publishers*, 86 NLRB 1041; *Graphic Arts League*, 87 NLRB 1215. Note the Board's reference in the *ANPA* case (footnote 15) to earlier cases in which the principle was applied. See also *ITU (Daily Review Corp.)*, 87 NLRB 1263.

¹⁹ See also *International Brotherhood of Teamsters, Local 294 (Conway's Express)*, 87 NLRB 972, where the Board observed that even if the union had made illegal closed-shop demands, such conduct would not have constituted restraint and coercion within the meaning of sec. 8 (b) (1) (A).

²⁰ *Di Giorgio Wine Company*, 87 NLRB 720.

were similarly held not to come within the prohibition of section 8 (b) (1) (A).

However, in several cases, the Board ruled that conduct which violated section 8 (b) (2) also constituted restraint or coercion of employees in violation of 8 (b) (1) (A). Section 8 (b) (2) forbids a labor organization to "cause or attempt to cause" an employer to discriminate against employees because of their union membership or lack of it except under a valid union-shop agreement. In the *Clara-Val Packing Company* case,²¹ the Board pointed out that when a union causes the discharge of an employee in the absence of a valid union-security agreement, the conduct violates section 8 (b) (1) (A) as well as 8 (b) (2) because the union's action is directed primarily at compelling the employee to forego the rights protected by section 7 of the act. In the Board majority's opinion, section 8 (b) (1) (A) must be construed to proscribe not only restraints in the form of threats of economic action but also the actual effectuation of the threat, such as the enforcement of an illegal contract against a specific individual employee. The majority held that the union's action was not directed only to the employer but to the employees as well, since "the discharge and the reason for it would inevitably become known to the employees, and would coerce and restrain them to join the union or retain their membership in it." Subsequently, the principle was applied in *Union Starch & Refining Co.*²² where a majority of the Board likewise held that the illegal application of a valid union-security agreement violated both 8 (b) (2) and 8 (b) (1) (A); and in *New York Shipbuilding Corporation*²³ and *General American Aerocoach Corporation*,²⁴ where the Board's findings of like violations were based upon the retroactive application of union-security contracts. In *Randolph Corporation*,²⁵ where no union-security agreement was involved, the Board majority similarly held that the union's action in causing the discriminatory discharge of employees, contravened not only 8 (b) (2) but also 8 (b) (1) (A).

c. Union Rules on Membership

The Board also was called upon to construe the proviso to section 8 (b) (1) (A) which safeguards "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Thus the proviso in the Board's view, was

²¹ 87 NLRB 703 (Board Member Reynolds dissenting).

²² 87 NLRB 779 (Board Members Houston and Reynolds dissenting).

²³ 89 NLRB No. 197.

²⁴ 90 NLRB No. 36.

²⁵ 89 NLRB No. 194 (Chairman Herzog and Board Member Murdock dissenting from finding of 8 (b) (2) and 8 (a) (3) violations).

unmistakably intended to, and did, remove the application of a union's membership rules to its members from the proscriptions of Section 8 (b) (1) (A), irrespective of any ulterior reasons motivating the union's application of such rules or the direct effect thereof on particular employees.

Consequently the Board held in the *ITU-ANPA* case²⁶ that the union, whose rules permitted the summary expulsion of members, did not violate section 8 (b) (1) (A) by threatening to expel members who failed to cooperate in enforcing an unlawful "Collective Bargaining Policy." The Board rejected the contention that "coercion" in the statutory sense was present because the threatened expulsion of members would result in their loss of "certain economic perquisites of the union-membership relation." In the *Conway's Express* case,²⁷ the Board similarly held that because the union was privileged under the proviso to expel members for strike-breaking activities, it was likewise privileged in warning members that they might lose their membership for engaging in such activities and in reminding them of the economic consequence resulting therefrom.²⁸

2. Restraint or Coercion of Employers in Choice of Bargaining Agents

Section 8 (b) (1) (B) of the act make it an unfair labor practice for a labor organization or its agents—¹

to restrain or coerce * * * an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances, * * *

In four cases during the past fiscal year the Board was called upon to determine whether a union had violated this provision of the act.

In *International Typographical Union (ANPA)*,²⁹ a Board majority³⁰ found that the international union and its officers had violated section 8 (b) (1) (B) of the act by threatening strike action unless the employers continued to hire only union members as foremen, and to delegate to such foremen broad managerial power, including the power to adjust grievances.³¹ In reaching this conclusion, however, the Board observed:

²⁶ 86 NLRB 951, 956-957.

²⁷ 87 NLRB 972.

²⁸ See also *Union Starch & Refining Co.*, 87 NLRB 779, where the Board pointed out that the denial to the union of the right to demand the discharge of an employee under a valid union-security contract for reasons other than the nonpayment of initiation fees and dues, did not interfere with the union's right under the sec 8 (b) (1) (A) proviso to deny membership to an employee upon any ground it wishes.

²⁹ *International Typographical Union (ANPA)*, 86 NLRB 951.

³⁰ Board Member Murdock dissented from this finding because, in the context of the case, he did not believe that the foremen's demands of the respondents should be treated as anything more than a facet of the attempt to achieve closed-shop conditions which had been found violative of sec. 8 (b) (2) of the act.

³¹ The full Board passed on a similar state of facts in *International Typographical Union (Graphic Arts League)*, 87 NLRB 1215, and found the conduct violative of sec. 8 (b) (1) (B) of the act.

Our decision is in no way to be interpreted to mean that we would hold on other facts that Section 8 (b) (1) (B) prohibits employees from collective action designed to induce their employer to remove specific supervisory employees having power to adjust grievances. It is sufficient to point out, for purposes of this case, that the Respondent's efforts were aimed at arrogating to itself, as a matter of policy and practice,³² general control over the selection of such supervisory employees.

In *Conway's Express*,³³ the Board adopted the trial examiner's finding that a union had not violated section 8 (b) (1) (B) by insisting, after being informed of a supervisor's designation as the employer's representative, on proof of his authority to represent the employer in the discussion of a dispute. It also adopted the examiner's further finding that the union representative's alleged refusal to discuss the dispute any further with the employer did not coerce the employer into appointing someone else to represent him, and hence did not violate section 8 (b) (1) (B).

3. Causing or Attempting to Cause an Employer to Discriminate Against Employees

Section 8 (b) (2) of the act makes it an unfair labor practice for a labor organization or its agents

to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Section 8 (a) (3), which is referred to in section 8 (b) (2), prohibits an employer from discriminating against employees for the purpose of encouraging or discouraging membership in unions, except in lawful application of a valid union-security agreement.³⁴

In general the Board has held that the insistence by a labor organization upon a closed shop³⁵ or hiring preference for union members or an illegal union shop violates section 8 (b) (2). This applies also to a hiring hall arrangement which, although nondiscriminatory on its face, is operated in a discriminatory manner. Insistence upon such illegal union-security devices amounts to an "attempt to cause" dis-

³² Cf. *ITU (Daily Review Corporation)*, 87 NLRB 1263, where a majority of the Board found that a similar proposal was not violative of the act, because it was made only after the company had wrongfully refused to honor an agreement by which it was legally bound (Board Member Reynolds dissenting).

³³ 87 NLRB 972

³⁴ Unfair practices forbidden by sec 8 (a) (3) are discussed in section 3 of part A of this chapter

³⁵ A closed shop, as meant here, is an arrangement whereby a prospective employee must obtain membership in a labor organization before he may be hired.

crimination in violation of the statute even though no employee actually suffers discrimination.³⁶

Agreeing to an illegal union-security provision also constitutes a violation of section 8 (b) (2). The insistence upon the discharge, demotion, or discipline of any individual employee in violation of section 8 (a) (3), of course, is also a violation of this section.

In those cases in which unions were alleged to have violated section 8 (b) (2) by causing unlawful discrimination and the respective employers were charged with the violation of section 8 (a) (3), the Board was primarily concerned with the question whether or not the actions of the unions and employers involved were justified by validly existing union-security agreements.³⁷

In one case,³⁸ in which an employee was discharged at the request of the union because of his failure to pay union dues during a layoff period in accordance with a valid maintenance-of-membership agreement, the Board rejected the trial examiner's finding that the employee had been exonerated by the union from the payment of dues. Consequently, the Board held that the union's request did not violate section 8 (b) (2). However, where employees remained away from work because of the union's threats of violence, the Board found that the union violated section 8 (b) (2) and that the employer who knowingly permitted the employees' ouster had thereby constructively discharged them in violation of section 8 (a) (3).³⁹

The most conspicuous cases in which the Board, during the past year, found that unions *attempted* to cause discrimination against employees in violation of section 8 (b) (2) were the *ITU* cases.⁴⁰ In these cases, the union insisted upon the acceptance by the employers of unilaterally determined "Conditions of Employment" or alternately a "60-day contract,"⁴¹ each of which had the effect of compelling the employers to maintain noncontractual closed-shop conditions and, in violation of section 8 (a) (3), discriminatorily to exclude nonunion men from employment "by the use of a continuing threat to strike."⁴²

³⁶ See Fourteenth Annual Report, pp 84-86. See also discussion of discriminatory conduct as violation of 8 (b) (1) (A), see section 1, above.

³⁷ Illegal union-security agreements are discussed also in section 4, below.

³⁸ *Pressed Steel Car Co., Inc.*, 89 NLRB No 36.

³⁹ *Randolph Corporation*, 89 NLRB No. 194. (Chairman Herzog and Board Member Murdock dissenting in part.)

⁴⁰ *International Typographical Union (ANPA)*, 86 NLRB 951; *Chicago Typographical Union No 16 (CNP)*, 86 NLRB 1041; *International Typographical Union (Graphic Arts League)*, 87 NLRB 1215; *International Typographical Union, et al. (Printing Industry of America)*, 87 NLRB 1418.

⁴¹ The union's so-called "no contract" and alternative "60-day contract" strategies are set out in footnote 55.

⁴² Cf. *Nassau County Typographical Union # 915, AFL, et al (The Daily Review Corporation)*, 87 NLRB 1263, where the majority of the Board held that the purpose of similar proposals was to induce the employer to abide by a validly existing union-security agreement and that the union therefore did not violate sec. 8 (b) (2).

In one of these cases,⁴³ the Board reiterated its previous conclusion⁴⁴ that a violation of section 8 (b) (2) may be found even though there is no "showing that particular employees were the actual or intended objects of a discriminatory scheme."

On the other hand, in *Conway's Express*,⁴⁵ a majority of the Board found that the union did not, as alleged, insist upon the execution of an illegal closed-shop agreement. Rather, the union's action was found to be a request that the employer acknowledge its preexisting obligations by signing a closed-shop agreement entered into prior to the effective date of the amended act. Similarly, no violation of section 8 (b) (2) was found in the *Combustion Engineering Company* case,⁴⁶ where the union, following the effective date of the amended act, did not repeat its previous demand for a closed shop. Nor was a violation of section 8 (b) (2) found in the *Santa Ana Lumber Co.* case⁴⁷ where the negotiations, in which the union was concerned with obtaining recognition, had never reached the stage of insistence by either party as to any contract terms.

In one case, in which no demands for unauthorized union security were involved, the union was found to have violated section 8 (b) (2) by attempting to force the employer to discharge members of another union by picketing activities accompanied by violence.⁴⁸

4. Refusal to Bargain

Section 8 (b) (3) makes it an unfair labor practice for a labor organization or its agents—

to refuse to bargain collectively with an employer, provided it is the representative of his employees * * *

Section 8 (d) defines collective bargaining as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment * * * and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession * * *."

In all cases decided by the Board under this section, the allegation that a union had refused to bargain in good faith turned upon the

⁴³ *ANPA*, 86 NLRB 951.

⁴⁴ See *National Maritime (The Texas Co.)*, 78 NLRB 971, enforced 175 F. 2d 686 (C. A. 2); *American Radio Association*, 82 NLRB 1344, *United Mine Workers*, 83 NLRB 916.

⁴⁵ 87 NLRB 972 (Board Member Reynolds dissenting).

⁴⁶ 86 NLRB 1264.

⁴⁷ *Lumber and Sawmill Workers Union, Local No. 1407 (Santa Ana Lumber Co.)*, 87 NLRB 937.

⁴⁸ *National Union of Marine Cooks (Irwin-Lyons Lumber Co.)*, 87 NLRB 54.

union's insistence upon an allegedly illegal demand. In these cases, the Board has followed the general rule that "a refusal to enter into a collective bargaining agreement, unless the other party to the negotiations agrees to a provision or takes some action which is unlawful or inconsistent with the basic policy of the Act, is a refusal to bargain in violation of the Act."⁴⁹ Thus, the Board has ruled that the insistence by a union upon an illegal closed-shop or a discriminatory hiring hall arrangement, as a condition precedent to making an agreement, constitutes illegal refusal to bargain.⁵⁰

The question of a union's alleged refusal to bargain, however, came to the Board for decision in only four cases during the past fiscal year, all involving the International Typographical Union and its locals. In three cases, the Board found that the union involved had refused to bargain in violation of the act.⁵¹ In the fourth, a majority of the Board found that the union was seeking merely to enforce a valid oral contract.⁵²

In the *Chicago* case, the Board summarized the scope of the statutory duty of a union to bargain in the following language:

Section 8 (b) (3) of the Act imposes upon labor organizations a duty to bargain coextensive with the duty long-since imposed upon employers by section 8 (a) (5) of the Act, and * * * the provisions of section 8 (d) defining the standard of good faith bargaining restate, in statutory form, the principles established under former section 8 (5).⁵³

Furthermore, the Board pointed out, the statutory obligation of a union to bargain "includes the duty to reduce any agreement arrived at to writing."⁵⁴

In three of the *ITU* cases decided during the past year, the Board held that the respective unions violated their statutory duty in two major respects. Thus, it was found that the unions deliberately conducted negotiations under their 1947 "Collective Bargaining Policy" so as "to avoid the making of *any* bilateral agreement, written or oral, with respect to *any* matters properly the subject of negotiation and agreement."⁵⁵

⁴⁹ *American Radio Association (Atlantic and Gulf Coasts)*, 82 NLRB 1344.

⁵⁰ *The Great Atlantic and Pacific Tea Company*, 81 NLRB 1052. See also Fourteenth Annual Report, pp. 86-87, *National Maritime Union (The Texas Company)*, 78 NLRB 791.

⁵¹ *Chicago Newspaper Publishers Association (Chicago Typographical Union No. 16)*, 86 NLRB 1041; *Graphic Arts League of Baltimore*, 87 NLRB 1215; *Printing Industry of America*, 87 NLRB 1418. In the *American Newspaper Publishers Association* case, 86 NLRB 951, identical conduct was involved but was not alleged to violate sec. 8 (b) (3).

⁵² *Daily Review Corp.*, 87 NLRB 1263.

⁵³ 86 NLRB 1041, footnote 2. The employer's duty to bargain is discussed in section 5 of part A of this chapter.

⁵⁴ See *Heinz Co. v. N L R B*, 311 U S 514, 523-526.

⁵⁵ *Chicago Newspaper Publishers Association*, 86 NLRB 1041. The "Policy" is outlined in the following findings of the Board in the *ITU (ANPA)* case:

Summarizing the pertinent facts, more fully set forth in the Intermediate Report, it appears that on or about August 21, 1947, the Respondent I. T. U. and the subordinate I. T. U. local unions, meeting in convention, unanimously adopted and agreed to follow

The Board concluded that

such a deliberate frustration of the operation of the bargaining process violates the Act, in that it reflects a complete negation of that duty to bargain which the amended Act imposes upon statutory representatives of employees.

Secondly, it was found that the unions refused to bind themselves contractually for more than 60 days contrary to their traditional policy of executing 1-year contracts. As to this conduct, the Board observed:

the insistence of the Respondents upon the 60-day cancellation clause in the "P-6A" contract form, independently establishes a continuing disregard * * * of the good-faith standards of bargaining required by the Act. * * * The Respondents' unwillingness to consider the traditional term, evidenced by their refusal to bind themselves contractually for more than 60 days, raises in and of itself a presumption that the Respondents were not bargaining in good faith. The record shows no lawful or reasonable economic justification for such a refusal. Indeed, as we have already noted, it establishes that the 60-day cancellation clause was deliberately designed, and was adamantly insisted upon, to effect the exclusion of nonunion men, squarely in conflict with the provisions of the amended Act. * * * under this arrangement the Respondents intended to place themselves in a position whereby they could with contractual impunity call a strike, ostensibly with regard to economic matters otherwise settled in the cancellable agreement, in order to force the Employer noncontractually to maintain closed-shop conditions.

However, in one of the *ITU* cases,⁵⁶ a Board majority found that the union's insistence upon its "collective bargaining policy" did not violate section 8 (b) (3),⁵⁷ because the union's request was designed

a uniform bargaining policy, avowedly designed to avoid the impact of those provisions of the amended Act which, *inter alia*, outlawed the "closed-shop" employment practices then in effect in shops organized and represented by the I. T. U. and/or its subordinate locals. The "Policy" so adopted, and widely publicized by the Respondents, contemplated the use during future negotiations, of a "bargaining strategy" calculated to compel employers to maintain, non-contractually and under threat of strike, employment conditions "satisfactory" to the Respondents and to the members of local unions immediately engaged in the negotiations. To this end, the Respondents formulated and the convention adopted, a "Conditions of Employment" form which both: (1) Set forth the "only" conditions under which I. T. U. members would work—one such condition being that they would not work with nonunion men; and (2) embodied the threat that the failure of the employers to provide the stated conditions would result in the declaration by the unions, pursuant to procedures in I. T. U. "laws," of a "lockout."

As is further set forth in the Intermediate Report, the "Conditions" strategy was slightly modified by the Respondents in about October 1947, following the institution of Board proceedings by employers (not involved immediately in the instant cases) complaining of the illegality of the use of such tactics by the I. T. U. and its local union. The modified strategy contemplated the unions' submission to employers of an alternate proposal, known as "P-6A", embodying the unions' offer to enter into a bilateral agreement cancellable at any time upon 60 days' notice. This alternate proposal, frankly designated by the Respondents to make the "Conditions" form "more desirable to the employers," was in fact utilized on a Nation-wide basis in the negotiations here in issue. Its use represented the sole departure, during the period here material, from the "no-contract" strategy above described.

⁵⁶ *International Typographical Union (Daily Review)*, 87 NLRB 1263.

⁵⁷ Board Member Reynolds dissented on the ground that in this case, as in the other *ITU* cases, the unlawful "collective bargaining policy" was being implemented without variation, and that, in his opinion, the union did not continue to offer the valid 1-year agreement as a basis for concluding negotiations.

primarily to compel the employer to honor a valid 1-year oral agreement. The Board pointed out that the union's proposals in this case were not limited to an adamant insistence on its "policy" as the only basis for agreement.⁵⁸

In *Conway's Express*,⁵⁹ the Board (Board Member Houston dissenting) found that the union had violated its bargaining obligations under section 8 (b) (3) by demanding that the employer post a \$5,000 performance bond as a condition to the settlement of a strike. In reaching this conclusion, the Board stated:

As it is the policy of the Act to promote the settlement of labor disputes through the peaceful processes of collective bargaining, there is no more reason to sanction the requirement of a bond as a condition of terminating a strike or lockout, than to allow such a demand to obstruct the negotiation of an ordinary labor agreement. It is true that the Union's insistence upon a bond, in the circumstances of this case, was not wholly unreasonable and that it was not, so far as the record shows, designed to frustrate the settlement of the strike. However, the Union's good faith in advancing this proposal is not decisive of the issue. It is the *tendency* of such proposals to "delay or impede or otherwise to circumscribe the bargaining process," which renders them improper.

a. The 60-Day Notice Requirement

In the *United Packinghouse Workers* case,⁶⁰ the Board was confronted with the question whether the union violated section 8 (b) (3) by striking for the purpose of securing a contract modification without complying with section 8 (d) insofar as it provides

That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

* * * * *

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

The strike occurred more than 60 days after the union had given notice of its intention to modify the contract, but before the contract'

⁵⁸ The Board adopted the examiner's conclusion that the union's conduct was not excused by the employer's failure to discuss wages or to submit a complete counterproposal. The examiner had observed that the union's alleged refusal to bargain was neither provoked by nor related to the employer's action and that the union's good faith could therefore be tested independently of the position taken by the employer in the negotiations. (Cf. *Times Publishing Company*, 72 NLRB 676, 683.)

⁵⁹ 87 NLRB 972.

⁶⁰ *United Packinghouse Workers of America (Wilson & Co.)*, 89 NLRB No. 32.

had expired. Holding that the statutory requirements had been observed, a majority of the Board⁶¹ concluded that, in the light of its legislative history, section 8 (d) (4) must be construed to require the withholding of economic action only during the 60-day period following the date on which proper notice of the proposed contract modification or termination is given. The majority rejected the trial examiner's view that the limitation of section 8 (d) (4) on economic action "for a period of sixty days after such notice is given *or until the expiration date of such contract whichever occurs later*"⁶² must be literally construed⁶³ so as to preclude such action until after the expiration of the contract. In the opinion of the majority of the Board, the phrase "whichever occurs later" was intended to apply only to situations in which notice to modify or terminate a contract is given *less* than 60 days before the termination of the contract.

5. Illegal Secondary Strikes and Boycotts

The act's major prohibitions against secondary strikes and boycotts are contained in section 8 (b) (4) (A).⁶⁴ This section prohibits a labor organization or its agents from inducing or encouraging employees to strike or withhold services with an object of forcing or requiring any employer or other person to cease doing business with any other person. The boycott activities forbidden by the statute for this objective include the inducement or encouragement of employees to engage in "a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services."

In construing this provision, the Board has found that "it is clear from the legislative history of the Act that section 8 (b) (4) (A) was aimed at *secondary* and not *primary* action."⁶⁵ The Board has endeavored therefore to balance in each case two major intentions of Congress: (1) The intent to outlaw secondary strikes and boycotts of the character described and (2) the intent to preserve the lawful "primary means which unions traditionally use to press their demands on employers."⁶⁶ In cases decided under this section during the past fiscal year, the Board has been engaged chiefly in delineating, case by

⁶¹ Chairman Herzog and Board Member Murdock, in separate opinions, disagreed with the majority's construction of sec. 8 (d) (4), but concurred in the majority's decision that the union did not violate sec 8 (b) (3).

⁶² Emphasis added.

⁶³ Chairman Herzog agreed with the majority in this respect.

⁶⁴ Sec. 8 (b) (4) (B) also forbids certain types of secondary strikes and boycotts. Cases decided under this section are discussed in section 6, below. Litigation in the courts involving these sections is discussed in Chapter VI.

⁶⁵ *Pure Oil Co.*, 84 NLRB (Board Member Gray dissenting only in part). [Emphasis by the Board.]

⁶⁶ *Pure Oil*, *supra*.

case, the bounds of this area of lawful primary action. In drawing this line, the Board has had to distinguish between illegal secondary activities and lawful primary action which has secondary effects.

The Board was first confronted with this problem in the *Pure Oil* case⁶⁷ in 1949. In that decision, the Board enunciated the general rule that:

The fact that the union's primary pressure on [the primary employer] may have also had a secondary effect, namely, inducing and encouraging employees of other employers to cease doing business on [the primary employer's] premises, does not, in our opinion, convert lawful primary action into [un]lawful⁶⁸ secondary action within the meaning of Section 8 (b) (4) (A). To hold otherwise might well outlaw virtually every effective strike, for a consequence of all strikes is some interference with business relationships between the struck employer and others.

The Board's decision in this case emphasized that the picketing and strike activities were conducted on the premises of the primary employer.

a. Situs-of-Dispute Test

In a number of cases, the question of whether conduct of a labor organization was within the statutory prohibition was determined by the Board on the basis of the situs of the particular activities in relation to the primary dispute involved.⁶⁹

Thus, in the *Ryan Construction* case,⁷⁰ the Board held that section 8 (b) (4) was not violated where a striking union picketed the primary employer's entire premises, including a gate which served employees of a secondary employer—a construction company engaged in erecting an addition to the plant. While this gate could also have been used by employees of the struck employer, and while a conceded object of the picketing was to enlist the aid of the employees of the construction company as well as that of employees of other customers and suppliers of the primary employer, the Board (Member Gray dissenting) found that the picketing was protected. Section 8 (b) (4) (A), the Board concluded, was

intended only to outlaw certain *secondary* boycotts whereby unions sought to enlarge the economic battleground beyond the premises of the primary employer. When picketing is wholly at the premises of the employer with whom the union is engaged in a labor dispute, it cannot be called "secondary" even though, as is virtually always the case, an object of the picketing is to dissuade all persons from entering such premises for business reasons.⁷¹

⁶⁷ *Pure Oil, supra*.

⁶⁸ The word "lawful" which appears at this point in the printed version of the Board's opinion is a typographical error.

⁶⁹ *Pure Oil, supra*; see also Fourteenth Annual Report (1949) pp. 96-98.

⁷⁰ *Ryan Construction Corp*, 85 NLRB 417 (Board Member Gray dissenting); briefly noted in the Fourteenth Annual Report (1949) p. 97, footnote 65.

⁷¹ See also *Deena Artware Inc.*, 86 NLRB 732 where the Board rejected an employer's contention that a strike, although confined to the premises of the primary employer, was illegal because it resulted in a work stoppage by construction workers on the premises of the primary employer.

Similarly, the Board in another case⁷² held that the picketing of a lumber company in connection with a recognition strike did not become unlawful because the strikers solicited employees of other companies immediately outside the lumber company's yards not to load or unload supplies destined for the lumber company or its customers. In the Board's opinion, the solicitation of the employees of other companies was "traditional primary action" at the *situs* of the labor dispute, and therefore not outlawed by the secondary boycott provisions of the act. In the *Di Giorgio* case,⁷³ the Board likewise found that it was immaterial that picketing on the employer's premises in aid of a primary recognition strike resulted in occasional interference with the entry and departure of trucks of companies engaged in hauling products to and from the premises of the employer.

But whenever a labor organization has extended its picket line to the premises of a secondary employer, the Board has held it to have so enlarged the "economic battleground" as to bring the activities within the prohibition of the act.⁷⁴

b. Situs in Trucking Industry

The problem of determining the situs of the primary labor dispute becomes more complicated when the business operations of the employer are not confined to a fixed geographical location but are of a "roving nature," as in the case of the transportation industry. The Board was confronted with this question in the *Schultz* case,⁷⁵ where a trucking concern moved its terminal from New York City to New Jersey, discharged its employees who were members of a local Teamsters' union, and then hired members of another Teamsters' local in New Jersey. In an effort to regain its bargaining rights, the displaced union retaliated with a strike and picketed Schultz' trucks in various parts of New York City. Whenever Schultz' drivers prepared to load or unload their trucks in front of the premises of a consignee, pickets walked around the trucks, announcing by means of printed signs that truck driving members of the striking union had been locked out by Schultz. The premises of consignees themselves were not picketed. In these circumstances, a majority of the Board ruled that the picketing was permissible primary action because, even though it took place at the premises of secondary employers, it was confined, as to location and time, to the loading and unloading of the trucks of the primary employer.

The majority predicated its conclusion on the prior holdings in the *Ryan* and *Pure Oil* cases to the effect that primary picketing is not

⁷² *Santa Ana Lumber Co.*, 87 NLRB 937.

⁷³ *Di Giorgio Wine Co.*, 87 NLRB 720

⁷⁴ *Howland Dry Goods Company, et al.*, 85 NLRB 1037

⁷⁵ *Schultz Refrigerated Service, Inc.*, 87 NLRB 502 (Board Members Reynolds and Gray dissenting).

secondary and unlawful because of incidental interference with the business of other employers. A significant distinction between lawful primary picketing and unlawful secondary picketing, the majority stated, lies in "the identification of such [primary] picketing with the actual functioning of the primary employer's business at the *situs* of the labor dispute." In the circumstances of this case, the employer did not conduct his operations from a fixed geographical location, but dispatched his trucks, "the necessary instruments" of his operations, over a wide area in New York City. Because of the "roving nature" of the primary employer's operations, the displaced employees were entitled to picket the trucks of the primary employer while the trucks were at the premises of the secondary employers, the majority held. Only in this manner could the striking employees effectively and directly relate their economic pressure to "the actual functioning of the primary employer's business at the *situs* of the labor dispute." The majority further reasoned:

there was no other place in New York City where the union could give adequate notice of its dispute with [the primary employer]. It therefore selected the struck vehicles as the most appropriate objects of primary pressure. In so doing the union was acting in a manner traditional to employees in all other industries, who choose to stand before their place of employment and point out their replacements to the interested public as strike-breakers, and their employer as unfair. Such picketing, virtually synonymous with the right to strike, is an exercise of a historic right thought necessary to the effectiveness of a strike. We do not believe that the truck driving employees in this case should be denied substantially the same right to advertise their grievance in the most effective manner possible, through a picket line around their peripatetic employer's trucks, which comprise that employer's own business in New York City at the point of direct contact with the patronage of its customers and consignees.

Members Reynolds and Gray in their joint dissent took the view that the primary employer's place of business and the *situs* of employment of his employees were at the employer's headquarters in New Jersey. In their opinion, the fact that the union confined its picketing activities to the employer's trucks was immaterial, inasmuch as the act does not require that a secondary boycott, in order to be unlawful, must contemplate the complete disruption of the operations of the secondary employer. Members Reynolds and Gray rejected the "rule of effectiveness" as a proper standard in testing the legality of means used to bring pressure on the primary employer, because in their view "the right to strike is not equivalent to the right to conduct an 'effective strike.'"

However, in another case, where the union's picketing activities were not "limited strictly" to the trucks of the primary employer, a majority of the Board found that the secondary boycott provisions of

the act had been violated.⁷⁶ In this case, the trucks of the primary employer, whose terminal was located in Massachusetts, loaded beer at a New York City brewery. A New York local of the Teamsters' union insisted that its members, rather than the over-the-road drivers of the trucking concern, should be hired to perform the delivery operations during which the trucks loaded and unloaded at various breweries in New York City. In support of its demand, the union placed a picket on the public sidewalk in front of the entrance to the unloading platform of one of the breweries. The picket carried a sign stating that the trucking concern refused to employ members of the New York City union. The majority noted that this differed from the *Schultz* case, in that the union did not picket around the trucks but at the entrance to the platform of the secondary employer where the trucks loaded and unloaded. Moreover, on one occasion, the union had its picket patrol the entrance to the plant before the truck of the primary employer approached, and on another occasion, the picket continued to patrol in front of the brewery for 15 or more minutes after all the trucks of the primary employer had left the plant. Under these circumstances, the majority (Chairman Herzog and Board Members Reynolds and Murdock) concluded that the picketing extended directly to the secondary employer's own premises and was therefore unlawful. Board Member Murdock added that here, unlike the *Schultz* case, the primary employer's trucks

were at all times beyond the ambulatory range of the patrolling picket. * * * Here, the physical situation was such that the [union] could not relate its picketing at [the secondary employer's] plant directly and immediately to its alleged objective.

Member Houston, in his dissent, expressed the view that

* * * There is no warrant for such a holding either in the *Schultz* case or in any provision in the Act. The test * * * is the identification of the picketing with the operations of the primary employer at the scene of the dispute. Here, the sole dispute related to the backing up or terminal operations conducted by [the primary employer] on [the secondary employer's] premises. And identification of the picketing with [the primary employer's] operations at this actual situs of the dispute was enhanced, rather than impaired, when the [union] confined its picketing to those very platform entrances where [the primary employer's] trucks unloaded.

But concerted activity away from the situs of a primary labor dispute is proscribed by section 8 (b) (4) only where employees of a secondary employer are, for the prohibited purposes, "induced or encouraged" to cease work. Consequently, the Board in the *Santa Ana*

⁷⁶ *Sterling Beverages, Inc.*, 90 NLRB No. 75 (Board Member Houston dissenting). Board Member Reynolds concurred in the finding that the union violated sec. 8 (b) (4) (A) for the reasons set forth in his dissenting opinion in the *Schultz* case.

case⁷⁷ held that no violation of the section occurred when the union, in addition to picketing the premises of a lumber company, with which it had a direct dispute, had the company's trucks followed to their destination by automobiles for the purpose only of learning the identity of customers, whom the union intended to dissuade from continuing to purchase the lumber company's products. These automobiles carried no signs, placards, or other means of identification, and their occupants did not picket either the trucks or the premises of the purchasers. In the absence of picketing or other methods of appealing to the employees of secondary employers to refrain from work on the lumber company's products, the Board did not believe that the "mere act of following the company's trucks was tantamount to 'inducement and encouragement' of employees other than the company's truck drivers, within the meaning of the Act."

c. Identity of Primary Employer

In the *Montgomery Ward* case,⁷⁸ the question whether a violation of the act was present or whether the union's conduct was protected depended upon the identity of the employer with whom the union had a primary dispute. Ward in this case instituted the rule that the union's business agents who desired to visit its shipping dock must obtain passes. In protest against this requirement, the union's business agents patrolled the trucking entrance to the Ward premises and instructed truck drivers who were members of the union not to make any pickups or deliveries there. The union also ordered its members who were employed by a trucking firm which served Ward not to drive any trucks to Ward's premises. A majority of the Board held that the union's actions were taken solely in furtherance of a primary dispute with Ward over "the conditions under which the union officials would be allowed to visit a working place of the employees whom they represented." The majority observed that the controversy between the union as the representative of the employees of the trucking firm and Ward constituted a "labor dispute," because under section 2 (9) of the act a labor dispute may exist "regardless of whether the disputants stand in the proximate relation of employer and employee."⁷⁹ Under these circumstances, the Board concluded that the order of the union to the employees, who had an immediate interest in the outcome of the dispute, to stay away from the premises of the primary employer was protected concerted activity.

⁷⁷ *Santa Ana Lumber Company, supra*, footnote 9.

⁷⁸ 87 NLRB 972 (Board Member Gray dissenting).

⁷⁹ Sec 2 (9) of the act provides: "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

In *Conway's Express*,⁸⁰ the Board was concerned with the nature of the dispute to which the union's activities related. Before passage of the amendments to the act, Conway had entered into an association-wide contract with the union which in effect provided that only members of the contracting union should be permitted to drive any trucks which Conway might operate itself or lease to other employers.⁸¹ Conway later leased trucks without union drivers to another employer with whom Conway was engaged in a joint venture. In the view of the Board majority, this gave rise to a primary dispute over enforcement of the contract. Consequently, the Board held, the union's strike in furtherance of this dispute was primary and fell outside the ban of the secondary boycott provision of the act, even though it prevented the consummation of Conway's lease arrangement with a third party.

d. "Hot Cargo" Contracts

Another important issue which the Board had to determine in the *Conway* case was whether the refusal of the employees of various trucking firms to handle the freight of a struck company violated the act where the refusal was acquiesced in by the employers, pursuant to the terms of valid collective bargaining agreements between the union and the trucking firms. The agreements in question, entered into before the effective date of the amended act, reserved to the union the right to refuse to handle the goods or freight of any employer involved in a labor dispute. In concluding that section 8 (b) (4) (A) did not apply, the majority of the Board said:

The secondary employers, in effect consented in advance to boycott [the struck trucking concern]. As they consented, their employees' failure to deliver freight to or accept freight from [the primary employer's] trucks was not in the literal sense a "strike" or "refusal" to work, nor was any such concerted *insubordination* contemplated by [the union] when it caused the employees to exercise their contractual privilege.

The Board regarded as without merit the contention that these "hot cargo" agreements were repugnant to the policy of the amended act, and therefore became invalid after the effective date of section 8 (b) (4) of the 1947 act. The Board majority reasoned that section 8 (b) (4) (A) does not prohibit means other than strikes or work stoppages, by which unions may "induce" or "encourage" *employers* to aid them in effectuating secondary boycotts. Adverting to the legislative history of the amended act, the Board noted that the trucking concerns in the case were not the "neutral" or "wholly unconcerned" employers whom the Congress intended to protect against secondary boycott.

⁸⁰ 87 NLRB 972 (Board Member Reynolds dissenting).

⁸¹ Board Member Reynolds dissented on the ground that the evidence failed to support a finding that a closed-shop contract was in existence between the trucking concern and the union during the period in question.

Moreover, the Board concluded, section 8 (b) (4) (A) does not prohibit employers from refusing to deal with other persons "because they desire to assist a labor organization in the protection of its working standards or for any other reason."⁸² The Board observed:

* * * An employer remains free, under that Section of the amended Act, as always, to deal with whatever firms, union or non-union, he chooses. And by the same token, there is nothing in the express provisions or underlying policy of section 8 (b) (4) (A) which prohibits an employer and a union from including "hot cargo" or "struck work" provisions in their collective bargaining contracts, or from honoring these provisions.

Member Reynolds disagreed with the majority on the ground that the contracts with the trucking concerns insofar as they authorized secondary activity on the part of the union, were repugnant to the basic public policies of the act, and therefore were not a valid defense to the secondary boycott allegations.

e. "Primary" and "Secondary" Employer Relationship

In some cases the determination whether the secondary boycott provisions of section 8 (b) (4) had been violated turned on the status of the "secondary employer" with whom the primary employer allegedly was "doing business" within the meaning of the act. In *Irwin-Lyons Lumber Co.*,⁸³ the "secondary employer," whose employees the union had induced to engage in a strike, was a river transportation company which transported lumber for the primary employer. The Board held that no secondary boycott was involved, because the transport company was not a "neutral" or "wholly unconcerned" party within the meaning of section 8 (b) (4) (A) but rather an "ally" of the lumber company. This conclusion was based on the fact that the stock ownership and managerial control of the two companies were vested in substantially the same individuals and that the two companies were, in effect, engaged in "one straight line operation," in which the transport company was utilized by the lumber company "as a necessary adjunct to the production of lumber."

In *Climax Machinery Company*,⁸⁴ however, the issue before the Board was whether a product boycott, clearly within the literal language of the statute, was a proper exercise of the employees' right to withhold services because the primary and secondary employer stood in the relationship of contractor and subcontractor. The Board rejected the union's contention that a subcontractor automatically becomes an "ally" of the contractor and loses his status as a "neutral

⁸² Chairman Herzog concurred in the finding that the union in this case did not violate 8 (b) (4) (A) but he stated, in a footnote to the majority opinion, that he would not find the contracts a defense to an allegation of illegal secondary boycott activities.

⁸³ 87 NLRB 54.

⁸⁴ 86 NLRB 1243.

party” in the primary dispute, particularly where, as here, the primary employer had no control over the operations or employees of the secondary employer. The Board also pointed to its previous decisions in which it extended the protection of section 8 (b) (4) (A) to subcontractors in the building industry.⁸⁵

f. “Unfair” Lists

One of the difficult questions presented by the act’s prohibition of secondary boycott activities was its impact upon the long-established use of “unfair” or “we do not patronize” lists by labor organizations. The Board early concluded that the use of such lists to promote an illegal secondary boycott was outlawed.⁸⁶ At first, the Board held that the listing of either a secondary employer or an employer with whom the union had a primary dispute was illegal.⁸⁷ But during the past fiscal year, in the *Grauman* case, the Board had occasion to reexamine the question of listing primary employers. Likening an “unfair” listing of a primary employer to picketing of his plant, a majority of the Board held that the secondary boycott ban does not prohibit a union from merely listing an employer with which it has a direct dispute.⁸⁸ However, the *Grauman* decision did not disturb the Board’s prior ruling that the placing of a secondary employer on an unfair list may be, in itself, a violation of the secondary boycott ban. In the *Grauman* case a building trades council placed a nonunion manufacturer and installer of store fixtures on its “unfair list,” which was distributed to its affiliated local unions. The council’s business agents informed the employees of subcontractors who were doing electrical and plumbing work in connection with installation of one of the nonunion manufacturer’s fixtures that the job was “unfair,” and that union members should not work with nonunion employees. Thereupon, the subcontractors’ union employees ceased work whenever the nonunion employees of the fixture manufacturer were present. In these circumstances, a majority of the Board held that by promulgating an “unfair list” containing the name of the nonunion manufacturer the union no more violated section 8 (b) (4) (A) than if it had directly picketed the premises of the manufacturer.⁸⁹ The majority said:

⁸⁵ See Fourteenth Annual Report (1949) pp. 89–95.

⁸⁶ *Wadsworth Building Co., Inc.*, 81 NLRB 802. (Board Members Houston and Murdock dissenting.)

⁸⁷ *Osterink Construction Co.*, 82 NLRB 228 (Board Member Houston dissenting.)

⁸⁸ *The Grauman Co.*, 87 NLRB 755 (Board Members Reynolds and Gray dissenting). See *Denver Building Trades Council v. N. L. R. B.* (C. A., D. C. No. 10271) decided September 1, 1950 (certiorari granted December 11, 1950, 71 Sup. Ct. 281), denying enforcement in *Gould & Preisner*, 82 NLRB 1195, on the ground that, because the relationship between the contractor and subcontractor on the job site was so closely intertwined, the union’s actions were primary and therefore did not violate 8 (b) (4) (A).

⁸⁹ See also *Santa Ana Lumber Company, supra*, where the Board, in addition to affirming the legality of an “unfair list,” found that the publication of a complementary “fair list” was not unlawful.

* * * Like direct picketing at a primary employer's premises, the unfair listing of a primary employer is a traditional weapon used by labor organizations in direct support of a primary labor dispute. The very fact that the primary employer is named indicates a direct thrust against him.

* * * * *

Had the Council chosen to establish a picket line at [the primary employer's] manufacturing plant, its conduct would unquestionably have been lawful; such primary action would not have lost its privileged character just because the resolution to engage in it would necessarily have involved participation by, and advice to, its *entire* membership.

* * * * *

Although one of the effects of such an unfair listing may well be that some employees, in support of the union's campaign against the primary employer, withhold their services from other, neutral, employers doing business with the one named as "unfair", we cannot say that the intention to accomplish the specific result proscribed as an objective by the Act inheres as an illegal objective in the unfair listing itself. Similar secondary action could as well result from any other form of publication. As we have already held, primary activity is no less protected because a possible or likely result is interruption of the primary employer's business with third parties.⁹⁰

Moreover, the majority found that the references to the "unfair list" by the union's agents, while inducing employees to strike against secondary employers with whom the union had no dispute, did not convert the union's listing of the primary employer as "unfair" into an unfair labor practice. The Board's opinion stated:

* * * In such case, the unfair list may indeed be relied upon as evidence in assessing the propriety of the union's other conduct. However, the legality of the unfair list itself can no more be impaired than primary picketing can itself become unlawful because union agents refer to it in calling a secondary strike.⁹¹

Board Members Reynolds and Gray agreed with the majority that the placing of a primary employer on an "unfair list" is not *per se* violative of the act. However, they differed from the majority to the extent that in their opinion an "unfair list" is lawful only if its sole purpose, unlike in the present case, is either to induce a general consumer boycott of the primary employer's products or to discourage all employees to withhold their services from the primary employer.

In both the *Grauman* case and *Kimsey Manufacturing Company*,⁹² on the other hand, the Board found an unfair labor practice where union representatives informed the union employees on a construction job that a nonunion subcontractor on the job was on an unfair list, and where union employees were instructed not to work alongside non-

⁹⁰ The Board noted, however, that the placing of a secondary employer on an "unfair list" was indicative of indirect, or secondary, action against the employer with which the union was not in dispute. Cf. *Wadsworth Building Company, Inc.*, 81 NLRB 802.

⁹¹ The Board concluded that the union's only unlawful conduct was statements by which its business agents sought to induce member-employees to stop work on the "unfair job" with the object of forcing the owner of the store to cease doing business with the nonunion manufacturer.

⁹² 89 NLRB No. 141.

union employees. The Board found that, while the placing of non-union subcontractors on an "unfair list" was not banned by section 8 (b) (4) (A), the union representatives' references to the list were calculated to induce the subcontractors' employees to engage in a work stoppage, with the prohibited object of forcing the owner of the project to cease dealing with a nonunion subcontractor.

g. Application of Statutory Definitions

In several cases in which violations of the secondary boycott provisions of section 8 (b) (4) were alleged, the Board had to determine whether the union involved was a "labor organization," or whether its conduct affected "employees" or an "employer" or a "person" within the statutory definitions of these terms.

In the *Di Giorgio* case, the Board found that a union whose members were agricultural laborers, who are specifically excluded from the protection of the act, was not a "labor organization" within the meaning of section 2 (5) of the act and therefore could not commit unfair labor practices. However, in the same case, the Board found that a union which numbered among its members nonagricultural as well as agricultural workers, was a "labor organization" and consequently was subject to the prohibitions of the secondary boycott provisions.

The Board also held that where labor organizations addressed their secondary activities only to employers⁹³ or supervisors,⁹⁴ rather than to employees, no violation of section 8 (b) (4) was present. However, in the *Grauman* case, *supra*, the Board pointed out that such conduct for purposes prohibited by section 8 (b) (4) (A) may be considered as evidence of unlawful motives on the part of a labor organization.

In *Al J. Schneider, Inc.*,⁹⁵ a union had requested that a municipal board of education cancel its contract with a nonunion contractor who was engaged on a school building project. The question before the Board was whether the board of education was an "employer" or "person" within the meaning of the pertinent language of section 8 (b) (4) (A). The Board held that there was no indication that Congress intended to give the terms "employer" and "person," in section 8 (b) (4) (A) a meaning different from that spelled out in the definition of those terms in section 2 (2) and (1) of the act.⁹⁶ The board of education, the Board held, was a political subdivision of a State, and therefore specifically excluded from the definition of "em-

⁹³ See *Kimsey Manufacturing Company, supra*; *Santa Ana Lumber Company, supra*; *Di Giorgio Wine Company, et al., supra*.

⁹⁴ *Conway's Express, supra*, footnote 17.

⁹⁵ 87 NLRB 99, 89 NLRB No. 15.

⁹⁶ See also *Conway's Express, supra*, footnote 17.

ployer" by the express terms of section 2 (2).⁹⁷ As to the term "person" in section 2 (1),⁹⁸ the Board found that the entities referred to in this definition "import a general class" limited to artificial and natural persons and, therefore, excluding governmental subdivisions.

6. Secondary Strikes and Boycotts for Recognition

Section 8 (b) (4) (B) prohibits secondary strikes and boycott activities for the object of forcing an employer to recognize or bargain with a labor organization which has not been certified by the Board as bargaining agent for the employees it seeks to represent.

Violations of this section were alleged in two cases during the past year. In one case, the Board dismissed the allegation of violation of this section because it found the conduct involved was of a primary nature.⁹⁹ In the other case, a violation of the act was found where a union, striking for recognition, extended its picket line to the premises of three other employers who had been doing business with the employer from whom the union was seeking recognition.¹ In the same case, another union was found to have violated the act by instructing its members to refuse to pass the first union's picket line at the premises of one of the secondary employers.

The facts of the case, as found by the Board, were as follows: A Teamsters' union requested a delivery company to recognize it as the exclusive bargaining representative of the company's truck drivers. The union, striking in support of its demand for recognition, placed pickets at the premises of three department stores serviced by the delivery company. The Board found that this constituted an illegal attempt by the delivery drivers' union to induce the employees of the department stores to engage in a strike or boycott or to force the delivery company to recognize the delivery drivers' union, which had not been certified. The Board found that another local of the Teamsters' union had also violated this section by instructing its members who were employed at one of the stores to strike in support of its sister union's demand for recognition.²

⁹⁷ Sec. 2 (2) provides: "The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof * * *"

⁹⁸ Sec. 2 (1) provides: "The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers"

⁹⁹ *Santa Ana Lumber Company*, 87 NLRB 987.

¹ *Houland Dry Goods Stores*, 85 NLRB 1037.

² Board Member Murdock expressed belief that it was not proved that the assisting union violated sec. 8 (b) (4) (B), because of a lack of proof that the union actually knew that the dispute of its sister union with the delivery company was over the recognition of an uncertified union.

In framing its cease and desist order in the case, however, the Board specifically limited the order to forbidding the inducement or encouragement of employees of employers other than the delivery company. The Board said this limitation was designed to avoid proscribing the right of the union to engage in a primary recognition strike at the premises of the delivery company.

7. Jurisdictional Disputes Under 8 (b) (4) (D)

Section 8 (b) (4) (D) forbids a labor organization to induce or encourage employees to engage in a strike or "concerted refusal in the course of their employment" to handle goods or perform services with an object of

forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

A charge of unfair labor practice under this section, however, must be handled in a manner different from that for handling any other type of unfair practice charge. The act establishes a preliminary procedure to deal with disputes over the assignment of work forbidden by this section which are commonly called "union jurisdictional disputes." This is provided by section 10 (k), which requires that the parties be given a 10-day period to adjust their disputes. If, at the end of this time, they are unable to "submit to the Board satisfactory evidence that they have adjusted or agreed upon methods for the voluntary adjustment of the dispute," the Board then is empowered to make a determination of dispute in the case. Section 10 (k) further provides that "upon compliance by the parties to the dispute with the decision of the Board, or upon such voluntary adjustment of the dispute, such charge shall be dismissed." Only when there is failure to comply with the Board's determination of dispute may a complaint alleging violation of 8 (b) (4) (D) issue.³

The question of what must be proved to establish a violation of 8 (b) (4) (D) was the principal issue in the only case to reach the Board involving charges under this section. In this case,⁴ a majority of the Board held that the statute requires that, in order to prove a violation of section 8 (b) (4) (D), the General Counsel must show noncompliance with the outstanding 10 (k) determination. The Board therefore remanded the case to the trial examiner to reopen the record "to give the General Counsel an opportunity to amend his pleadings and

³ See Fourteenth Annual Report, pp. 99-104.

⁴ *Los Angeles Building Trades Council (Westinghouse)*, 88 NLRB No. 241.

to introduce evidence to sustain his burden of proof." Chairman Herzog and Board Member Reynolds, dissenting, were of the opinion that compliance with a 10 (k) determination is an affirmative defense which must be proved by the respondent union.

In two cases, the Board was called upon to determine disputes which had given rise to unfair labor practice charges under section 8 (b) (4) (D). In one of these cases, *United Brotherhood of Carpenters (Stroh Brewery)*,⁵ the dispute arose from the following facts: Members of the respondent unions, in the employ of a subcontractor, were engaged in the installation of certain machinery on a construction project. While this work was in progress, the owner of the project himself hired members of another union to install a different kind of machinery. The respondent unions insisted that their members were entitled to the work in question and enforced their demands by picketing the project. The Board found that since the unions had no contractual rights to the disputed work and had no rights under any Board certification or order affecting the work within the meaning of section 8 (b) (4) (D), they could not lawfully require the company to assign the work to their members. Moreover, the Board rejected the unions' contention that the dispute had been "effectively settled" and was moot as indicated by the termination of the strike and the absence of the company's own installation workers from the project. Pointing out that the construction project had not been completed and that the company refrained from recalling its installation workers because of its fear that the respondent unions might resume their strike activities, the Board observed that it could scarcely be said that the dispute was moot or that it had been "voluntarily adjusted" within the provisions of section 10 (k).

In the second case, *Ship Scaling Contractors Association*,⁶ the Board held that it was without power to make a determination in the case because no work assignment dispute in the statutory sense was present. The Board found that the respondent union's picketing activities were not intended to force employers to assign a certain type of work to its members rather than the members of another union, but were for the purpose of bringing pressure on employers who employed members of the competing union to raise wages for the particular kind of work to the level established by the respondent union. The dispute, in the Board's opinion, was therefore one over a wage differential rather than over the assignment of work.

On the other hand, the Board rejected the respondent union's contention that the Board was without authority to determine the alleged jurisdictional dispute without finding, in the first place, that the

⁵ 88 NLRB No. 169.

⁶ 87 NLRB 92.

union's conduct violated section 8 (b) (4) (D). The Board pointed out that the only prerequisites to the exercise of its jurisdiction under section 10 (k) are (1) the filing of 8 (b) (4) (D) charges, and (2) an investigation by the Board's regional director which establishes that there is reasonable cause to believe that section 8 (b) (4) (D) has been violated.⁷

8. "Feather-bedding" Exactions

Section 8 (b) (6) of the act makes it an unfair labor practice for a labor organization or its agents—

to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

In the two cases in which the Board was called upon during the past year to apply the above provisions, *ITU (ANPA)*⁸ and *Conway's Express*,⁹ it was found that the specific situations presented were not within their purview. The Board's findings were based upon the conclusion that Congress in enacting section 8 (b) (6) clearly intended to reach, not all types of so-called "feather-bedding," but only the practice of exacting payment for services "not performed or not to be performed."

Applying this standard in the *ITU (ANPA)* case, the Board held that the union did not violate section 8 (b) (6) by insisting that employers continue the practice of paying their employees to set "bogus type" rather than lay them off during slack periods. Under this 75-year-old practice in the news printing industry, employers have their own employees reproduce in type certain matter originally made up as stereotype matrices in other shops. The employees are paid for time thus spent, which was found to be about 5 percent of full working time. The Board pointed out that under this practice "all employees engage in production work for the employer's benefit, but as an incident to such employment they demand and receive payment for certain non-production time." The Board found this differs from the examples of "feather-bedding" cited in the legislative history of section 8 (b) (6) in that, in the cases cited to Congress, the "stand-by or extra employees furnish no consideration whatsoever for their employment, and their entire compensation represents payment for non-productive time; in fact, their employment relationship is created and maintained solely for the purpose of forcing payment of wages for services not to be performed."

⁷ See also *Herzog v. Parsons*, 181 F. 2d 781 (C. A., D. C.), petition for writ of certiorari denied October 9, 1950, Supreme Court Docket No. 57.

⁸ 86 NLRB 951.

⁹ 87 NLRB 972.

The Board concluded that "payment for reproduction work can represent an integral part of the wage structure of workers already standing in a proximate employer-employee relationship, not unlike a guaranteed weekly or annual wage arrangement, which is generally recognized as a legal demand, although it may and often does in any given situation, involve payment for non-productive time."

In the *Conway's Express* case, a majority of the Board (Board Member Reynolds dissenting) held that the prohibitions of section 8 (b) (6) did not extend to the union's demand that, as part of a strike settlement, the employer pay to it an amount equal to that paid to a nonunion employee who made a trip which the union claimed should have been made under the contract by a union driver. This sum was to go to a union employee whom the union believed to have been entitled to the job under the agreement. In the majority's view, "This was * * * a demand made under a color of right, in the nature of a claim for damages for breach of contract. It was not a demand 'in the nature of an exaction' within the meaning of Section 8 (b) (6) of the Act." The majority further observed that the union's demand was not within the category of "feather-bedding" practices in the nature of "extortion" which Congress intended to prohibit.¹⁰

9. Union Responsibility for Unfair Practices

In determining the responsibility of labor organizations for alleged unfair labor practices within the meaning of section 8 (b) of the act, the Board during the past year applied the controlling rules of agency outlined during the preceding year in the *Sunset Line and Twine Company* case.¹¹

In *Santa Ana Lumber Co.*,¹² the Board reaffirmed the principle that the burden is on the General Counsel to show an agency relationship between the respondent union and the individuals who committed the acts with which the union is charged.¹³ Holding that this burden had not been sustained, the Board noted that the evidence showed only that the conduct charged was induced by the business agent of a union other than the respondent, and that there was no evidence of any con-

¹⁰ In *Kallaher and Mee, Inc.*, 87 NLRB 410, a proceeding involving charges under sec. 8 (a) (3), the employer attempted to justify the discharges on the ground that the employees in question had engaged in a strike which violated sec. 8 (b) (6) and was, therefore, unprotected concerted activity. The Board found that the purpose of the strike, which was called to induce the employer to reinstate several other employees who had previously been discharged, was wholly unrelated to the type of exaction for work "not performed or not to be performed" proscribed by sec. 8 (b) (6).

¹¹ 79 NLRB 1487; Fourteenth Annual Report, pp. 104-106.

¹² 87 NLRB 937.

¹³ See also *Irwin-Lyons Lumber Co.*, 87 NLRB 54.

nection between the business agent and the respondent union. The Board pointed out that "suspicion" was not "a substitute for proof." Nor, the Board held, could the union be charged with the alleged conduct of another individual whom the General Counsel had failed to identify clearly.

In *Irwin-Lyons Lumber Co.*,¹⁴ the Board similarly held that two union members who engaged in picket-line violence had not been shown to have acted as agents of the respondent union. The Board observed that neither of the two individuals held any union office. Moreover, the Board was of the opinion that while one of them, with the acquiescence of union representatives, had appointed himself an agent on the picket line, his acts of violence could not be imputed to the union because, prior to their commission, the union had abandoned its policy of force and because none of its responsible officials had any knowledge of the particular conduct.

In the *Howland Dry Goods Co.* case,¹⁵ where the question whether the acts of a union steward were binding on the union was involved, the Board applied the principle that the union's responsibility for the acts of its agent does not rest upon either express authority or ratification, but upon whether his acts were within the scope of his general authority. Holding that the authority of a union steward extends to instructing employees to honor the picket line of a sister union, the Board concluded that the union was answerable for the steward's conduct.

In one case during the past year,¹⁶ the Board had occasion to hold that several closely affiliated unions which jointly sponsored an organizational campaign were engaged in a joint venture and were, therefore, jointly and severally liable for the violations of section 8 (b) (1) (A) which occurred in the course of the campaign.

In two of the cases against the International Typographical Union,¹⁷ the question was presented whether the parent international union was jointly liable for the refusal of a subsidiary local to bargain in violation of section 8 (b) (3). In finding joint liability, the Board¹⁸ gave controlling weight to the actual working relationship between that international and its local. In the Board's view, this relationship outweighed the fact that the local had been certified separately as bargaining representative of the employee groups concerned and that the local had previously concluded collective bargaining

¹⁴ *Supra*.

¹⁵ 85 NLRB 1037.

¹⁶ *United Mine Workers (Union Supply Co.)*, 90 NLRB No. 38.

¹⁷ *Chicago Typographical Union No. 16 (CNPA)*, 86 NLRB 1041, and *Baltimore Typographical Union (Graphic Arts League)*, 87 NLRB 1215

¹⁸ Board Members Houston and Murdock, while dissenting on this issue in the *Chicago* case, joined in the decision in the *Baltimore* case.

agreements which the international did not approve. The Board observed that, pursuant to certain intraunion rules and regulations which were operative at the time, the international participated actively in most of the important stages of negotiations in order to insure contracts "palatable to *all* members" of the international. The Board further took into consideration that the arrangement between international and local, which contemplated that the international participate directly or indirectly in negotiations by prescribing and enforcing certain uniform working conditions, had been adopted by the employees who designated as their bargaining agent not only their local but also the international.

C. Remedial Orders

Whenever the Board finds that any person named in the complaint has engaged or is engaging in any unfair labor practice, it is empowered under section 10 (c) of the act to issue an order requiring such person to "cease and desist from such unfair labor practices, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." This applies to both employers and labor organizations or the agents of either.

During the past fiscal year, the remedial orders issued by the Board have generally followed established practice.¹ As heretofore, the injunctive provisions of the Board's orders were framed to meet the requirements of the various sections of the act and varied according to the nature of the case. Where the record revealed an attitude of general hostility to the purposes of the act and the commission of future violations of the act could, therefore, be anticipated, the Board issued a broad order to cease and desist not only from the unfair labor practices found but also from infringing in any other manner upon the employees' rights guaranteed by section 7 of the act.² In other situations, where the element of general hostility was lacking, the

¹ See previous annual reports; Fourteenth Annual Report, orders against employers, pp. 79-80, orders against unions, pp. 107-109.

² *Anchor Rug Mill*, 85 NLRB 764; *Premier Worsted Mills*, 85 NLRB 985; *Lloyd A. Fry Roofing Company*, 85 NLRB 1222; *Morristown Knitting Mills*, 86 NLRB 342; *Rome Lincoln-Mercury Corp.*, 86 NLRB 397; *E. A. Laboratories, Inc.*, 86 NLRB 711; *Virtue Bros Mfg. Co.*, 87 NLRB 1518; *O. Ray Randall Manufacturing Company*, 88 NLRB No. 18; *Eva-Ray Dress Mfg. Co., Inc.*, 88 NLRB No. 94; *Weisfelds, Inc.*, 88 NLRB No. 122; *Globe Wireless, Ltd.*, 88 NLRB No. 211; *Luzerne Hide and Tallow Company*, 89 NLRB No. 119; *Central Wisconsin Motor Transport Company*, 89 NLRB No. 143; *A. Kravitz & Company*, 89 NLRB No. 192; *A. J. Swis Products Corporation of Virginia*, 90 NLRB No. 33; *Cen-Tennial Cotton Gin Company*, 90 NLRB No. 46.

Board ordered the employer or union to cease and desist from the particular unfair labor practice found and from any like or related conduct.³

Insofar as publication of orders by the respondent is concerned, the Board has continued to direct the posting of notices at such places as the respondent's office, plant, or other place of business. In cases in which unions are found in violation, they customarily are ordered to post notices in their meeting halls and offices where notices to members usually are posted. However, in order to reach the employees where special circumstances prevail, the Board directed other appropriate methods of publication. Thus, in the case of a dam construction project, notices were ordered to be posted at the dam site and other work locations throughout the particular watershed; ⁴ the operator of a plant protection service was directed to post notices at his office and at "stations where his employees are assigned"; ⁵ in the case of a department store, publication of the notice in the employer's "Daily Bulletin," and distribution of the "Bulletin" to the employees was directed; ⁶ an association of maritime employers was ordered to post notices in the association's offices and aboard the vessels operated by its members; ⁷ and where operations were discontinued at the mine at which unfair labor practices were committed, notices were ordered posted at any office or place of business in the vicinity of the mine.⁸ Similarly, in some cases, unions were ordered to publish in their official publication notices that they would cease conduct found illegal.⁹

1. Computation of Back Pay

The most important development regarding affirmative remedies was the amplification of the rules governing back-pay awards to put the computation of back pay on a quarterly basis. The Board's previous practice was to compute back-pay awards by calculating the differ-

³ See *Peerless Yeast Company*, 86 NLRB 1098 and *Progressive Mine Workers, et al., (Randolph Corporation)*, 89 NLRB No. 194, where discriminatory discharges were induced by union conduct; *General Controls Co., a corporation*, 88 NLRB No. 242; *Yawman and Erbe Manufacturing Company*, 89 NLRB No. 108; *Electric Auto-Lite Company*, 89 NLRB No. 145, where the employers refused to furnish data concerning wage rates; *Leadbetter Logging & Lumber Co.*, 89 NLRB No. 80, where there was evidence of past amicable relations between the employer and the union. See also, *Sussex Hats, Inc.*, 85 NLRB 399; *Clark Shoe Company*, 88 NLRB No. 178; *The Maryland Drydock Company*, 88 NLRB No. 230; *B. F. Goodrich Company*, 89 NLRB No. 139; *Higgins, Inc.*, 90 NLRB No. 81.

⁴ *Ozark Dam Constructors, et al.*, 86 NLRB 520.

⁵ *Standard Service Bureau*, 87 NLRB 1405.

⁶ *Meier & Frank Co., Inc.*, 89 NLRB No. 114.

⁷ *Pacific Maritime Association*, 89 NLRB No. 115.

⁸ *Progressive Mine Workers, et al., (Randolph Corp.)*, 89 NLRB No. 194.

⁹ *International Typographical Union (ANPA)*, 86 NLRB 951; *Chicago Typographical Union No. 16*, 86 NLRB 1041.

ence between what an employee would have earned, during the whole period of discrimination, absent discrimination against him, and what he actually earned in other employment during this period. Regarding this method of computation, the Board declared in the *F. W. Woolworth* case:¹⁰

The cumulative experience of many years discloses that this form of remedial provision falls short of effectuating the basic purposes and policies of the Act. We have noted in numerous cases that employees, after having been unemployed for a lengthy period following their discriminatory discharges, have succeeded in obtaining employment at higher wages than they would have earned in their original employments. This, under the Board's previous form of back-pay order, resulted in the progressive reduction or complete liquidation of back pay due.

The deleterious effect upon the companion remedy of reinstatement has been twofold. Some employers, on the one hand, have deliberately refrained from offering reinstatement, knowing that the greater the delay, the greater would be the reduction in back-pay liability. Thus, a recalcitrant employer may continue to profit by excluding union adherents from his enterprise. Employees, on the other hand, faced with the prospect of steadily diminishing back pay, have frequently countered by waiving their right to reinstatement in order to toll the running of back pay and preserve the amount then owing. Upon analysis of a substantial number of cases involving such action, we have found the economic motivation and compulsion upon the employee not difficult to discern. Unemployment or employment at lesser wages may have resulted in the exhaustion of the employee's savings; his incurrence of debts, and even in deprivation of the necessities of life. Our observation on this score accords with the view of the United States Supreme Court which, in treating this general problem, recognized that the worker is "not likely to have sufficient resources" to sustain the necessary "minimum standard of living necessary for health, efficiency, and general well-being" during such periods. [*Brooklyn Savings Bank v. O'Neil*, 324 U. S. 697, 707.] The consequent desire of the victim of discrimination to recoup the maximum amount possible in order to offset such losses, even if this must be accomplished at the price of relinquishing the right to be returned to his former position, may readily be anticipated. The Board has viewed these results with concern because we, as well as the courts of review, have long regarded the remedy of reinstatement as one of the most effective measures expressly provided by the Act for expunging the effects of unfair labor practices and maintaining industrial peace. [*Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 195.]

In view of the foregoing, the Board ordered that loss of pay on account of discrimination be determined by computing the difference between (1) the earnings the employee would have received in each separate calendar quarter or portion thereof, but for the employer's discrimination against him and (2) the quarterly earnings from other employment in each quarter during the period of discrimination. The Board specifically ruled that earnings of one particular quarter shall have no effect upon the back-pay liability for any other quarter.¹¹ In order to facilitate the determination of back pay according to this formula, the Board required that the employer, upon request, make all pertinent records available to the Board and its agents.

¹⁰ 90 NLRB No. 41.

¹¹ See also *Cen-Tennial Cotton Gin Company*, 90 NLRB No. 46.

2. Reasonable Effort to Seek New Employment

In the *Harvest Queen* case,¹² the Board reaffirmed the rule adopted in 1943 in the *Ohio Public Service* case¹³ that a discriminatorily discharged employee, to be eligible for back pay, must make a reasonable effort to obtain new employment during the period of discrimination. It also reaffirmed the *Ohio Public Service* rule that registration of the employee with the United States Employment Service or equivalent State employment offices will be accepted as conclusive evidence of a reasonable search for employment absent a showing that the employee, without good cause, rejected or gave up desirable new employment. The Board decision in the *Harvest Queen* case said:

We are of the opinion that the requirement set forth in the *Ohio Public Service* case, that claimants make reasonable efforts to secure desirable new employment, is a sound rule, without regard to the special wartime conditions of September 1943, which were adverted to in the quoted portion of the decision. So that an employer's back-pay obligation may be mitigated as much as possible, the requirement should be met by claimants under today's conditions as well.

As facilities equivalent to the United States Employment Service are maintained by the various States as a medium for seeking employment, we shall regard registration with such State offices or with the United States Employment Service as conclusive evidence that a reasonable search for employment has been made. As we held in the *Ohio Public Service* case, where such registration has been established, any party urging a diminution of a back-pay award will be restricted to the introduction of evidence showing that the claimant, without good cause, rejected an offer of, or gave up, desirable new employment. If evidence showing a failure of registration is adduced, additional evidence may then be presented to prove that no other reasonable effort to obtain desirable new employment has been made. In determining whether there has been such reasonable effort, we shall consider all the evidence, including circumstances which explain the failure to have done so.

3. Joint Liability of Employer and Union

During the past year, the Board for the first time had occasion to determine that, where both an employer and a union are responsible for discrimination against an employee, section 10 (c) permits the Board, in its discretion, to hold the employer and the union jointly liable for back pay.¹⁴ In this case, the Board held the union and the employer jointly and severally liable without adjusting the amount of back pay between them since both had committed unfair labor practices.

¹² *Harvest Queen Mill & Elevator Co*, 90 NLRB No. 32.

¹³ *Ohio Public Service Co*, 52 NLRB 725, enforced 144 F. 2d 252 (C. A. 6), certiorari denied 324 U. S. 857.

¹⁴ *H M Newman*, 85 NLRB 725. See also *Clara-Val Packing Company*, 87 NLRB 703; *Union Starch & Refining Company*, 87 NLRB 779; *Lloyd A. Fry Roofing Company*, 89 NLRB No. 93; *New York Shipbuilding Corporation*, 89 NLRB No. 197; *General American Aero-coach, etc*, 90 NLRB No. 36; and *Pinkerton's National Detective Agency, Inc.*, 90 NLRB No. 39; *Acme Mattress Company, Inc.*, 91 NLRB No. 169, decided October 19, 1950, reaffirming (Chairman Herzog and Board Member Reynolds dissenting).

However, in the *General American Aerocoach*¹⁵ and *Pinkerton's National Detective Agency*¹⁶ cases, the Board provided that the union's joint liability for back pay would terminate 5 days after the union notified the employer in writing that it had withdrawn its objections to the reemployment of the employees who had suffered discrimination. In the *General American Aerocoach* case, the Board also specifically required the union to request the employer to offer reinstatement to the employees whose discriminatory discharge the union had caused. This makes it possible for a labor organization, which has no direct power over the reinstatement of employees, to limit its liability by affirmative action to remedy its violation of the act to the extent of its power.

¹⁵ 90 NLRB No. 36.

¹⁶ 90 NLRB No. 39.

Supreme Court Rulings

SUPREME COURT litigation during the past year was concerned with several important issues affecting the administration of the amended National Labor Relations Act in general, as well as with the construction of specific provisions of both the amended and original acts.

Eight cases coming before the Court involved the act. Three dealt with the constitutionality of the so-called non-Communist affidavit requirements of the amended act. Two were concerned with the question of the extent to which the Board's power to seek judicial enforcement of its orders is affected (1) by events occurring subsequent to issuance of the orders, and (2) by the lapse of time intervening between the issuance of an order and the Board's petition to the court of appeals for its enforcement. In another case, the Board's interpretation of the closed-shop proviso of the Wagner Act was involved. In the remaining two cases, the Board participated as *amicus curiae* because of questions presented regarding the extent to which Congress, in the National Labor Relations Act, had preempted the field of labor relations and had thereby excluded State regulation.

1. The Non-Communist Affidavit

In *American Communications Association v. Douds*, and *United Steelworkers v. N. L. R. B.*,¹ the Court upheld² the constitutional validity of the provisions of section 9 (h) of the amended act. Section 9 (h) denies a labor organization access to the processes of the Board unless it has filed with the Board

an affidavit executed contemporaneously or within the preceding 12-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

¹ See Fourteenth Annual Report (1949) p. 126.

² 339 U. S. 382, rehearing denied, 339 U. S. 990, decided May 8, 1950. Justice Black dissented, while Justices Jackson and Frankfurter concurred and dissented in part. Justices Douglas, Clark, and Minton did not participate.

The Court held that, in enacting section 9 (h), Congress did not seek to regulate speech by censorship or by prohibiting the dissemination of information, but exercised its powers under the commerce clause in order to protect commerce from the continuing danger of disruptive political strikes. Insofar as the purpose to safeguard commerce was concerned, the Court held that section 9 (h) was constitutional in that the remedy provided bears a reasonable relation to the evil sought to be reached. Thus, the Court stated, Congress could, and did, find that the policy of the Communist Party, unlike that of other political parties, is to utilize union leaders to bring about strikes and other obstructions of commerce for political purposes.³ Similarly, the Court declared, Congress could reasonably conclude that persons who believe in the forcible overthrow of the Government are likewise apt to abuse union office for such purposes. Consequently, the Court held, it was within the constitutional powers of Congress to protect commerce from these dangers and to bring pressure on unions to deny offices to persons who were likely to use them for purposes harmful to the national interest. To this extent, the Court considered section 9 (h) akin to statutes prohibiting other groups of persons from holding positions of power because "they threaten to abuse the trust that is a necessary concomitant of the power of office."

The Court also held, that although section 9 (h) affected political affiliation or beliefs, its validity did not depend upon a showing that affiliation with the Communist Party or the expression of belief in the forcible overthrow of the Government themselves constitute "a clear and present danger of some substantial evil." The Court explained that the cases in which the "clear and present danger" test had been applied were concerned with the *suppression* of speech which threatened to ripen into conduct inimical to the public welfare, whereas section 9 (h) does not attempt to suppress speech because of anticipated harmful consequences but seeks to protect commerce from "evils of conduct that are not the product of speech at all." Section 9 (h), the Court continued, "is designed to protect the public not against what Communists and others identified therein advocate or believe, but against what Congress has concluded they have done and are likely to do again."

Moreover, according to the Court, the effect of the limitations of section 9 (h) on freedom of speech and assembly is narrow: Section 9 (h) neither directly prevents or punishes speech, affiliations, or beliefs, or indirectly seeks to suppress dangerous ideas, nor can it be "made the instrument of arbitrary suppression of views." Section

³The concurring part of Justice Jackson's opinion sets forth in detail the conclusions which Congress could draw from the evidence before it regarding the structure and objectives of the Communist Party. See footnote 2, *supra*.

9 (h), the Court declared, contains no elements of invalid censorship or prohibition of the dissemination of information, its purpose being to discourage the identified affiliations and beliefs only where they are combined "with occupancy of a position of great power over the economy of the country." Thus, Congress in section 9 (h) did not restrain the political activities of the Communist Party or seek to stifle beliefs; section 9 (h) affects only relatively few persons, "leaving the great majority of persons of the identified affiliations and beliefs completely free from restraint. And it leaves those few who are affected free to maintain their affiliations and beliefs subject only to the possible loss of positions which Congress has concluded are being abused to the injury of the public by members of the described groups."

In sustaining the portion of section 9 (h) dealing with belief, however, as distinguished from membership in the Communist Party, the Court held that it must be construed as applying only to belief in the "violent overthrow of the Government as it presently exists under the Constitution as an objective, not merely a prophecy." Moreover, the Court pointed out, section 9 (h) does not suppress, forbid, or penalize the "philosophical" belief in the forcible overthrow of Government; its sole effect is to force the relinquishment of union office by persons who maintain such beliefs.⁴

The Court further held that section 9 (h) was not unconstitutionally vague, nor was it a bill of attainder or *ex post facto* law within the proscription of article I, section 9.

Pursuant to section 9 (h), the Court noted, a person is punishable for untruthfully denying his *affiliation* with the Communist Party or his *support* of organizations advocating the overthrow of the Government by *illegal or unconstitutional methods*. However, section 35 of the Criminal Code, which is made applicable, provides punishment only for statements wilfully made with knowledge of his falsity. In view of this restriction, the Court concluded, section 9 (h) gives adequate warning of the nature of the punishable offense and is therefore valid even though its terms might, in other contexts, be unduly vague and indefinite in the constitutional sense.

Rejecting the argument that section 9 (h) was a bill of attainder, the Court called attention to the fact that the disability growing out of section 9 (h) does not seek to punish past actions of the persons identified, but attempts to curtail future conduct which may be anticipated from present affiliations or beliefs. That section 9 (h) is intended to prevent future dangerous conduct, rather than to punish

⁴ Justices Jackson and Frankfurter concurred in the Court's holding that sec. 9 (h) is constitutional insofar as it concerns affiliation or membership in the Communist Party, but dissented as to the validity of the provisions requiring disclosure of certain beliefs.

past action, the Court noted, is demonstrated by the fact that persons within the purview of section 9 (h) may escape the disabilities imposed by voluntarily changing their past loyalties and beliefs.

In *Osman v. Douds*,⁵ the Court again upheld the constitutionality of section 9 (h) upon the grounds set forth in the *American Communications Association* case.

2. Scope of Judicial Review

In *N. L. R. B. v. Mexia Textile Mills, Inc.*,⁶ and *N. L. R. B. v. Pool Manufacturing Co.*,⁷ both decided May 15, 1950, the primary common issue on which the Court granted *certiorari* was whether the Court of Appeals for the Fifth Circuit had properly deferred action on the Board's petition for enforcement and had properly remanded the case for the purpose of ascertaining, and determining the effect of, the employer's alleged compliance with the Board's order.⁸ Vacating the respective orders below, the majority of the Court, in accordance with well-established precedent,⁹ held that "the employer's compliance with an order of the Board does not render the cause moot, depriving the Board of its opportunity to secure enforcement." The Court emphasized that the Board's order "imposes a continuing obligation; and the Board is entitled to have the resumption of the unfair practice barred by an enforcement decree." The Court concluded: "The fact that an enforcement decree adds the sanction of punishment for contempt, is not a circumstance to which a court will ordinarily lend a friendly ear."¹⁰

Referring to the legislative history of both the original and amended acts, the Court noted the manifest congressional intent to eliminate compliance from consideration in enforcement proceedings, and thus to make immediately available a court decree to serve as a basis for contempt proceedings in case of resumption of the practices prohibited in the Board's orders. The matter of compliance being, therefore, wholly irrelevant for the purpose of enforcement, the Court concluded that the lower court was without power to grant the respondent party's

⁵ 339 U. S. 846, decided June 5, 1950. Justice Minton, who did not participate in the *Communications Association* case, joined Chief Justice Vinson and Justices Reed and Burton in upholding sec. 9 (h) in its entirety. Justice Douglas, who likewise did not participate in the *Communications Association* case, joined Justices Black, Frankfurter, and Jackson to the extent that they considered the required disclosure of beliefs invalid. Justice Douglas found it unnecessary to pass upon the constitutionality of the other provisions of sec. 9 (h), since in his opinion the several oath requirements were not separable.

Justice Clark did not participate in the decision of the *Osman* case.

⁶ 339 U. S. 563.

⁷ 339 U. S. 577.

⁸ See Fourteenth Annual Report (1949) p. 124.

⁹ Cf. Fourteenth Annual Report (1949) pp. 120-121.

¹⁰ The Court quoted from the decision of the Court of Appeals for the Second Circuit in *N. L. R. B. v. General Motors Corp.*, 179 F. 2d 221, 222.

motions to adduce additional evidence. For, as the Court had previously declared,¹¹ the "power to adduce additional evidence granted to the circuit court of appeals by section 10 (c) cannot be employed to enlarge the statutory scope of judicial review."

The *Pool Manufacturing* case presented the further question of whether the lapse of 2½ years since the issuance of the Board's order made its enforcement inappropriate. Holding that, insofar as the immediate circumstances of the case were concerned, the Board's delay in seeking enforcement was not fatal,¹² the Court pointed out that since Congress permitted, without requiring, resort to enforcement it is the primary responsibility of the Board to determine in each case whether and when the institution of enforcement proceedings will best serve to effectuate the policies of the act. The Court observed that the process of negotiation rather than enforcement proceedings at times may advance those policies; but while in one case such negotiations may lead to an immediate settlement, in another case much time may elapse before the ultimate failure of negotiation techniques indicates the necessity for enforcement. Even in case of a settlement, the Court noted, it is for the Board to decide whether the settlement shall be considered as controlling. In any event, the Court concluded, the respondent party, who could have obtained review of the Board's order under section 10 (f) of the act, was not in a position to object to the delay on the part of the Board in seeking enforcement.¹³

In both cases, the Supreme Court vacated the order of the court of appeals and decreed enforcement of the Board's order "unless 'extraordinary circumstances' are pleaded which justify the respondent's failure to urge its objection before the Board."¹⁴

In three cases in which the Board sought review of the action of the Court of Appeals for the Fifth Circuit in denying enforcement without indicating its reasons, the Supreme Court denied the Board's petition for *certiorari*.¹⁵

¹¹ *N. L. R. B. v. Donnelly Garment Co.*, 330 U. S. 219, 284-235.

¹² Cf. Fourteenth Annual Report (1949) pp. 122-123.

¹³ Insofar as the employer sought to resist enforcement on the ground that the Board did not seek enforcement until long after the employer had bargained with the complaining union, the Court referred to its holding in *N. L. R. B. v. Crompton Highland Mills*, 337 U. S. 217, 225 (cf. Fourteenth Annual Report (1949) pp. 113-114) to the effect that the Board's order "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." Unless this reasoning is applied to situations like the present one, the Court pointed out, the Board's orders may readily be defeated by delaying tactics in negotiations followed by motions to adduce evidence in response to the enforcement proceedings.

¹⁴ Justices Frankfurter and Jackson dissented solely on the ground that, in the light of the lower court's subsequent decision in *N. L. R. B. v. Cooper*, 179 F. 2d 241, and in view of other circumstances in the *Mexia* and *Pool* cases, the lower court's orders in those cases did not indicate an intended departure from the firmly established precept that compliance with an order of the Board is not a defense to its enforcement.

¹⁵ *N. L. R. B. v. Atlanta Metallic Casket Co.*; *N. L. R. B. v. Massey Gin & Machine Works, Inc.*; and *Wilson & Co., Inc. v. N. L. R. B.*, 338 U. S. 910.

3. Closed Shop Under the Wagner Act

In *Colgate-Palmolive-Peet Co. v. N. L. R. B.*, 338 U. S. 355, decided December 5, 1949, the Court reversed the decision of the Court of Appeals for the Ninth Circuit approving the Board's view, originally expressed in the *Rutland Court* case,¹⁶ that the closed-shop proviso of the Wagner Act did not excuse discrimination against an employee by the parties to a union-security agreement where the contracting employer knew that the employee was expelled from the union on account of his timely advocacy of a change of representatives.¹⁷ The Board's *Rutland Court* doctrine, as the Court noted, had previously been approved by the Ninth Circuit, as well as by the Second and Third Circuits,¹⁸ but had been disapproved by the Seventh Circuit.¹⁹ The Supreme Court's reversal of the lower court rested on its disagreement with the Board's conclusion that the closed-shop provisions of the original section 8 (3) could not be reconciled with provisions of section 7, which guarantee employees the right to select their representatives freely, unless employees were protected against the use of closed-shop contracts to penalize timely activities on behalf of a rival union. The Court took the view that Congress, though fully aware of the inevitable restriction on the employees' free choice of representatives, enacted the proviso to section 8 (3) because of the tendency of the closed-shop to promote stability in labor-management relations, which was the primary purpose of the act. Unlike the Board, the Court concluded that the congressional policy in regard to the effect to be given the proviso to section 8 (3) was clear and left no room for the Board's *Rutland Court* doctrine. The Court further held that its decision in *Wallace Corp. v. N. L. R. B.*²⁰ did not construe the proviso of section 8 (3) to preclude the use of closed-shop agreements for the purpose of discharging employees whom the contracting union has expelled for rival union activities at any time during the term of the contract. Contrary to the view of the Board and the Courts of Appeals for the Second and Ninth Circuits,²¹ the decision in the *Wallace* case, the Court stated, turned entirely on the fact that the employees there were discharged pursuant to a closed-shop contract which had been made with a dominated union and was, therefore, invalid from its inception.

¹⁶ Eighth Annual Report (1943) p. 34

¹⁷ See Fourteenth Annual Report (1949) pp 116-117; Twelfth Annual Report (1947) pp 49-51.

¹⁸ Note the cases discussed at pp. 50-51 of the Twelfth Annual Report (1947) and pp. 116-117 of the Fourteenth Annual Report (1949); see also *N. L. R. B. v. Public Service Coordinated Transport*, 177 F. 2d 119 (C. A. 3).

¹⁹ See Thirteenth Annual Report (1948) p. 70, discussing *Lewis Meier Co. v. N. L. R. B.*, 21 LRRM 2093, and *Aluminum Co. of America v. N. L. R. B.*, 159 F. 2d 523

²⁰ 323 U. S. 248. See Tenth Annual Report (1945) pp. 57-58.

²¹ See Twelfth Annual Report (1947) pp. 49-50. See also *Hunt v. Crumbach*, 325 U. S. 821, 826, and Tenth Annual Report (1945) p. 50.

Justices Reed and Burton, dissenting, expressed the opinion that the use of closed-shop agreements to destroy the employees' free choice of representatives is inconsistent with the guarantees of section 7. Therefore, they concluded, it was proper for the Board to resolve the conflict between section 7 and the closed-shop proviso of section 8 (3).

4. Extent of State Jurisdiction

In *Plankinton Packing Co.* case²² and *International Union, UAW v. O'Brien*,²³ the Board participated as *amicus curiae* because in its view the State action involved in each case encroached upon the field occupied by Congress in enacting the original and amended National Labor Relations Acts.

In the *Plankinton* case, the United States Supreme Court, citing *Bethlehem Steel*²⁴ and *LaCrosse Telephone*,²⁵ reversed in a *per curiam* opinion the Wisconsin Supreme Court which had upheld the jurisdiction of the Wisconsin Employment Relations Board to redress, in an interstate industry, the discharge of an employee which was discriminatory under Wisconsin law. The discharge of the employee under a maintenance-of-membership agreement, after he had resigned from the union during an "escape period," was in conflict with both the Wisconsin law and the parallel provisions of the National Labor Relations Act.

In its argument before the Supreme Court, the National Labor Relations Board contended that under the rule of the *Bethlehem* and *LaCrosse* cases²⁶ its jurisdiction over the unfair labor practice was exclusive. Pursuant to those cases, the Board pointed out, it was sufficient that the Plankinton company was clearly engaged in commerce within the meaning of the National Labor Relations Act and that the Board had repeatedly asserted its jurisdiction over the company in representation cases. The Board also noted that in the *Bethlehem* case,²⁷ the Supreme Court had specifically rejected "a case by case test of federal supremacy" and that it was, therefore, of no moment that the Board had not acted in the instant case.²⁸

To the extent that the Court in the *Bethlehem* and *LaCrosse* cases had upheld the exclusive jurisdiction of the Board in matters

²² *Plankinton Packing Co. v. Wisconsin Employment Relations Board*, 338 U. S. 953, decided February 13, 1950.

²³ 330 U. S. 454, decided May 8, 1950.

²⁴ *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767.

²⁵ *LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18.

²⁶ See Fourteenth Annual Report (1949) p. 115, and Twelfth Annual Report (1947) p. 43.

²⁷ 330 U. S. at 776.

²⁸ In *Wisconsin Employment Relations Board v. Gilson Bros.*, 338 U. S. 891, presenting a similar problem, the Supreme Court denied the petition for *certiorari* in support of which the Board had filed a brief as *amicus curiae*. The record in that case did not show that the employer was subject to the National Labor Relations Act, nor were there any cases in which the Board had assumed jurisdiction over the company or its employees.

of representation because of the Court's concern with the confusion which might result from concurrent exercise of discretion by Federal and State agencies in those matters, the Board pointed out that the Court's reasoning applied with equal force to overlapping jurisdiction over unfair labor practices. The Board called attention to the possibility that State and Federal boards might evaluate the same evidence differently and might grant different relief under identical circumstances; that aggrieved parties could select the forum they believed most favorable to them; and that a party unsuccessful before a State board could again seek relief before the National Labor Relations Board.

In predicating its *per curiam* decision on the *Bethlehem* and *La-Crosse* cases, the Court implicitly rejected the Wisconsin court's view that the *Plankinton* case was governed by the *Algoma Plywood* case where the Court had sustained the jurisdiction of the Wisconsin board over a discharge pursuant to a union-security agreement which conformed with Federal but not with State law requirements. The Board contended that the holding of the *Algoma* case was inapplicable because (1) the discharge in the *Plankinton* case, unlike that in the *Algoma* case, was in contravention of, rather than pursuant to, a union-security agreement, inasmuch as Plankinton's employee had resigned from the contracting union under an "escape clause" and (2) the discharge in the *Algoma* case, unlike the discharge in the present case, did not violate any provision of the Federal act. Finally, the Board observed that while section 14 (b) of the amended National Labor Relations Act authorizes States to enact and enforce limitations on union-security agreements which are more restrictive than those of the National Labor Relations Act, Congress did not thereby vest the States with concurrent jurisdiction over unfair labor practices which are unaffected by the proviso to section 8 (a) (3).

In *International Union of United Automobile Workers v. O'Brien*,²⁹ where the Board likewise participated as *amicus curiae*, the Court held invalid the Michigan labor mediation law (Bonine-Trippe Act) of 1947, as in conflict with the congressional policies embodied in the Wagner and Taft-Hartley Acts. The provisions of the Michigan statute, the Board argued, encroached on the field preempted by Congress (1) by requiring parties unable to settle a dispute over legitimate collective-bargaining demands to give at least 10 days' notice of their intention to strike or lock out; (2) by authorizing State authorities to mediate the dispute and, in case of the failure of mediation efforts, to hold a strike vote in a unit determined by the State board; and (3) by providing for criminal sanctions in case of a strike not authorized in an election by a majority of the employees.

²⁹ 339 U. S. 454, decided May 8, 1950.

The Court's holding that the State of Michigan lacked the power to regulate strikes in the foregoing manner is predicated primarily upon its acceptance of the proposition that Congress, in the original and amended National Labor Relations Acts, had occupied the particular field by guaranteeing to employees the right to engage in legitimate "concerted activities" and by preserving the right to strike in support of lawful collective-bargaining demands, subject only to specific limitations contained in the Federal law.

Referring to its holdings in the *Plankinton*,³⁰ *LaCrosse Telephone*,³¹ and *Bethlehem Steel*³² cases, as well as in *Hill v. Florida*,³³ the Court held that Congress, in dealing with strikes under its power to regulate interstate commerce, left no room for concurrent State regulation.

The notice, mediation, and strike-vote provisions of the Michigan statute, the Court observed further, were in direct conflict with the corresponding provisions of the National Labor Relations Act which permit strikes at a different time and omits any requirements for majority approval of strikes. Finally, the Court held that under its decisions in the *Plankinton*, *LaCrosse*, *Bethlehem*, and *Hill* cases, the Michigan law was inconsistent with the Federal law in that it provided for the determination of bargaining units by State authorities which may differ from the determinations of the National Labor Relations Board. The Court noted that, while any unit found appropriate by the Michigan board for the purpose of a strike vote necessarily could not extend beyond the State boundaries, the National Labor Relations Board had in fact certified the defendant union as the representative of a unit of employees in several States.

The Court rejected the argument that the Michigan statute should be held valid under the rule of *International Union, U. A. W., Local 232 v. Wisconsin Employment Relations Board*,³⁴ where the Court had upheld the power of the State to regulate "recurrent or intermittent unannounced stoppages of work to win unstated ends." The Court pointed out that the conduct there involved, unlike the conduct sought to be reached by the Michigan statute, was not within the purview of the National Labor Relations Act and was, therefore, governable by State law. The Court reiterated the principle that where Congress, as in the present case, "has protected the union conduct which the State has forbidden * * * the State legislation must yield."

³⁰ *Supra*, footnote 22.

³¹ *Supra*, footnote 25. Fourteenth Annual Report (1949) p 115

³² *Supra*, footnote 24, Twelfth Annual Report (1947) p 43.

³³ 325 U. S 538 (1945). In this case the Court invalidated a State statute providing for the licensing of union representatives.

³⁴ 336 U. S. 245, decided February 28, 1949.

VI

Enforcement Litigation

LITIGATION by the Board during the past year, as in previous years, was primarily concerned with the enforcement of Board orders. In the course of this litigation, the courts of appeals reviewed 88 Board orders, as compared with 50 orders during the preceding year. Supreme Court review was obtained in 4 cases as compared with 3 cases during the fiscal year 1949.¹ The results of the Board's enforcement litigation in the courts of appeals and the Supreme Court during the past year, and during its entire existence, are summarized in the following table:

Results of Litigation for Enforcement or Review of Board Orders July 1, 1949, to June 30, 1950, and July 5, 1935, to June 30, 1950

Results	July 1, 1949, to June 30, 1950		July 5, 1935, to June 30, 1950	
	Number	Percent	Number	Percent
Cases decided by United States courts of appeals.....	88	100 0	873	100 0
Board orders enforced in full.....	*57	64 8	525	60 1
Board orders enforced with modification.....	14	15 9	211	24.2
Board orders set aside.....	15	17 0	120	13.7
Remanded to Board.....	2	2 3	17	2 0
Cases decided by U S. Supreme Court.....	4	100 0	66	100 0
Board orders enforced in full.....	3	75 0	48	72.7
Board orders enforced with modification.....			11	16.7
Board orders set aside.....	1	25.0	3	4.6
Remanded to Board.....			1	1.5
Remanded to court of appeals.....			2	3.0
Board's request for remand or modification of enforcement orders denied.....			1	1.5

*One of these cases was remanded to the Board for additional findings on one point.

In a substantial number of the cases successfully litigated by the Board during the past year, the issues were largely confined to con-

¹ Rulings of the Supreme Court are discussed in the preceding chapter.

Note.—In citations of cases against unions in the footnotes throughout the chapters on litigation, the employer bringing the charge in the case generally will be named in parentheses. In all citations, the abbreviation C. A. stands for U. S. Court of Appeals, and the number following this abbreviation indicates the circuit involved. Thus C. A. 10 means U. S. Court of Appeals for the Tenth Circuit. The abbreviation D. C. in citations means United States District Court and the abbreviation following it indicates the location of the court. Thus, D. C., D. C., means the U. S. District Court for the District of Columbia and D. C., W. Pa., means the U. S. District Court for Western Pennsylvania.

ventional questions regarding the evidentiary and legal bases of the Board's unfair labor practice findings and orders, and the application of well-established principles and procedures.² The cases in which new principles were formulated regarding the administration of various provisions of and amendments to the act, and in which the courts had occasion to reaffirm principles previously established, are discussed below.

1. Principles Relating to Employer Unfair Practices

a. Employers Subject to the Act

In *N. L. R. B. v. O'Keefe & Merritt Mfg. Co.*, 178 F. 2d 445 (C. A. 9), the court held that the Board had properly directed its order to a corporation and an affiliated partnership whom it had held liable as joint employers for unfair labor practices under the following circumstances: During an organizational campaign the corporate employer illegally assisted one of two competing labor organizations. The assisted union was defeated in an election and the successful union was certified by the Board. Thereupon, both the corporation and the partnership interfered with the certified union's bargaining rights. Bargaining negotiations were delayed by the corporate employer while arrangements for the transfer to the partnership of the manufacturing operations in which the union's members were engaged were made and carried out. Simultaneously, the partnership executed a closed-shop contract with the defeated but favored union covering the

² See the following cases in which orders of the Board were enforced in full: *N. L. R. B. v. Piedmont Cotton Mills*, 179 F. 2d 345 (C. A. 5); *N. L. R. B. v. Cannon Mfg. Co.*, 177 F. 2d 197 (C. A. 9); *N. L. R. B. v. Burnette Castings Co.*, 177 F. 2d 203 (C. A. 6); *N. L. R. B. v. Gibson County Electric Membership Corp.*, 177 F. 2d 203 (C. A. 6); *N. L. R. B. v. Columbian Carbon Co.*, 177 F. 2d 1003 (C. A. 10); *N. L. R. B. v. Differential Steel Car Co.*, 179 F. 2d 241 (C. A. 6); *N. L. R. B. v. General Motors Corp.*, 179 F. 2d 221 (C. A. 2); *N. L. R. B. v. Tower Hosiery Mills, Inc.*, 180 F. 2d 701 (C. A. 4), certiorari denied October 9, 1950; *N. L. R. B. v. Lewis Motor Company, Inc.*, 180 F. 2d 254 (C. A. 5); *N. L. R. B. v. Consumers Cooperative Refinery Association*, 180 F. 2d 581 (C. A. 5); *N. L. R. B. v. Super-Cold Southwest Company*, 180 F. 2d 581 (C. A. 5); *Cedartown Yarn Mills, Inc. v. N. L. R. B.*, 180 F. 2d 579 (C. A. 5); *Abercrombie Company, J. S., v. N. L. R. B.*, 180 F. 2d 578 (C. A. 5); *N. L. R. B. v. Aldora Mills*, 180 F. 2d 580 (C. A. 5); *Bochner v. N. L. R. B.*, 180 F. 2d 1021 (C. A. 3); *Carnes v. N. L. R. B.*, 182 F. 2d 940 (C. A. 3); *N. L. R. B. v. Texas Miller Products, Inc.*, 182 F. 2d 349 (C. A. 5); *N. L. R. B. v. Fournier, Rome Lincoln-Mercury Corp.*, 182 F. 2d 621 (C. A. 2); *N. L. R. B. v. Vermont American Furniture Corp.*, 182 F. 2d 842 (C. A. 2); *N. L. R. B. v. Premier Worsted Mills*, 183 F. 2d 256 (C. A. 4); *N. L. R. B. v. Dixie Mfg. Co.*, 180 F. 2d 173 (C. A. 6). See also the following cases in which the Board's petition for summary enforcement was granted in view of the respondent's failure to file timely exceptions to the trial examiner's intermediate report (see Fourteenth Annual Report, p. 123): *N. L. R. B. v. Dairy Center, Inc.*, March 7, 1950 (C. A. 1); *N. L. R. B. v. Israel Putnam Mills, Inc.*, January 10, 1950 (C. A. 2); *N. L. R. B. v. J. W. Woodruff, d/b/a Atlanta Broadcasting Co.*, July 14, 1949 (C. A. 5); *N. L. R. B. v. Rowland Lumber Mills*, July 14, 1949 (C. A. 5); *N. L. R. B. v. The Cooper Company, Inc.*, 179 F. 2d 241 (C. A. 5); *N. L. R. B. v. Jo. G. Burk, et al., d/b/a Belle Maid Mfg. Co.*, 177 F. 2d 1021 (C. A. 8); *N. L. R. B. v. Manuel Rico*, October 11, 1949 (C. A. 9); and *N. L. R. B. v. Hicks-Hayward Co.*, January 30, 1950, reported under *N. L. R. B. v. Itasca Cotton Mfg. Co.*, 179 F. 2d 504 (C. A. 5).

same group of employees. The partnership and corporation occupied the same premises and the corporation paid all utility expenses, taxes, and insurance. All manufacturing operations were controlled by the corporation whose principal shareholders were also the principal owners of the partnership. The court held that the combination of these facts "fits into a legal pattern already well marked out by an abundance of authority in the labor law field" and that the partnership was responsible for the unfair labor practices as fully as the corporation. The court observed that the Board "could hardly fail to draw the conclusion of continuity of the policy initiated by the corporation and carried forward by the partnership." See also *N. L. R. B. v. Don Juan, Inc.*, 178 F. 2d 625 (C. A. 2), where the court similarly upheld the Board's conclusion that two separate corporate entities were jointly liable for certain unfair labor practices. The Board had found that both corporations were under common control, used the same name, trade-mark, and manufacturing formulas, and used the same plant facilities.

In *N. L. R. B. v. Blue Ridge Shirt Mfg Co.*, 177 F. 2d 202 (C. A. 6), the court, without opinion, enforced the Board's order which was directed separately to the company and to a local chamber of commerce which had joined the company in interfering with employee rights guaranteed by the act. The Board had found that by instigating, furthering, and acquiescing in the chamber's antiunion activities, the company "tacitly made the Chamber its agent" and that as such agent the chamber itself was an "employer" within the meaning of section 2 (2) of the act and subject to the Board's remedial order.

b. Employees Entitled to Benefits of the Act

In *N. L. R. B. v. Brown & Sharpe Mfg. Co.*, 169 F. 2d 331 (C. A. 1), the court had previously remanded to the Board its order in this case issued under the terms of the Wagner Act,³ for the purpose of determining whether certain time-study men were clothed with supervisory functions so as to deprive them of the protection of the amended act. The court, reiterating its conclusion that time-study men, as a general class, are "employees" within the contemplation of the amended act, adopted the Board's supplementary finding that the particular time-study men had no unique or peculiar duties which put them in the class of "supervisors" and removed them from the class of protected employees.

c. Protected Employee Activities

In *N. L. R. B. v. Kennametal, Inc.*, 182 F. 2d 817 (C. A. 3), the court was confronted with the employer's defense to charges of un-

³ *N. L. R. B. v. Brown & Sharpe Mfg. Co.*, 169 F. 2d 331.

lawful discrimination that the spontaneous work stoppage which gave rise to the discharge of the employees concerned was not the kind of concerted employee action which was protected by the act. In sustaining the Board's contrary conclusion, the court observed:

That the employees suddenly dropped their tools and insisted upon presenting their grievances during working hours does not detract from the lawfulness of their conduct. Certainly the statute would have protected them against interference or coercion if instead of insisting upon immediate discussion of their demands they had then and there left the plant and formed a picket line outside. In fact, what the workmen did was more reasonable and less productive of loss to all concerned than an outright strike.

The language of the Act does not require and its purposes would not be served by holding that dissatisfied workmen may receive its protection only if they exert the maximum economic pressure and call a strike.

The court held the present situation distinguishable from that in *U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245,⁴ on the ground that there "recurrent or intermittent unannounced work stoppages," rather than a single spontaneous work stoppage, were involved and were held outside the statutory concept of protected activities. Nor, the court held, was the situation analogous with that in *N. L. R. B. v. Condenser Corp.*, 128 F. 2d 67, 77 (C. A. 3), where the spontaneous stoppage had been preceded by an apparent agreement between the employer and the employee concerned.⁵ The court also rejected the employer's contention that no labor organization was involved and that, therefore, the discharge of the strikers was not a violation of section 8 (a) (3) which presupposes discouragement of membership in "any labor organization." The court held that employees who informally join together to present their grievances clearly constitute a labor organization for the purposes of the act.

In *Albrecht, et al. v. N. L. R. B.*,⁶ the Board was sustained in its conclusion that concerted refusals on the part of employees to perform work assignments are not protected under all circumstances. The court adopted the Board's view that a group of supervisory employees,⁷ whose unfair labor practice charges the Board dismissed, were not protected in their refusal to perform indispensable functions for the protection of persons and property against serious injury or damage during a rank-and-file strike. The Board had found that, in the special circumstances of that case, the refusal of supervisory

⁴ See also *International Union v. O'Brien*, 339 U S 454

⁵ Cf. *Gullett Gun Co. v. N. L. R. B.*, 179 F 2d 499 (C. A. 5), certiorari granted on another point, October 9, 1950, where the Fifth Circuit held that, while employees may be discharged in caprice or anger, they are protected "if that caprice or anger arises out of * * * resentment against employees for pressing their rights under the Act."

⁶ Decided May 2, 1950 (C. A. 7).

⁷ The case arose under the Wagner Act and the question of the exclusion of supervisory employees from the protection of the amended act was not involved.

employees to remain at work was a serious breach of duty and removed the conduct from the area of protected activity.

d. Free Speech Protection of Employers

In a number of cases during the past year, employers resisted enforcement of the Board's order on the ground that the verbal conduct on which the pertinent unfair labor practice findings were based came within the concept of expressions of "views, argument, or opinion" which are protected by section 8 (c) of the act.

In *N. L. R. B. v. LaSalle Steel Company*,⁸ and *N. L. R. B. v. Kropp Forge Company*,⁹ the Seventh Circuit, construing section 8 (c) as but "a restatement of the principles embodied in the First Amendment," pointed out that the application of its provisions, like that of the constitutional free speech guarantees, requires that utterances for which privilege is claimed be considered "in connection with the relation of the parties, the entire course of conduct of the employer and as part of 'a pattern' disclosed by the entire record." The court, therefore, rejected the contention in the *Kropp Forge* case that under section 8 (c) expressions of an employer may not be held unlawful, even though in the circumstances of their utterance they are coercive, unless they contain threatening or promising words, or words which considered together constitute a threat or a promise. The court observed:

It also seems clear to us that in considering whether such statements or expressions are protected by Section 8 (c) of the Act, they cannot be considered as isolated words cut off from the relevant circumstances and background in which they are spoken. A statement considered only as to the words it contains might seem a perfectly innocent statement, including neither a threat nor a promise. But, when the same statement is made by an employer to his employees, and we consider the relation of the parties, the surrounding circumstances, related statements and events and the background of the employer's actions, we may find that the statement is a part of a general pattern which discloses action by the employer so coercive as to entirely destroy his employees' freedom of choice and action. To permit statements or expressions to be so used on the theory that they are protected either by the First Amendment or by Section 8 (c) of the Act, would be in violation of Section 7 and contrary to the expressed purpose of the Act. Therefore, in determining whether such statements and expressions constitute, or are evidence of unfair labor practice, they must be considered in connection with the positions of the parties, with the background and circumstances under which they are made, and with the general conduct of the parties. If, when so considered, such statements form a part of a general pattern or course of conduct which constitutes coercion and deprives the employees of their free choice guaranteed by Section 7, such statements must still be considered as a basis for a finding of unfair labor practice. To hold otherwise would nullify the guaranty of employees' freedom of

⁸ 178 F. 2d 829, certiorari denied 339 U. S. 963

⁹ 178 F. 2d 822, certiorari denied October 9, 1950.

action and choice which Section 7 of the Act expressly provides. Congress, in enacting Section 8 (c), could not have intended that result.

The court also pointed out that its holding in the *Sax* case,¹⁰ that the employer's utterances in that case were not coercive either in themselves or because of the attending circumstances, was intended to indicate that "statements or expressions must still be considered as a part of their general pattern or background in cases where such pattern or background throws light upon the significance of such statements or expressions."¹¹

In *N. L. R. B. v. Minnesota Mining and Mfg. Co.*,¹² the Eighth Circuit specifically held that the interrogation of employees about their union affiliations and sympathies and those of fellow workers is not protected by section 8 (c), thus approving the Board's position¹³ that such questioning is inherently coercive.¹⁴

e. Remedial Orders Against Employers¹⁵

The principle that the determination of the means which are best suited to expunge unfair labor practices is the function of the Board and will not normally be overturned by the courts was reaffirmed in several cases under a variety of circumstances.

In *N. L. R. B. v. Red Arrow Freight Lines*,¹⁶ the court enforced an order in which the Board directed the disestablishment of a union in whose creation the employer had been instrumental, although the members of the union themselves urged upon the court that the union had satisfactorily served them for more than 10 years and that it was their desire to retain the union as their bargaining agent.

In *N. L. R. B. v. La Salle Steel Co.*,¹⁷ the court similarly held that,

¹⁰ *Sax v N L R B*, 171 F 2d 769, Fourteenth Annual Report, p. 131.

¹¹ *Cf. N L R B v O'Keefe & Merritt Mfg Co.*, 178 F. 2d 445 (C. A. 9), where the court, while holding that certain speeches were not coercive, pointed out that for the purpose of sec 8 (c) "words are not to be looked at in vacuum, but in the light of all the circumstances surrounding their utterance"

In the *La Salle* case, the court held that the announcement of an expected War Labor Board approval of a wage increase and "none too subtle intimations" of the employer's preference for one of the unions which was to participate in the impending election, accompanied by interrogation, were not utterances of the kind envisaged by sec. 8 (c)

See also *N L R B v The Bailey Company*, 180 F 2d 278 (C A 6), where the court, relying on the *La Salle* case, similarly construed sec. 8 (c) See also *N. L. R. B v. Fulton Bag & Cotton Mills*, 175 F 2d 675 (C. A. 5).

¹² 179 F 2d 323 (C A 8).

¹³ See, e. g., *Standard-Coosa-Thatcher Co.*, 85 NLRB 1358, *supra*

¹⁴ In *Electric City Dyeing Co. v. N L R B.*, 178 F 2d 980 (C. A. 3), sec 8 (c) was held not to protect a speech in which the employer (1) termed the employees' organizational activities an "unfriendly act," (2) outlined a previously nonexistent benefit program, and (3) pointed out the advantages to be gained from a "friendly management" See also *N L R B. v Union Manufacturing Co.*, 179 F. 2d 511 (C A 5), where certain bulletins and circulars issued by the employer during a stalemate in bargaining negotiations were held to have constituted more than the mere exercise of free speech.

¹⁵ Board rulings on remedial orders against employers and unions are discussed in chapter IV.

¹⁶ 180 F. 2d 585 (C A 5), certiorari denied October 9, 1950.

¹⁷ 178 F. 2d 829 (C. A. 7).

where the employer had unlawfully favored an inside organization which competed with a national organization in a Board election, it was for the Board and not the court to determine whether the policies of the act were best effectuated by ordering the employers not to deal with the favored union until it had been certified by the Board as the lawful bargaining agent of the employees concerned.

In *Superior Engraving Co. v. N. L. R. B.*,¹⁸ the court reaffirmed the principle that it is within the Board's province to order an employer who has unlawfully refused to bargain to continue to bargain with the designated representative of his employees without a new election notwithstanding lapse of time and a substantial personnel turn-over which may have resulted in the union's loss of majority since its designation.¹⁹

In *N. L. R. B. v. Harris-Woodson Co., Inc.*,²⁰ the court was called upon to pass on the Board's power to formulate its bargaining order so as to accommodate special circumstances. The employer, notwithstanding an outstanding order of the Board,²¹ continued to refuse to bargain with the accredited representative of its employees. Based on this refusal, the Board issued a further bargaining order which, in view of the intervening enactment of the filing and affidavit requirements in the amended act, was conditioned upon full compliance with those provisions within 30 days both by the union and its immediate parent.²² Upon the latter's failure to comply, the local union surrendered its CIO charter, changed its name, and affiliated with another national organization which was in compliance. The Board thereupon reopened the case for the purpose of substituting the new local as the beneficiary of its original bargaining order. The court approved the Board's action on the ground that the identity of the representative of the company's employees had not been altered by the change of the local union's name and affiliation. The court observed that "metaphysical arguments as to the nature of the entity with which we are dealing should not be permitted to obscure the substance of what has been done or to furnish a smoke screen behind which the company may with impunity defy the [bargaining] requirements of the statute."²³

The broad discretion of the Board in devising appropriate remedies for the redress of unfair labor practices was likewise acknowledged in

¹⁸ 183 F. 2d 783 (C. A. 7).

¹⁹ In this case the court was of the opinion that sec. 10 (c) of the act precluded the Board from presuming that the union's loss of majority was due to the employer's unfair labor practices in view of evidence which showed a substantial turn-over in the employer's personnel. Compare the cases discussed at pp. 120-121 of the Fourteenth Annual Report.

²⁰ 179 F. 2d 720 (C. A. 4).

²¹ Enforced in *N. L. R. B. v. Harris-Woodson Co.*, 162 F. 2d 97 (C. A. 4).

²² Compare the cases noted in the Fourteenth Annual Report, pp. 121-122.

²³ The court noted that the company's assertion of doubt as to the union's majority was "little short of absurd" since practically all employees participated in a strike to compel the employer to bargain with the union.

N. L. R. B. v. Clark, 176 F. 2d 341 (C. A. 3), where the court specifically approved the Board's usual requirement that an employer who committed unfair labor practices post a notice explicitly assuring its employees that it will refrain in the future from the specified conduct.²⁴

2. Principles Relating to Union Unfair Practices

During the past fiscal year, the courts of appeals for the first time were confronted with petitions for the enforcement and review of orders issued by the Board under the unfair labor practice provisions contained in section 8 (b) of the act. In these cases the respective courts were called upon to pass upon the constitutionality of various specific provisions upon which the Board's order was based, the Board's jurisdiction to act under the circumstances of the particular case, and the propriety of the Board's findings and conclusions.

a. Constitutionality of 8 (b) (4) (A) and 8 (b) (2)

Assertions that the so-called secondary boycott provisions of section 8 (b) (4) (A) are in conflict with the constitutional guarantee of free speech and protection against involuntary servitude were rejected by the court in *N. L. R. B. v. Wine Workers Union, Local 1 (Schenley)*,²⁵ and *N. L. R. B. v. Local 74, Brotherhood of Carpenters (Watson Specialty Store)*.²⁶

In the *Schenley* case, the court observed that, insofar as First Amendment rights were concerned, Congress in imposing the limitations of section 8 (b) (4) (A) had exercised the recognized power (*Thornhill v. Alabama*, 310 U. S. 88, 104) "to set the limits of permissible contest open to industrial combatants." Moreover, the court was of the opinion that section 8 (b) (4) (A) of the act could not be regarded as constitutionally invalid if viewed in the light of the Supreme Court's unanimous holding in *Giboney v. Empire Storage Co.* (336 U. S. 490, 502) that "it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed." In the *Watson Specialty* case, the court likewise held that under the rule of the *Giboney* case, as interpreted in the *Schenley* case, section

²⁴ Sec. 10 (c) of the amended act, insofar as it precludes reinstatement and back-pay orders in favor of employees who were "suspended or discharged for cause," was again interpreted as codifying the Board's previous practice of directing reinstatement and back pay where the evidence showed that the true reason for the discharge of an employee was his union activity rather than the "cause" assigned by the employer. *N. L. R. B. v. Dixie Shurt Co., Inc.*, 176 F. 2d 980 (C. A. 4). See also *N. L. R. B. v. Electric City Dyemng Co.*, 178 F. 2d 980 (C. A. 3), where the court observed that "it matters not that for reasons apart from union activity an employee deserves summary discharge if as a fact the reason was union activity."

²⁵ 178 F. 2d 584 (C. A. 2).

²⁶ 181 F. 2d 126 (C. A. 6). The Supreme Court granted certiorari December 11, 1950.

8 (b) (4) (A) did not violate the guarantees of the First Amendment. In both the *Schenley* and *Watson Specialty* cases, the court held that the prohibition of secondary boycott activities did not result in constitutionally proscribed involuntary servitude since the restriction imposed affected only the conduct of unions and their agents but did not restrain employees from exercising their constitutional right to abandon work at any time. In each case, the court held that section 8 (b) (4) (A) did not differ in this respect from the Wisconsin statute regulating certain union activities which the Supreme Court upheld in *U. A. W. v. Wisconsin Employment Relations Board*.²⁷

In *N. L. R. B. v. National Maritime Union*, 175 F. 2d 686 (C. A. 2), certiorari denied 338 U. S. 954, 339 U. S. 926, the court likewise rejected the contention that section 8 (b) (2) is constitutionally invalid if construed to prohibit unions from insisting on the employer's acceptance and continuation of traditional closed-shop arrangements not authorized by section 8 (a) (3) of the act. In the court's opinion, section 8 (b) (2), as applied to the case, neither contravenes the guarantees of the First and Fifth Amendments as construed by the Supreme Court, nor imposes involuntary servitude since it is directed against the union and its agents only and does not prohibit employees from quitting their jobs for any purpose.²⁸

b. Jurisdiction in Secondary Boycott Cases

In two cases, the court rejected the contention that secondary boycott activities, intended to compel construction project contractors or owners to cease doing business with suppliers of materials and services, did not affect commerce so as to give the Board jurisdiction over the boycotting union. *Electrical Workers, Local 501 v. N. L. R. B., (Samuel Langer)* 181 F. 2d 34 (C. A. 2)²⁹; *N. L. R. B. v. Local 74 (Watson Specialty Store)*, *supra*.

In the *Langer* case, the court held that, while the boycotted electrical contractor's interstate operations in connection with the construction project were small, they were sufficient to come within the purview of the act in which Congress had intended to exercise its power over interstate commerce to the fullest extent. The court noted that the electrical contractor had to travel and bring materials from New York to the construction site in Connecticut and that the general contractor on the project was similarly engaged in interstate transactions. Under these circumstances, the court concluded that the union's activities, although insignificant, immediately affected commerce within the meaning of the act. Moreover, the court observed that the elec-

²⁷ 336 U. S. 245, 251.

²⁸ For other cases upholding the constitutional validity of sec 8 (b) (4) see the sec. 10 (1) injunction cases discussed at pp. 134-137 of the Fourteenth Annual Report.

²⁹ The Supreme Court granted certiorari December 11, 1950.

trical contractor was generally engaged in an interstate business and that the Board, therefore, had jurisdiction in the case regardless of the location of the project against which the union's activities were directed.

In the *Watson Specialty Store* case, the court similarly sustained the Board's jurisdiction on the ground that the union's activities were directed not merely against the owner of a local construction project but were intended to effect a boycott against the *Watson Store*, a business enterprise whose operations clearly affected commerce under the principles applied by the court in the case of the *J. L. Hudson Department Store*.³⁰ The court referred to *United Brotherhood of Carpenters v. Sperry*³¹ where the Tenth Circuit under comparable circumstances held that secondary activities calculated to compel a contractor, engaged solely in intrastate operations, to cease doing business with an interstate manufacturer were within the purview of section 8 (b) (4) (A). The court rejected the contention that the *de minimus* doctrine was applicable to the case.

c. Activities Found to Be Unfair Labor Practices

In the *Schenley* case, the court sustained the Board's finding that the union violated section 8 (b) (4) (A) in the following respects. The union, which represented employees of alcoholic beverage distributors in New York City, caused its members to strike against employers who distributed Schenley-manufactured products. The object of the strike was to force Schenley to agree to contract terms which a sister union sought to obtain from one of Schenley's subsidiaries. The court pointed out that even if the union had grievances, as alleged, against the employers of their members, its action was nevertheless illegal since section 8 (b) (4) (A) forbids a work stoppage when, as here, "an object thereof" is to force the struck employer to cease dealing in the products of another employer. The court rejected the union's contention that Schenley and the distributors of its products were so closely allied through their common business interests that a strike among the employees of the distributors was not of a secondary nature within the meaning of section 8 (b) (4) (A). Schenley and its distributors, the court noted, were completely separate in ownership and management and not, as in the *Metropolitan Architects* case,³² affiliated employers with practically identical interests operating alternately as business exigencies required.

In the *Watson Specialty* case, the court concurred in the Board's conclusion that section 8 (b) (4) (A) had been violated under the

³⁰ *N. L. R. B. v. J. L. Hudson Co.*, 135 F. 2d 330, certiorari denied 330 U. S. 740.

³¹ 170 F. 2d 863, 868.

³² *Doubs v. Metropolitan Federation of Architects*, 75 F. Supp. 672 (D. C., N. Y.); Thirteenth Annual Report, p. 93.

following circumstances. The owner of a residence (Stanley) agreed with a general contractor (Parker) on the terms for the renovation of his residence. When Parker, who employed exclusively union members, was unable to secure a certain type of floor and wall covering materials, Stanley arranged for their purchase and installation through Watson, an employer of nonunion labor. A representative of the union thereupon instructed the carpenters on the Stanley job to cease work and responded to Stanley's request to countermand his instructions by suggesting that Stanley cancel his contract with Watson. The fact that the initial cessation of work by the carpenters occurred prior to the effective date of the secondary boycott provisions of the amended act was immaterial in the court's opinion inasmuch as the carpenters had not, as contended by their union, permanently abandoned work on the Stanley job, but subsequent to August 21, 1947, continued to withhold their services for the purpose of compelling Stanley to meet the union's demand. The strike being a continuing one, the court concluded, section 8 (b) (4) (A) was properly applied and was not given retroactive effect.³³

The court also rejected the contention that the Board was without power to issue its order since the Stanley job had been completed and that the case had become moot. The court pointed out that the discontinuance of unlawful practices has consistently been held by the courts not to bar injunctive relief since the practices may be resumed.

In the *Langer* case, the Board's finding of a violation of section 8 (b) (4) (A) was likewise sustained. Here the union's agent induced employees of a subcontractor (Deltorto) to abandon work on a construction job in order to bring pressure on the general contractor (Giorgi) to cease employing another subcontractor (Langer) who operated with nonunion labor. The question before the court was whether section 8 (b) (4) (A) was intended to embrace the situation or was, in the court's words, "limited to pressure upon third parties who are not engaged in the same venture with the unyielding employer." In the court's opinion:

The gravamen of a secondary boycott is that its sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it. Its aim is to compel him to stop business with the employer in the hope that this will induce the employer to give in to his employees' demands. We cannot see why it should make any difference that the third person is engaged in a common venture with the employer, or whether he is dealing with him independently. The phrase, "doing business," would ordinarily cover doing any business which the third party is free to discontinue, regardless of

³³ The court noted that in *Jeffrey-DeWitt v. N. L. E. B.*, 91 F. 2d 134 (C. A. 4), certiorari denied 302 U. S. 731, the parties to a labor dispute had been held subject to the Wagner Act although the dispute began prior to its enactment.

whether he is merely supplying materials to the employer, or has subcontracted with him to perform part of a work which the third party has himself contracted to do. The third party cooperates as truly with one to whom he furnishes materials as with a subcontractor. Indeed, when the coercion is upon the third person to break a contract with the employer, his position is more embarrassing than if he may discontinue his relations with the employer without danger of liability. The phrase, "cease doing business," is general and admits of no such evasion.

In the *National Maritime Union* case, the same court enforced the Board's order remedying certain practices which in the Board's opinion were violative of section 8 (b) (2) of the act. The union in its dealings with maritime employers had continued to insist upon the inclusion in their contracts of so-called hiring-hall provisions pursuant to which the employers may hire only personnel supplied by the union unless the union is unable to furnish needed replacements. The Board had held, that while the hiring-hall clauses, unlike closed-shop agreements, did not on their face require discrimination against nonunion employees, those clauses in actual operation resulted in such discrimination and were intended by the union to have the effect of encouraging unlicensed seamen to acquire membership in the union with the acquiescence of the employers. The Board had also held that the union's strike-supported demands were not limited to the mere continuation of traditional hiring-hall clauses, but contemplated the continued cooperation of the contracting employers in their discriminatory application. The court held that the Board's findings were supported by the evidence and, on the basis of the legislative history of section 8 (b) (2), sustained the Board's conclusion that the prohibitions of the section are not confined to actual discrimination against specific employees but makes it illegal for a labor organization to attempt to cause an employer to discriminate against a group of employees or potential employees. The court likewise concurred in the Board's conclusion that the clear legislative purpose to outlaw the hiring-hall practices in the maritime industry must be given effect, regardless of any convictions regarding the undesirability of the resultant return to the conditions in the industry which the hiring hall had remedied. The court also held, that enforcement of the Board's order was not barred because subsequently the union entered into modified contracts with the employers concerned, permitting nonunion seamen employed at the time to retain their employment and reemployment rights. The new contracts, the court noted, nevertheless continued the former discriminatory hiring practices insofar as new applicants were concerned at least until the expiration of the new agreements or until their validity had been judicially determined.

3. Determination of Bargaining Representatives

a. Determination of Appropriate Unit

In two cases decided during the past year, the courts had occasion to reaffirm the broad discretion conferred upon the Board in determining appropriate bargaining units and the limited power of the courts to disturb the Board's findings only if they appear arbitrary or capricious.

In *N. L. R. B. v. Continental Oil Co.*,³⁴ the court enforced the Board's bargaining order over the employer's objection that the Board had improperly found appropriate a unit confined to office and clerical employees in one of the employer's refineries. The court held that, contrary to the employer's contention, the amendments to section 10 (b) and (e) of the act did not enlarge the powers of the courts which in the case of unit determinations continued to be limited to the question whether the Board's determination was free from arbitrariness and was supported by the record. In upholding the Board's exclusion of the employer's general office employees from the unit, the court noted that the employees in the unit were concerned with the collection of data and other tasks essential to the operation of the refinery which employed its own help; that there was little interchange of office and clerical personnel between the general office and the refinery; that the working conditions including dress requirements differed in the two groups; and that the work in the refinery was considered more hazardous than that in the general office. The court also pointed out that it, as well as other courts, had previously recognized the appropriateness of separate units of cohesive groups of plant clerks.³⁵

In *Mueller Brass Company v. N. L. R. B.*,³⁶ the employer resisted a bargaining order on the ground that the separate unit of die sinkers with which it had been directed to bargain was inappropriate.

In sustaining the Board's unit determination, the court noted that Congress, in both the original and amended act, had recognized the necessity for establishing only minimal standards and had left it to the Board to deal with the complexities of varying industrial patterns. The court further pointed out that Congress in amending the act, upon careful consideration, left the Board's discretion unimpaired except insofar as it sought to encourage crafts by prohibiting findings that a craft unit is inappropriate because a different unit has previously been established by the Board. Citing the *Continental Oil* case, the court also held that in view of the clear legislative intent nothing

³⁴ 179 F. 2d 552 (C. A. 10).

³⁵ *N. L. R. B. v. Armour Co.*, 154 F. 2d 570 (C. A. 10), *N. L. R. B. v. Swift & Co.*, 162 F. 2d 575, 581 (C. A. 3); *Footo Bros. Gear & Machine Corp. v. N. L. R. B.*, 114 F. 2d 611, 623 (C. A. 7)

³⁶ 180 F. 2d 402 (C. A., D. C.).

in section 10 (b), (c), (e), and (f) of the amended act may be construed as imposing a restriction on the Board's discretion in determining bargaining units. Insofar as the immediate die sinker's unit was concerned, the court was of the view that the integration of the work of the die sinkers with that of other employees in a larger group, and the past bargaining history of the die sinkers on a broader basis did not preclude the Board from giving paramount consideration to the fact (1) that the employer's die sinkers were the highest skilled and highest paid employees in their group, were alone capable of performing the particular functions to which they devoted all of their time, and worked on separate machines in a separate room under their own foreman; and (2) that, notwithstanding previous representation by another union in a larger unit, the die sinkers had maintained membership in their craft union, preserved separate die sinkers apprenticeship ratios, and handled their grievances through a special representative. In regard to the company's contention that under the Board's practice of holding inappropriate units of mere segments of a craft the unit here should have included all other employees who work on dies, the Board had pointed out to the court that the die sinker unit included all employees of equal skill and identical bargaining interests and that, consequently, no craft segmentation was involved. The court, therefore, concluded that under the rationale approved by the Supreme Court in the *May Department Stores* case³⁷ the Board did not act arbitrarily in excluding from the die sinker unit other employees who work on dies but have different skills and collective interests.

b. Procedure in "Globe" Elections

In *N. L. R. B. v. Underwood Machinery Co.*,³⁸ the court was called upon to determine the validity of the Board's long-established practice³⁹ to hold elections in advance of its ultimate unit determination in cases where it is found that two or more groups of employees might appropriately form separate units or be included in a larger unit, and where different unions seek to represent the respective groups in such units. Approving the Board's practice, the court rejected the employer's contention that such a self-determination election improperly delegates to the employees the Board's exclusive function to determine bargaining units. In the court's view,⁴⁰ no such delegation is present since it is the Board that determines first the

³⁷ *May Department Stores Co. v. N. L. R. B.*, 326 U. S. 376, 380, Eleventh Annual Report (1946) p. 53.

³⁸ 179 F. 2d 118 (C. A. 1).

³⁹ See *Globe Machine & Stamping Co.*, 3 NLRB 294.

⁴⁰ The court's view is predicated largely on the rationale of the dissenting opinion in *Marshall Field & Co. v. N. L. R. B.*, 135 F. 2d 391 (C. A. 7), the only case in which the Board's "Globe" doctrine was judicially examined and rejected.

functional appropriateness of each of the proposed units in the light of known circumstances and then, through election methods, ascertains the preferences of the employees in the several groups, the wishes of the employees being a relevant factor which, under proper conditions, may be given weight by the Board⁴¹ in determining which of several possible units is appropriate.

4. Filing and Affidavit Requirements⁴²

In *N. L. R. B. v. Greensboro Coca Cola Bottling Co.*,⁴³ the employer sought to resist enforcement of the Board's order by alleging that the union which initiated the proceeding had not complied with the so-called filing and affidavit requirements of section 9 (f), (g), and (h) of the act and that the Board was, therefore, without jurisdiction to entertain the proceeding. Rejecting the contention that section 9 (f), (g), and (h) is "jurisdictional" and that compliance must be shown in order that the Board may proceed, the court observed that such a requirement was not expressly provided in the act and would greatly hamper its administration.⁴⁴ The court continued that a statute will not be construed so "as to make it administratively unworkable if any other construction is possible." Moreover, the court held that in the absence of any evidence of the union's noncompliance, the issuance of a complaint in the case, and the Board's granting relief upon the complaint gave rise to the presumption that the law had been complied with.

In *N. L. R. B. v. Postex Cotton Mills, Inc.*,⁴⁵ the Board's view that, as a general rule, section 9 (h) does not apply to such parent organizations as the CIO and AFL was rejected by the court.

⁴¹ See *Pittsburgh Plate Glass Co v N. L. R. B.*, 313 U. S 146, 156, cited by the court.

⁴² The constitutionality of the provisions of sec. 9 (f), (g), and (h) has been affirmed by the Supreme Court. See chapter V.

⁴³ 180 F. 2d 840 (C. A. 4).

⁴⁴ The court noted the elaborate administrative machinery established by the Board for determining the compliance status of any union which invokes the processes of the Board.

See also *Bentley Lumber Co v. N. L. R. B.*, 180 F. 2d 641 (C. A. 5), where the court rejected the employer's contention that enforcement should be denied because of the union's alleged noncompliance with the filing requirements of sec 9 (f). The court noted that the employer's assertion rested solely on the Board's advice that compliance would be required before the issuance of a complaint.

In *N. L. R. B. v. Fulton Bag & Cotton Mills*, 180 F. 2d 68 (C. A. 10), the court held that the affidavit requirements of sec. 9 (h) were prospective and did not apply to a proceeding in which the complaint was issued and the hearing held before the effective date of the amended act. See also *N. L. R. B. v. Clark*, 176 F. 2d 341 (C. A. 3). In the *Fulton* case the Board also rejected the employer's contention that the Board failed to protect its processes against abuse by the charging party who allegedly was a member of the Communist Party. The court held that the question whether its processes were abused for the purpose of achieving the objects of the Communist Party rather than vindicating rights under the act was a matter within the sound discretion of the Board. The Board had pointed out to the court that in the present case any conceivable benefits to the Communist Party from the Board's order, remedying the employer's discrimination against an employee because of his participation in Board proceedings, were extremely remote and insubstantial and far outweighed by the direct and serious harm done by the employer to public rights under the act and the Board's processes.

⁴⁵ 181 F 2d 919 (C A. 5).

5. The 6-Month Limitation on Charges

In several cases during the past year, the enforceability of the Board's order depended on whether the complaint upon which it was based had been properly issued insofar as section 10 (b) of the amended act provides that—

no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.

In *N. L. R. B. v. Itasca Cotton Manufacturing Company*, 179 F. 2d 504 (C. A. 5),⁴⁶ the Board's complaint was based on charges filed prior to the effective date of the amended act but within 6 months of the occurrence of the alleged unfair labor practices. Between the enactment of the amended section 10 (b) and its effective date, August 22, 1947, a copy of the charges was served on the employer. The court sustained the Board's view that the charges so filed and served were not barred by the proviso to section 10 (b). The court agreed with the Board that, in view of its clear language and legislative history, the proviso does not go to the jurisdiction of the Board but is a statute of limitations fixing the time within which charges may be filed. Being a new statute of limitations, the court held, the proviso, according to well-established law, had no retroactive effect and was operative only on and after its effective date. Consequently, the court concluded, the Board is empowered to issue a complaint on all charges filed substantially in compliance with the proviso either before its effective date or within 6 months thereof.

In the *Joanna Cotton Mills* case,⁴⁷ the Fourth Circuit also expressed the view that the 6-month limitation on the filing of charges "runs from the date when the statute became effective."⁴⁸

However, in the *Superior Engraving Company* case,⁴⁹ the Seventh Circuit took the view that the 6-month limitation applies to all charges filed after the effective date of the amended act and that only charges filed during the 60-day period between the passage and the effective

⁴⁶ Submitted together with several other cases in which the facts were stipulated to be identical: *Hicks-Hayward Co., Hillsboro Cotton Mills, and Vanette Hosiery Mills*.

⁴⁷ *Joanna Cotton Mills Co. v. N. L. R. B.*, 176 F. 2d 749.

⁴⁸ However, the court held that the Board improperly acted on an amended charge which, while alleging unlawful discrimination against an employee prior to the effective date of the amended act, was not served on the employer until more than 6 months after that date. In the court's opinion, the allegation in the amended charge that the employee was discharged for "concerted activities" was "new and entirely different" from the allegation in the original charge that the discharge was caused by the employee's union membership and activities in behalf of the union. The rule that the sec. 10 (b) proviso has no retroactive effect where the Board's complaint issued before the effective date of the amended act was reaffirmed in *N. L. R. B. v. Clark*, 176 F. 2d 341 (C. A. 3). See also Thirteenth Annual Report, pp. 75-76.

⁴⁹ *Superior Engraving Company*, 183 F. 2d 783 (C. A. 7).

date of the amended act, during which Congress expressly suspended its operation, were exempt from the limitation of the proviso to section 10 (b).⁵⁰ On the basis of this construction of the proviso, the court concluded that the Board's complaint was improper insofar as it alleged unfair labor practices occurring prior to the passage of the amended act and contained in an amended charge filed within 6 months after the effective date of the act. Nevertheless, the court held that evidence relating to those charges could properly be received for the purpose of proving other unfair labor practices.⁵¹

6. Scope of Judicial Review

While the Sixth Circuit, to which the Supreme Court referred the question in the *Pittsburgh Steamship* case,⁵² held that both the provisions of the Administrative Procedure Act and the amendments to the pertinent sections of the National Labor Relations Act had the effect of enlarging the power of the courts to review the findings of the Board,⁵³ other courts confronted with the question during the past year uniformly held that the actual scope of review remained substantially unchanged.

The Second Circuit in the *Universal Camera Corporation* case,⁵⁴ noting the decisions of other circuits,⁵⁵ reached the conclusion that its review powers had not been broadened and that "no more was done than to make definite what was already implied."⁵⁶ According to the court, in the absence of more explicit language, neither the addition of the word "substantial" in section 10 (e), nor the amended provisions of section 10 (b) and (c), may be construed as intended to establish a new standard of review. Both the *Universal Camera*⁵⁷ and *Pittsburgh Steamship*⁵⁸ cases were awaiting decision by the Supreme Court at the time of writing.

The views expressed by the Second Circuit concerning the impact of the amendments to section 10 (b), (c), and (e) upon the review function of the courts were adopted by the Seventh Circuit in the

⁵⁰ In the *Joanna Cotton Mills* case (*supra*, footnote 47), the Board in its brief pointed out to the court that the 2-month suspensory provision was not relevant in this connection but, according to its legislative history, was intended to enable the Board to accomplish its administrative reorganization.

⁵¹ The Board's order in this case was enforced in full by the court

⁵² *N. L. R. B. v. Pittsburgh Steamship Co.*, 337 U. S. 656, 661; Fourteenth Annual Report, p. 114.

⁵³ *Pittsburgh Steamship Co. v. N. L. R. B.*, 180 F. 2d 731 (C. A. 6).

⁵⁴ *Universal Camera Corporation*, 179 F. 2d 749 (C. A. 2).

⁵⁵ See cases discussed at p. 80 of the Thirteenth Annual Report and at p. 129 of the Fourteenth Annual Report.

⁵⁶ *Cf. N. L. R. B. v. Vermont American Furniture Corp.*, 182 F. 2d 842 (C. A. 2), where the same court, referring to its decision in the *Universal Camera* case, observed that there was sufficient evidence to support the Board's order, even if tested by the somewhat broader scope of review applied by the Sixth Circuit in the *Pittsburgh Steamship* case.

⁵⁷ Certiorari granted, 339 U. S. 962.

⁵⁸ Certiorari granted, 339 U. S. 951.

*LaSalle Steel*⁵⁹ and *Superior Engraving*⁶⁰ cases. The Eighth Circuit in the *Minnesota Mining Company* case,⁶¹ declined to follow the reasoning in the *Pittsburgh Steamship* case, holding that neither the Administrative Procedure Act nor the amendments to the Wagner Act effected a material change in the scope of review of the orders of the Board. In the *J. A. Booker* case,⁶² the Fifth Circuit adhered to its view⁶³ that the amended act does not permit the court to set aside findings which are "supported by substantial evidence, even though the court on reviewing the record as a whole thinks that the finding is clearly erroneous."⁶⁴

In the *Universal Camera* case, *supra*, the court was also confronted with the question of the extent of its review powers in cases where the Board's findings overturn those of the trial examiner. The court concluded that, while the Board may not totally disregard the examiner's findings, "it is practically impossible for a court, upon review of those findings which the Board itself substitutes, to consider the Board's reversal as a factor in the court's own decision." In the absence of any controlling statutory provisions, the court declined to follow those cases under the Wagner Act in which the Sixth, Seventh, and Eighth Circuits,⁶⁵ had in effect held that when the Board reverses a finding it shall count in the court's review of the Board's substituted finding.⁶⁶

7. Denial of Enforcement

a. Interpretation of Statutory Definitions

In several cases in which enforcement was denied, the court's action was predicated upon its disagreement with the Board's definition or construction of specific statutory terms and provisions.

In *N. L. R. B. v. Morris Steinberg*,⁶⁷ the court, contrary to the Board's conclusion, held that certain fur trappers were independent contractors rather than employees within the meaning of the act and were therefore not entitled to its protection. The court's disagreement was chiefly the result of a different evaluation of the evidence.

⁵⁹ *N. L. R. B. v. LaSalle Steel Co.*, 178 F. 2d 829 (C. A. 7).

⁶⁰ *Superior Engraving Co. v. N. L. R. B.*, 183 F. 2d 783 (C. A. 7).

⁶¹ *N. L. R. B. v. Minnesota Mining and Manufacturing Co.*, 179 F. 2d 323 (C. A. 8).

⁶² *N. L. R. B. v. J. A. Booker*, 180 F. 2d 727 (C. A. 5).

⁶³ See *N. L. R. B. v. Caroline Mills, Inc.*, 167 F. 2d 212 (C. A. 5); Thirteenth Annual Report, p. 80.

⁶⁴ For cases holding that the amended act did not enlarge the court's power to review the Board's unit determinations see *supra*, subsection a.

⁶⁵ See *Staley Mfg. Co. v. N. L. R. B.*, 117 F. 2d 868, 878 (C. A. 7); *Wymon Garden Co. v. N. L. R. B.*, 153 F. 2d 480, 482 (C. A. 7); *Wilson & Co. v. N. L. R. B.*, 123 F. 2d 411, 418 (C. A. 8); *N. L. R. B. v. Olin Calorium Co.*, 133 F. 2d 721, 724 (C. A. 6).

⁶⁶ The issue was awaiting decision by the Supreme Court at the time of writing.

⁶⁷ 182 F. 2d 850 (C. A. 5).

Thus, unlike the Board, the court found that, in view of the laws of Louisiana, the contracts between the fur merchants and trappers concerned were subleases and gave the trappers status as sublessees; that such factors as the integration of the operations of the trappers with those of the company, the relative permanency of the relationship, the company's right to terminate the relationship and to make daily checks and inspections and to grade the furs for the purpose of payment, and the control and direction of the trappers' operations, were either not controlling or, under the circumstances, did not indicate an employment relationship. Unlike the Board, the court concluded that no employer-employee relationship existed since the company did not have the requisite right to control and direct the work, not only as to the result to be accomplished by the work, but also as to the manner and means by which the result is accomplished.

In *Ohio Power Co. v. N. L. R. B.*,⁶⁸ the court rejected the Board's conclusion that control operators in a highly automatized electric power plant had none of the supervisory characteristics enumerated in section 2 (11) of the act and were, therefore, properly a part of the unit with which the employer was under a duty to bargain. In the court's view, the control operators had authority "responsibly to direct" other employees, one of the attributes which under section 2 (11), as recognized by the Board, is a sufficient indication of supervisory status.⁶⁹ The court declined to give effect to the legislative history which in the Board's opinion indicated that the phrase "responsibly to direct" is not to be given a literal meaning but must be read to envisage only the limited class of employees above the grade of straw bosses, lead men, set men, setup men, and other minor supervisory employees. Nor did the court take into consideration that the control operators only sporadically and infrequently exercised the duties which in the court's view involved the responsible direction of other employees. According to the court, the existence of the power to "responsibly direct" alone is sufficient to establish the supervisory status of an employee.

In *International Rice Milling Co., Inc. v. N. L. R. B.*,⁷⁰ the court reversed an order by which the Board dismissed a complaint alleging that the respondent union had engaged in conduct which violated the provisions of section 8 (b) (4) (A) and (B) of the act. The Board's dismissal was predicated on the following grounds: (1) The union, by causing employees of a railroad to cease servicing the complaining employer's rice mills, did not seek to force an "employer" to

⁶⁸ 176 F. 2d 385 (C. A. 6), certiorari denied 338 U. S. 890.

⁶⁹ See the court's decision in *N. L. R. B. v. Budd Mfg. Co.*, 169 F. 2d 571, Fourteenth Annual Report, pp. 127-128.

⁷⁰ 183 F. 2d 21 (C. A. 5), Board's petition for certiorari granted by the Supreme Court December 11, 1950.

cease transporting the goods of another person within the prohibition of section 8 (b) (4) since railroads were expressly excluded from the definition of the term "employer" in section 2 (2) of the act; (2) the union's other conduct was carried on in the immediate vicinity of the premises of the employer with whom the union had a dispute and, therefore, was primary action not prohibited by the act. As to the first question, the court took the view that the definitions in section 2 (2) are not applicable and that the term "employer" as used in section 8 (b) (4) (A) must be given a meaning broad enough to include railroads, particularly since Congress by inserting the terms "transport" and "transporting" had indicated its intention to reach secondary boycotts in the transportation industry. In regard to the second question, the court declined to adopt the Board's distinction between primary and secondary action. According to the court, the union's picketing activities, which prevented a truck owned and operated by another employer from entering the premises of the primary employer with whom the union had a dispute, were within the prohibition of section 8 (b) (4) (A) and (B), regardless of the fact that the picketing occurred in connection with and at the situs of the union's dispute with the primary employer.

b. Non-Communist Affidavits

In *N. L. R. B. v. Postex Cotton Mills, Inc.*,⁷¹ enforcement was denied because of the court's disagreement with the Board's construction of the affidavit requirements of section 9 (h) of the act. The Board had held that the complaining union was entitled to utilize the processes of the Board although the officers of its parent, the Congress of Industrial Organizations, had not filed non-Communist affidavits. The Board had taken the view⁷² that such parent federations as the CIO and AFL are not "national or international labor organizations" within the contemplation of section 9 (h) and that their officers need not be in compliance except in those infrequent cases where the AFL or the CIO directly participates in or controls collective bargaining. The Board had further concluded that this interpretation of section 9 (h) would best serve the congressional purposes both to foster collective bargaining and to preserve it from Communist-fomented disruption. The court, on the other hand, was of the opinion that national federations such as the CIO are labor organizations within the meaning of section 9 (h) and that Congress intended to subject them to its provisions regardless of whether or not they bargain directly.⁷³

⁷¹ 181 F. 2d 919 (C. A. 5).

⁷² See *Northern Virginia Broadcasters*, 75 NLRB 11 and subsequent cases discussed in the Thirteenth Annual Report, pp. 23-24.

⁷³ The Board's construction of sec. 9 (h) was sustained in *West Texas Utilities Company v. N. L. R. B.*, 184 F. 2d 233 (C. A., D. C.).

In several cases enforcement of the Board's order was denied because of the court's disapproval of the application of rules administratively developed by the Board in carrying out certain provisions of the act.

c. Midwest Piping Doctrine

In two of these cases, the court declined to give effect to the Board's so-called *Midwest Piping* doctrine⁷⁴ according to which the Board normally finds that an employer commits an unfair labor practice by granting exclusive recognition to a union at a time when a question concerning the representation of the employees has been raised by competing unions and is pending before the Board. In *N. L. R. B. v. Standard Steel Spring Co.*,⁷⁵ the court was of the opinion that the employer did not violate the act by granting exclusive recognition to a union while a conflicting representation petition was pending, since the employer acted in good faith in accepting the union's showing of its majority status. In *N. L. R. B. v. Flotill Products, Inc.*,⁷⁶ the court withheld enforcement because of events occurring subsequent to the issuance of the Board's order which was based on the employer's exclusive recognition of a union at a time when its majority status remained in doubt because of the pendency of the representation petition of a rival union. While recognizing that as a general rule the court's sole concern in reviewing an order of the Board is the validity of the order when made, the court believed that "extraordinary circumstances" precluded enforcement in the present case. The court took into consideration the length of time consumed by the representation proceeding, its ultimate dismissal because of the petitioning union's noncompliance with the filing and affidavit requirements of section 9 (f), (g), and (h) whose enactment had intervened, and the potential effect of the enforcement of the Board's order on existing bargaining relations. The court also observed that the Board itself had recognized that its *Midwest Piping* doctrine should be sparingly applied⁷⁷ because it "can easily operate in derogation of the practice of continuous collective bargaining." See also *N. L. R. B. v. G. W. Hume Co.*,⁷⁸ a companion case, in which the court, on similar grounds, denied enforcement of that part of the Board's order which required the employer to cease dealing with a union to which it had accorded exclusive recognition notwithstanding the pendency of representation proceedings before the Board. However, the court enforced the order insofar as it directed the employer to reinstate with

⁷⁴ See *Midwest Piping & Supply Co., Inc.*, 63 NLRB 686; Tenth Annual Report (1946) pp. 38-39. See also Eleventh Annual Report (1947) pp. 25-36 and Twelfth Annual Report (1948) p. 26.

⁷⁵ 180 F. 2d 942 (C. A. 6).

⁷⁶ 180 F. 2d 441 (C. A. 9)

⁷⁷ See *Ensher, Alexander & Barsom, Inc.*, 74 NLRB 1443, 1445.

⁷⁸ 180 F. 2d 445 (C. A. 9).

back pay the employees whom it had discharged at the request of the union in the absence of a valid closed-shop agreement.⁷⁹ The court also decreed enforcement of the provisions of the order requiring the employer to cease giving effect to a closed-shop agreement subsequently entered into. The court observed that this part of the order was justified since the making of the agreement during the pendency of representation proceedings before the Board was a part of a general course of conduct on the part of the employer which was calculated to render unlawful assistance to the union.

d. Consent-Election Procedures

In *N. L. R. B. v. Joseph Sidran*,⁸⁰ the court reversed the Board's finding that the employer unlawfully refused to bargain with the statutory representative of the employees on the ground that the regional director's certification of the union upon the results of a consent election was invalid. In the court's opinion, the employer was improperly deprived of a formal hearing on the question of the eligibility of certain challenged voters even though the employer had entered into a consent-election agreement providing that the regional director's determinations "shall be final and binding upon any questions including questions as to the eligibility of voters." The court sustained the employer's contention that he had not waived his right to a formal hearing concerning the validity of challenges to certain voters. The court stated that such a waiver was not clearly expressed in the consent-election agreement and that it was not willing to infer such a waiver where no clear intention to waive was shown.⁸¹

e. Protection of Employee Activities

In *Joanna Cotton Mills Co. v. N. L. R. B.*,⁸² the court reversed the Board's finding that the discharge of an employee who initiated a petition requesting the removal of his foreman constituted unlawful discrimination within the meaning of the act. The court adopted the view of the dissenting members of the Board that the employer's conduct grew out of personal resentment over discipline and did not develop into protected "concerted activity" for the mutual aid and protection of employees because fellow employees signed the petition. While the court agreed that concerted employee activities for any of the purposes of the act are protected even though the employees are not acting through a union, it was of the opinion that

⁷⁹ The case arose under the Wagner Act and did not involve the union-security restrictions of sec. 8 (a) (3) of the amended act.

⁸⁰ 181 F. 2d 671 (C. A. 5).

⁸¹ Since the decision in this case the Board has revised its form of consent-election agreement so as to provide clearly for such waiver.

⁸² 176 F. 2d 749 (C. A. 4).

the petition in the present case had no relation to collective bargaining and therefore was not within the act's protection. The court also held that the Board improperly based its findings on an amended charge which was barred by the limitations of section 10 (b).

In *N. L. R. B. v. Maurice Eanet*,⁸³ enforcement was denied chiefly because in view of the small number of employees involved the court was in doubt as to whether the Board's bargaining order was still appropriate after the intervening lapse of time. Chief Judge Stephens dissented on the ground that the Supreme Court's ruling in the *Franks Bros.* case⁸⁴ required enforcement of the Board's order. The dissenting opinion also points out that the Board's delay in seeking enforcement should not be considered since this was a matter within the Board's discretion and the employer could himself have sought judicial review of the order. Finally, insofar as the majority questioned the Board's exercise of its jurisdiction over the small hotel involved, Judge Stephens observed that the employer's operations clearly affected commerce within the District of Columbia and that the Board therefore had properly exercised its jurisdiction. Judge Stephens also noted that the smallness of the business was not a proper basis for the court's refusal to enforce the Board's order, particularly since employees in a small enterprise may be in even greater need of the act's protection than employees who benefit from the strength of a large industrial unit.

f. Substantiality of Evidence

In a number of cases, the court's decision turned solely on the question of the substantiality of the evidence. *Owens-Illinois Glass Co. v. N. L. R. B.*, 176 F. 2d 172 (C. A. 7); *N. L. R. B. v. Westinghouse Electric Corp.*, 179 F. 2d 507 (C. A. 6); *N. L. R. B. v. Scientific Nutrition Corp.*, 180 F. 2d 447 (C. A. 9); *Pittsburgh Steamship Co. v. N. L. R. B.*, 180 F. 2d 731 (C. A. 6); *N. L. R. B. v. Atlantic Towing Company*,⁸⁵ 180 F. 2d 726 (C. A. 5). In the *Pittsburgh Steamship* case, now pending before the Supreme Court, the lower court held that both the amended National Labor Relations Act and the Administrative Procedure Act had broadened its review powers.⁸⁶ Applying the standards of review which the court believed were indicated in those enactments, the court concluded that the Board's order was not supported by the record.

⁸³ 179 F. 2d 15 (C. A., D. C.).

⁸⁴ *Franks Bros. Co., v. N. L. R. B.*, 321 U. S. 702, Ninth Annual Report (1944) p. 54

⁸⁵ Enforcement originally was granted in this case. However, on reconsideration the court, Chief Judge Hutcheson dissenting, held that the Board's unfair labor practice findings were not supported by substantial evidence. Cf. *N. L. R. B. v. J. A. Booker*, 180 F. 2d 727 (C. A. 5), *infra*.

⁸⁶ Compare the contrary holdings, *supra*, section 6.

In two cases in which the order was predicated on the Board's interpretation of the closed-shop proviso of the Wagner Act in the *Rutland Court* case, enforcement was withheld in view of the Supreme Court's decision in the *Colgate-Palmolive* case disapproving the Board's *Rutland Court* doctrine. *N. L. R. B. v. Public Service Co-ordinated Transport*, January 24, 1950 (C. A. 3), vacating 177 F. 2d 119; *N. L. R. B. v. Detroit Gasket & Mfg. Co.*, 179 F. 2d 241 (C. A. 6).

g. Modification of Board Orders

In most of the cases in which only partial enforcement was granted, the modification of the Board's order was the result of the court's rejection of the principles or procedures applied by the Board or the court's view that certain parts of the order were not supported by the record. In some cases the Board's order was modified by minor changes in its text.

In *N. L. R. B. v. S. W. Evans & Sons*,⁸⁷ the court declined to enforce the bargaining provisions of the order because the Board had improperly failed to apply its rules, then in effect⁸⁸ so as to deny a preelection hearing despite the fact that, in the court's opinion, substantial issues were raised.

In *N. L. R. B. v. Kentucky Utilities Co.*,⁸⁹ the court eliminated that part of the Board's bargaining order which was based on the employer's refusal to negotiate with the representative of one of the complaining locals who, the court found, was objectionable to the employer and could not be taken to bargain in good faith in view of his expressed hostility to the employer. The court also stated that the complaining union had agreed orally, though not in writing, to exclude the particular representative from further negotiations. The Board had taken the view that "no binding legal agreement" had been made to this effect and, moreover, that any such agreement would have been unenforceable. However, the court agreed that the employer violated the provisions of the act by refusing to bargain with another union because it was not composed exclusively of the employer's own employees.

In *N. L. R. B. v. Spiewak*,⁹⁰ the Board's order directed the reinstatement of strikers against whom the employer had unlawfully discriminated by conditioning their reemployment upon union membership pursuant to an invalid closed-shop contract with an illegally-assisted

⁸⁷ 181 F. 2d 427 (C. A. 3)

⁸⁸ As noted by the court, these rules, which conferred on the regional director discretion to hold prehearing elections where his preliminary investigation discloses no substantial issues, were superseded by the provisions of sec. 9 (c) of the amended act, which preclude the practice of holding prehearing elections.

⁸⁹ 182 F. 2d 810 (C. A. 6).

⁹⁰ 179 F. 2d 695 (C. A. 3).

employee association. The court declined to enforce the order to the extent that it benefited six strike leaders to whose reinstatement the association had objected because of their alleged commission of acts of violence during the strike. In the court's view, the employer was justified in yielding to the association's pressure, and in denying reinstatement to these strikers because of unprotected activities he was not acting "from a discriminatory motive." The Board had concluded that the claim of violence was not conclusively established and that the employer's refusal to reinstate the strike leaders was in fact based on the provisions of the invalid closed-shop contract.

In *N. L. R. B. v. Dorsey Trailers, Inc.*,⁹¹ the court reversed the Board's finding that the employer violated the act by the 4-day suspension of employees who, in order to obtain adjustment of a grievance, resorted to spontaneous strike action rather than to a contractual grievance procedure. Without deciding whether the contractual provisions for a grievance procedure made the strike unlawful, the court held that the Board's unfair labor practice finding was barred by a settlement between the employer and the bargaining representative of the employees in which the union agreed to the suspension of the strikers as a matter of discipline. The reversal of certain other parts of the Board's order was predicated upon the court's conclusion that they were not sufficiently supported by the evidence.

One order was modified to the extent that it was based on employer utterances which the court believed were within the free speech protection of section 8 (c) (*N. L. R. B. v. O'Keefe & Merritt Mfg. Co.*),⁹² while another order was set aside insofar as it represented an application of the Board's *Midwest Piping* doctrine (*N. L. R. B. v. G. W. Hume Co.*).⁹³ In another case (*Gullett Gin Co. v. N. L. R. B.*),⁹⁴ the court modified the Board's back-pay order so as to permit the employer to deduct from the amount to be paid discharged employees State unemployment compensation benefits received. The court's ruling overturns the Board rule of not permitting back-pay deductions on account of such benefits and it is in conflict with the only other court decision on the point.⁹⁵ It assimilates unemployment benefits to payments for work performed on work-relief projects, such as were involved in the *Republic Steel Corp.* case,⁹⁶ which the court cited.

In several other cases the partial reversal of the Board's order was predicated primarily on the court's view that the Board's findings were

⁹¹ 179 F. 2d 589 (C. A. 5).

⁹² 178 F. 2d 445 (C. A. 9), *supra*.

⁹³ 180 F. 2d 445 (C. A. 9).

⁹⁴ 179 F. 2d 499 (C. A. 5).

⁹⁵ *N. L. R. B. v. Marshall Field & Co.*, 129 F. 2d 169 (C. A. 7).

⁹⁶ *Republic Steel Corp. v. N. L. R. B.*, 311 U. S. 7.

not supported by substantial evidence. *D. H. Holmes Co. v. N. L. R. B.*, 179 F. 2d 876 (C. A. 5); *N. L. R. B. v. Fulton Bag & Cotton Mills*, 175 F. 2d 675 (C. A. 5); *N. L. R. B. v. Piedmont Cotton Mills*, 179 F. 2d 345 (C. A. 5); *N. L. R. B. v. J. A. Booker*, 180 F. 2d 727 (C. A. 5). In the *Booker* case, originally enforced in full, the court on reconsideration reversed the Board's finding that an employee had been subjected to unlawful discrimination.

In three cases the court's action was confined to minor modifications of the notice provisions of the Board's order. *N. L. R. B. v. Clark*, 176 F. 2d 341 (C. A. 3); *N. L. R. B. v. Salant & Salant*, 171 F. 2d 292 (C. A. 6); *N. L. R. B. v. Bailey Company*, 180 F. 2d 278 (C. A. 6).

8. Contempt Proceedings

In six cases during the past year, the courts passed upon petitions for the adjudication in contempt of employers who, the Board believed, had violated enforcement decrees. The Board's petition was granted in four cases and was denied in two cases.

In *N. L. R. B. v. Republican Publishing Co.*,⁹⁷ the adjudication of the employer in contempt on the pleadings was based on the employer's failure to obey the court's decree which directed that the employer reinstate an employee who had been discriminatorily transferred to a less desirable position. In rejecting the employer's defense that the employee ceased to be able to perform his former duties, the court pointed out that had there been any change in circumstances the proper procedure for the employer would have been to move the court to modify its decree rather than to await contempt proceedings. While the Board's order had made no provision for back pay since the employer's discrimination did not involve a reduction in pay, the court directed the employer to reimburse the employee for all losses incurred on account of the employer's failure to reinstate him after the court's decree. The terms of purge imposed by the court also included full reinstatement, as well as reimbursement of the Board for "all proper costs incurred in the preparation and prosecution of [its] petition for contempt." The court's decree further provided that unless the provisions for reinstatement and back pay, insofar as ascertained shall have been complied with within 7 days, the individual respondent named in the Board's order shall be taken and held in custody pending compliance or further order of the court.

In *N. L. R. B. v. Lawley*,⁹⁸ the employer was adjudged in civil contempt for failure to comply with the back-pay provisions of the court's

⁹⁷ 180 F. 2d 437 (C. A. 1).

⁹⁸ 182 F. 2d 798 (C. A. 5).

decree. A number of the employees who had been subjected to unlawful discrimination endorsed back to the employer checks received for the amount of back pay due them. No checks were issued to the remaining claimants because the Board declined to agree that delivery of checks in the proper amounts would satisfy the employer's back-pay obligations under the court's decree. The court held that, since the endorsement and redelivery of the checks issued by the employer had not been shown to be free and uncoerced, none of the employees entitled to back pay had received actual payment. The court's order provided that the employer need not reimburse the Board the costs of the proceeding if it purged itself of its contempt within 60 days. In view of the grounds upon which the employer asked that the Board's contempt petition be dismissed, the court took occasion to reiterate the principle that the Board alone has authority to institute proceedings for the adjudication in contempt of parties who have failed to obey a decree enforcing an order of the Board.

The Board's petition for contempt adjudications were likewise granted in *N. L. R. B. v. Manuel Rico*⁹⁹ and *N. L. R. B. v. Todd Co., Inc.*¹ In the *Rico* case, the employer was found to have wilfully disregarded the court's decree and to have complied with its terms only following service of the rule to show cause. Under these circumstances, the court ordered the employer to reimburse the Board for expenses (not to exceed \$100) incurred "in its endeavor to persuade him to take action in conformity with the decree." In the *Todd* case, the court ordered the employer to pay a penalty of \$1,000 and to comply with the court's decree within 10 days. Leave was granted to the Board to move for the imposition of an additional penalty for each day of noncompliance following the 10-day period provided in the court's decree.

In *N. L. R. B. v. Corsicana Cotton Mills*,² the Board in its contempt petition pointed out that the employer violated the provisions of the court's decree which required the employer to recognize and bargain with the union³ (1) by insisting that the union agree to the participation of nonunion employees in union meetings in which contract terms were to be voted on, (2) by refusing to agree in writing to the presence of a union representative at the adjustment of grievances, and (3) by otherwise refusing to bargain in good faith. The court agreed that in the first and second respects the employer had wrongfully withheld recognition from and refused to bargain with the union.

⁹⁹ 182 F. 2d 254 (C. A. 9).

¹ June 29, 1950 (C. A. 2), certiorari denied October 23, 1950.

² 178 F. 2d 344, 178 F. 2d 347, 179 F. 2d 234 (C. A. 5)

³ Insofar as other violations were alleged, the court granted the Board's request for leave to withdraw its charges without prejudice to other proceedings in respect thereto.

However, being of the opinion that the employer had acted in good faith and on the basis of a mistaken view of the law, the court reserved judgment as to the employer's other conduct, deferred final action on the Board's petition, and directed the employer to resume bargaining negotiations at once "in a sincere effort to reach an agreement." Following the employer's report alleging full compliance with these directions, the court found that the employer's intransigence in the matter of arbitration procedures and its insistence on union responsibility for strikes by both union and nonunion employees indicated the absence of good faith on the employer's part. However, since bargaining negotiations had progressed in other respects and consummation of an early accord appeared probable, the court again deferred final action on the Board's petition until a specified time at which the employer was directed to report the status of its negotiations with the union. An agreement having been reached by the parties on all controverted issues prior to that date, the court held that the employer was in compliance with decree and was, therefore, not guilty of contempt.

In *N. L. R. B. v. National Plastic Products Co.*,⁴ the Board alleged in its contempt petition that the employer, in violation of the court's bargaining decree, refused to sign a contract with the union although the parties were in agreement on all contract terms. Upon the issuance of the court's order to show cause, and prior to its return date, the employer signed the contract. In view of this fact, the court dismissed the Board's contempt petition with leave to the Board to renew its application in the event of "further acts of contempt."

On July 28, 1950, the Court of Appeals for the Third Circuit, in *N. L. R. B. v. Weirton Steel Co.*, adjudicated the employer in contempt of its decree of May 18, 1943.⁵ The court adopted the report in which the special master had found that certain companies, which were the successors to the corporate respondent in the original proceeding, as well as the officials and accomplices of those companies, had engaged in contumacious conduct by (1) assisting and interfering with an inside union which was the successor to the union the court ordered disestablished in its decree; (2) encouraging and supporting, financially and otherwise, assaults on outside union representatives and sympathizers; and (3) discriminating against certain employees in order to discourage membership in the outside union and encouraging membership in the favored inside union.⁶

⁴ June 29, 1950 (C. A. 4).

⁵ 135 F. 2d 494.

⁶ In one case during the past year the court granted the Board's motion to remand the case for the purpose of determining the extent of the employer's back-pay obligations. *N. L. R. B. v. Sifers*, October 24, 1949 (C. A. 10). (The court's decision enforcing the Board's order is reported in 171 F. 2d 631.)

VII

Injunction Litigation

SECTION 10 (j) and (l) of the amended act provides for the Board to seek injunctive orders in the United States district courts to halt conduct alleged to constitute an unfair labor practice.

Section 10 (j) confers discretion on the Board to petition for an injunction against any type of conduct, by either an employer or a union, which is alleged to constitute any unfair practice forbidden by the act. Such injunctive relief may be sought upon issuance of a formal complaint in the case by the general counsel. On the Board's petition, the court may then grant "such temporary relief or restraining order as it deems just and proper."

Section 10 (l) requires that an injunction be sought in a United States district court against a labor organization charged with a violation of section 8 (b) (4) (A), (B), or (C),¹ whenever the general counsel's investigation reveals "reasonable cause to believe that such charge is true and that a complaint should issue." The court is given discretion to grant "such injunctive relief or temporary restraining order as it deems just and proper." Section 10 (l) also provides for the issuance of a temporary restraining order without prior notice to the respondent party upon an allegation that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate relief is granted. Such an *ex parte* restraining order shall not be effective for more than 5 days. In addition, section 10 (l) provides that its procedures shall be used in seeking an injunction against a labor organization charged with engaging in a jurisdictional strike under section 8 (b) (4) (D), "in situations where such relief is appropriate."

Discretionary 10 (j) injunctions were sought in five cases, four against labor organizations and one against an employer. In three of the four cases against unions, injunctive relief was granted and the fourth case was pending at the close of the fiscal year. The petition for an injunction filed against an employer was withdrawn when the employer agreed to a settlement of the case approved by the Board's regional director. All but one of the cases in which discretionary injunctions were sought, against either a union or an employer,

¹ These sections contain the act's prohibitions against secondary strikes and boycotts, certain types of sympathy strikes, and strikes or boycotts against a Board certification of representative. Board action on cases involving these sections are discussed at pp. 137-149.

involved conduct alleged to be detrimental to the collective bargaining policy of the act. The fifth case involved violence, mass picketing, and the forcible barring of employees from plants producing 95 percent of the Nation's potash. In all cases against unions, the conduct included strike activities alleged to be illegal. The one case against an employer was based on charges that the employer had illegally made a contract with one of two unions seeking to represent his employees without a demonstration of the contracting union's majority status and while the question of his employees' representation was pending before the Board.

Under the mandatory provisions of section 10 (1), injunctions were sought in 22 cases. Nine were granted; four were denied. Three cases were settled, and one withdrawn. Two were pending, and three inactive at the close of the fiscal year. Eighteen of these cases involved secondary action allegedly to force cessation of business in violation of section 8 (b) (4) (A) or to force the recognition of an uncertified union in violation of section 8 (b) (4) (B). Four involved primary action allegedly to force recognition of one union when another union had been certified by the Board as representative of the employees, conduct which violates section 8 (b) (4) (C). Injunctions were sought under section 10 (1) in only two cases involving charges of a jurisdictional strike forbidden by section 8 (b) (4) (D). Both were granted.

The following table summarizes the proceedings instituted² and the action taken by the courts in cases under these sections:

Summary of injunction litigation under section 10 (j) and (l)
July 1, 1949, to June 30, 1950

Type of proceeding	Number of cases instituted	Number of applications granted	Number of applications denied	Cases settled, inactive, or pending
Proceedings under sec. 10 (j)				
(a) Against unions.....	4	13	0	1 pending
(b) Against employers.....	1	0	0	1 settled
Proceedings under sec. 10 (l).....	24	11	4	3 settled 3 inactive 1 withdrawn ⁴ 2 pending
Totals.....	29	14	4	11
Proceedings under sec. 10 (l) instituted during preceding fiscal year concluded in current year.	0	2	1	0

¹ In one of these cases, the injunction decree was entered upon consent of respondent.

² Four of these cases were dismissed following a settlement of the dispute after issuance of the restraining order.

³ In one of these cases, the proceeding was retained on the court's docket in the event new charges should be filed against the respondent.

⁴ Withdrawn after Board refused to assert jurisdiction over the operations of the charging party in a companion R case.

⁵ 10 of the 13 cases which were pending at the close of the past fiscal year (Fourteenth Annual Report, p. 134) remained inactive.

⁶ All injunction proceedings in which action was taken during fiscal year 1950 are listed in appendix B, tables 24, 25, 26, pp. 248-253. The procedure prescribed in sec. 10 (j) and (l) is outlined in the Thirteenth Annual Report (1948) pp. 83-84.

Litigation under section 10 (j) and (l) during the past year was marked by the reaffirmation of the principles previously established by the courts and the application and extension of those principles to new situations.

1. The Free Speech Guarantees

While heretofore the "free speech" defense to applications for injunctive relief frequently has taken the form of attacks upon the constitutionality of section 10 (j) and (l) and the related prohibitions of section 8 (b) (4),³ similar objections to injunction proceedings during the past year were for the most part confined to assertions that the particular conduct sought to be enjoined was within the protection of expressions of "views, argument, or opinion" embodied in section 8 (c)⁴ and the "free speech" guarantee of the First Amendment.

However, in the *Goodwin* case,⁵ the respondent, by way of cross-complaint, insisted (1) that section 10 (k) and section 10 (l) when applied to section 8 (b) (4) (D) charges, unconstitutionally delegate legislative power to the Board, and (2) that the act is arbitrary in its unequal application to the construction trades unions. In the first respect, the court referred to the well-established principle that the delegation to an administrative officer of some discretion in applying a statute to specific situations is constitutional so long as Congress has provided general standards. In the second respect, the court held that the union was not in a position to avoid its liability under the act on the ground that the Board's representation procedures had not been available to it, particularly since the union had not exhausted its administrative remedies for the purpose of obtaining access to those procedures.

In the *Grauman* case⁶ the court held that inducement or encouragement of employees by threats of reprisal or promises of benefits to

³ Fourteenth Annual Report (1949) pp 134-137; Thirteenth Annual Report (1948) pp. 84-85.

⁴ See Fourteenth Annual Report (1949) p. 137.

⁵ *Brown v. Roofers Union Local No. 40 (Goodwin)*, 86 F. Supp. 50 (D. C., No. Cal.). In the same case, the court rejected the union's request for a three-judge court (sec. 2282, title 28, U. S. C.) because no substantial claim of unconstitutionality was presented within the rule of *Water Service Co. v. Redding*, 304 U. S. 252, and since the provision for a three-judge court was not intended to apply where administrative action rather than the act of Congress itself is challenged. *Jameson Co. v. Morgenthau*, 307 U. S. 171.

In *Penello v. United Mine Workers*, 88 F. Supp. 935 (D. C., D. C.), the court confirmed the constitutionality of sec 10 (j) on the authority of *Evans v. I. T. U.*, 76 F. Supp. 881 (D. C., Ind.); *Madden v. United Mine Workers*, 79 F Supp 616 (D. C., D. C.), and *Douds v. Teamsters Union, Local 294*, 75 F Supp. 414 (D. C., N. Y.). See Thirteenth Annual Report (1948), pp. 84-86.

⁶ *Slater v. Denver Building Trades Council, et al. (Grauman)*, 175 F. 2d 608 (C. A. 10) Reversing the District Court for Colorado, 81 F. Supp. 490, which had denied the application for an injunction on jurisdictional grounds.

engage in strike action within the meaning of section 8 (b) (4) (A) was violative of that section and not protected by section 8 (c).

In the *Sterling Beverages* case, the court rejected the union's contention that its peaceful picketing activities came within the protection of section 8 (c). The court also held that the picketing, by being conducted upon and near the premises of an employer who was not a party to the union's dispute with another employer, became a secondary boycott, and the prohibition of such picketing did not violate the union's constitutional rights of free speech.⁷

In the *Alaska Salmon* decision,⁸ the court quoted the decision of the Court of Appeals for the Ninth Circuit in the *Sealright* case to the effect that the protection of section 8 (c) does not extend to picketing activities which come within the proscription of section 8 (b) (4) (A). In the *Western Express* case,⁹ the court similarly rejected the union's defense that the relief sought by the Board under section 10 (1) would invade the union's constitutional rights.¹⁰

2. Questions of Effect on Commerce

In several cases, injunctions were opposed on the ground that the Board was not entitled to relief since, in view of the nature of the complaining employer's business, the alleged conduct could not affect commerce within the jurisdictional requirements of the act.

The Court of Appeals for the Tenth Circuit in the *Grauman* case reversed the lower court which had dismissed the Board's application for relief under section 10 (1) on the ground that Grauman's operations were local in character and that any secondary boycott directed against Grauman would not interfere with interstate commerce.

Grauman manufactures, sells, and at times installs soda fountains and fixtures for stores and restaurants. Annually, Grauman purchases about \$100,000 worth of raw materials in other States and sells

⁷ *Douds v. International Brotherhood of Teamsters, Drivers Local No. 807 (Sterling Beverages)*, 85 F. Supp. 429 (D. C., So. N. Y.). The court considered the situation governed by the decisions in *Printing Specialties Union v. LeBaron (Sealright)*, 171 F. 2d 331, Fourteenth Annual Report (1949) pp. 135-136, 137; *Carpenter's Union v. Ritter's Cafe*, 315 U. S. 722, and *Giboney v. Empire Storage Co.*, 336 U. S. 490.

⁸ *Graham v. International Longshoremen's Union (Alaska Salmon)*, May 27, 1950 (D. C., W. Wash.).

⁹ *Humphrey v. Local 294 (Western Express)*, January 11, 1950 (D. C., So. N. Y.), 25 LRRM 2318.

¹⁰ In *Brown v. Retail Salesmen's Union (Cramer)*, 89 F. Supp. 207 (D. C., No. Cal.), the court in finding injunctive relief inappropriate in a section 10 (1) proceeding alleging a violation of section 8 (b) (4) (C) referred to the "possibility" that the peaceful picketing of the primary employer came within the protection of the First Amendment under certain Supreme Court decisions. The Supreme Court cases cited by the court and the court's decision both antedated the recent Supreme Court decisions in *International Brotherhood of Teamsters v. Hanke*, 339 U. S. 410; *Building Service Employees v. Gazzan*, 339 U. S. 532; and *Hughes v. Superior Court of California*, 339 U. S. 460.

manufactured products of a like value in interstate commerce. The dispute in the case arose in connection with the installation of Grauman products at a Denver restaurant, and the conduct sought to be enjoined allegedly was designed to induce the restaurant owner as well as other persons, to cease using and installing store and restaurant fixtures manufactured by Grauman.

The court of appeals pointed out that the purpose of the act is not only to protect interstate commerce against disruptive unfair labor practices occurring in the actual stream of commerce, but also to prohibit practices which indirectly affect commerce. Consequently, the court continued, conduct which if multiplied into a general practice tends to disrupt interstate commerce is within the purview of the act. The court observed that Grauman both bought and sold materials and products in interstate commerce and that the inescapable result of secondary boycott activities against Grauman would be to reduce those transactions. While the reduction in Grauman's business might not have immediately perceptible effects upon the free flow of commerce, the union's alleged practices if expanded into a general pattern throughout a substantial part of the country would seriously disrupt commerce, the court pointed out.

In the *Goodwin* case,¹¹ the court likewise held that a jurisdictional dispute tends to burden interstate commerce even though it occurs in connection with a local construction project. The job involved was a large housing project on which some 500 workers were employed. The Board had alleged that the respondent unions, through methods proscribed by section 8 (b) (4) (D), sought to force the complaining employers to assign certain work on the construction project involved to their members rather than to other employees. As in the *Grauman* case, the court in the *Goodwin* case held that the effect of unfair labor practices on commerce is not to be determined solely by their immediate quantitative effect,¹² but that the cumulative effect of the practices "when multiplied into a general practice" is controlling. "The power to regulate is not lost because of the small size of an individual contribution," the court observed. The court also pointed out that, according to established principles, the interstate flow of materials for use in the construction project was a sufficient basis for asserting jurisdiction and that the absence of a like flow of goods or materials from the area of the dispute in the case did not eliminate jurisdiction.¹³

¹¹ *Brown v. Roofers Union, supra.*

¹² Citing *Polish National Alliance v. N. L. R. B.*, 322 U. S. 643, Ninth Annual Report (1944) p. 55.

¹³ The court specifically relied on the following cases in which building trades unions had been enjoined from conduct prohibited by sec. 8 (b) (4): *United Brotherhood of Carpenters v. Sperry (Wadsworth)*, 170 F. 2d 863 (C. A. 10), Fourteenth Annual Report (1949) pp. 135, 136, 137; *Shore v. Building Trades Council (Petredis)*, 173 F. 2d 678 (C. A. 3), *ibid.*, p. 138; *LeBaron v. Building Trades Council (Westinghouse)*, May 26, 1949 (D. C., So. Cal.), *ibid.*, pp. 136, 138-139, 140.

In the *Best Housekeeping* case, the court also rejected the contention that an injunction, prohibiting conduct alleged by the Board to violate section 8 (b) (4) (C), should not issue because the employer against whom the conduct was directed was not subject to the Board's jurisdiction. The court held that, while the business involved was predominantly local, its interstate purchases and sales were such that any disruption caused by the union's conduct would inevitably affect commerce within the meaning of the act.¹⁴ The charging employer operates two stores in New York City and is engaged in selling, both wholesale and retail, electrical and household appliances. During 1949 about 80 percent of Best's total purchases of \$272,000 and 2.5 percent of its total sales of \$341,000 were interstate transactions. During the preceding year, both its out-of-State sales and purchases were substantially larger. The court declined to withhold injunctive relief because of the possibility that the Board might not assert jurisdiction over so small an enterprise. The court observed that it was not its function to anticipate the Board's ultimate action in the case.

However, in two cases in which the Board's application for injunctive relief was denied, the court predicated its action in part upon its doubt that the Board would ultimately assert its jurisdiction in the case.¹⁵ In the *Cramer* case, the court felt that the size and interstate aspects of the operations involved were such that, in the light of recent decisions, the Board would consider them essentially local and would hold that to exercise its jurisdiction would not effectuate the policies of the act.¹⁶ In the *Kimsey* case, the court conceded that, according to judicial precedent, interstate commerce was sufficiently endangered by the alleged conduct of the respondent unions to give the Board jurisdiction. However, the court was of the view that the small extent of the employer's operations and the limited potential effect on commerce brought the situation within the category of cases in which the Board had exercised its asserted discretion to decline jurisdiction.¹⁷

3. Jurisdiction of the Court

The court's jurisdiction to entertain the Board's petition for relief was challenged on several other grounds in the following cases:

In the *Goodwin* case, the court rejected the contention that it was without jurisdiction to grant relief under section 10 (1) in connec-

¹⁴ *Douds v. Wholesale Workers, Local 65 (Best Housekeeping)*, November 29, 1949 (D. C., So. N. Y.). The court concluded that the case was governed by the principles established in *N. L. R. B. v. Painblatt*, 306 U. S. 601, Fourth Annual Report (1939) p. 115.

¹⁵ *Brown v. Retail Salesmen's Union (Cramer)*, 89 F. Supp. 207 (D. C., No. Cal.); and *Graham v. Spokane Building Trades Council (Kimsey)*, September 16, 1949 (D. C., E. Wash.).

¹⁶ The Board subsequently declined to assert jurisdiction in the case, 89 NLRB No. 187.

¹⁷ Subsequently, the Board asserted jurisdiction in the case, 89 NLRB No. 141.

tion with a jurisdictional dispute because the parties had referred the dispute to a private agency for determination.¹⁸ The court pointed out that its power to grant injunctive relief was not so limited by the act.

In the *Western Express* case, the court held that it was not precluded from entertaining the Board's petition for relief under section 10 (l) because the employer, on whose charges the Board proceeded, had previously elected to institute damage suits against the respondents under other provisions of the act. The court held that the several remedies which the act affords are not mutually exclusive.

In the *Grauman* case, the court declined to dismiss the appeal from the lower court's denial of temporary relief on the ground that in the meantime the trial examiner had recommended the dismissal of the charges before the Board. The court pointed out that the trial examiner's action had been appealed to the Board and that, therefore, the charges had not been finally determined.¹⁹

4. The Scope of Court's Inquiry

In passing upon the Board's applications for relief under section 10 (j) and (l), the courts have continued to apply the now well-established principle that the court must ascertain only whether reasonable cause exists to sustain a belief that unfair labor practices affecting commerce as charged have been, or are being, committed²⁰ and that the actual existence of violations of the act is for the exclusive determination of the Board.²¹

In the *Goodwin* case, in which a violation of the work assignment dispute provisions of section 8 (b) (4) (D) was charged, the requisite "reasonable cause" was held to have been shown not only by the regional director's "very thorough" preliminary investigation and the testimony and the documentary evidence presented to the court, but also by the record of the hearing in the intervening section 10 (k) proceeding in which no determination of the dispute had yet been made by the Board.²²

¹⁸ The court cited *International Brotherhood of Teamsters v. United Brewery Workers*, 106 F. 2d 871, 875 (C. A. 9) (1939) as controlling.

¹⁹ In *Penello v. United Mine Workers*, 88 F Supp 935 (D C, D C), the court rejected the contention that the Board could not delegate to the regional director its authority to seek injunctive relief under sec. 10 (j), citing *Evans v. I T U*, 76 F Supp. 881 (D C, Ind), Thirteenth Annual Report (1948) p 90

²⁰ *Penello v. United Mine Workers*, 88 F Supp. 935 (D. C., D. C.); *Graham v. Spokane Building Trades Council (Kimsey)*; *Humphrey v. Local 294 (Western Express)*, *Brown v. Roofers Local 40 (Goodwin)*, *Douls v. Wholesale Workers, Local 65 (Best Housekeeping)*, see Fourteenth Annual Report (1949) p 138; Thirteenth Annual Report (1948) pp. 86-87.

²¹ *Graham v. Spokane Building Trades Council (Kimsey)*, *supra*.

²² Compare the *Westinghouse* and *Juneau Spruce* cases (Fourteenth Annual Report (1949) p. 139) where the Board's determination of the jurisdictional dispute involved was considered by the court as an indication that there was reasonable cause to believe that a violation of sec. 8 (b) (4) (D) had occurred.

5. Prerequisites of Injunctive Relief

In exercising the statutory power to grant "just and proper" relief, the courts in some cases have enjoined conduct within the purview of section 8 (b) (4) on the basis of a showing of reasonable cause that the act had been violated without discussion of any standards other than those set forth in the act.²³

But, in other cases, the courts have indicated that the current need for an injunction is a consideration in determining appropriate relief. The need for relief in several instances was considered present although the immediate conduct charged had been discontinued. Thus, in the *Grauman* case, the court of appeals held that the completion of the installation project in connection with which the secondary boycott activities involved occurred did not render the case moot.²⁴ The court pointed out that the unfair labor practices, whose existence was alleged by the Board, were of a general pattern, not limited in effect to the immediate project, but were intended to force employers and persons generally to cease doing business with Grauman.

Similarly, the court held in the *Goodwin* case, that the cessation of the unlawful picketing activities a day or two before filing of the injunction proceeding did not justify the withholding of relief. The court observed that under the circumstances of the case, it must be assumed that the union's withdrawal of its pickets was motivated by the anticipation of injunction proceedings and that the picketing would be resumed if the relief requested were denied. In this connection, the court considered the history of picketing by the unions at other jobs where similar disputes had existed.

In the *Alaska Salmon* case, the court granted injunctive relief where the respondent unions had withdrawn their pickets only upon the condition that the picketed transport companies refrain from handling property of the boycotted employers. This condition itself violated section 8 (b) (4) (A) of the act, the court noted.

In some cases, under section 10 (1) as well as under section 10 (j), the courts have referred to the special circumstances, apart from effectuating the policies of the act, which were deemed to warrant injunctive relief in the particular case. In the *United Mine Workers* case, the court specifically noted that, aside from the interests of the immediate parties to the dispute, the welfare of the entire Nation was

²³ See *Douds v. Teamsters, Local No. 807 (Sterling Beverages)*, *supra*; *Greene v. General Drivers, Local No. 886 (Santa Fe Trail)*, October 20, 1940 (D. C., W. Okla.), 25 LRRM 2049; *Shore v. General Teamsters, Local 249 (Swift)*, March 22, 1950 (D. C., W. Pa.), 25 LRRM 2590; *Evans v. Metal Polishers Union (Climax)*, July 27, 1949, (D. C., So. Ind.), 24 LRRM 2404.

²⁴ The court cited *Shore v. Building Trades Council (Petredes & Fryer)*, 173 F. 2d 678 (C. A. 3), Fourteenth Annual Report (1949) pp. 140-141.

at stake and that relief was sought not by private parties but by the Government on behalf of the public.²⁵

In the *Goodwin* case, the court took into consideration that the "public good" required that the unions' conduct be enjoined in order to insure the uninterrupted progress on a large housing project of which the community was in need.²⁶ The court also noted that the work assignment dispute involving 6 employees had necessitated the cessation of work on the entire project, depriving 400 to 500 employees of work.²⁷ In the *Wilbert* opinion,²⁸ the court mentioned the adverse effect which rival union conduct, believed to violate section 8 (b) (4) (C), had upon the public interest.

In granting temporary relief in cases in which the respondent unions, by means alleged to violate section 8 (b) (4) (C), sought to obtain recognition notwithstanding the Board's certification of other unions, the court held that the employers in the *Best Housekeeping* case and the employees affected in the *Wilbert* case were entitled to protection, as innocent bystanders.

6. Scope and Form of Relief

In granting the Board's applications for temporary relief, the courts have continued generally to include in their injunctive orders prohibitions against acts, similar or related to those charged, which could reasonably be anticipated from the union's past conduct.²⁹ In a few cases, because of the particular circumstances involved, the injunctions were limited to the specific acts concerning which complaint was made.³⁰

In *Western Express*, the court, withholding an injunction, held that the just and proper relief under the peculiar circumstances of the case was to retain the proceeding on its docket with permission to the Board to introduce additional evidence in case of the filing of other unfair labor practice charges of a similar nature. In the *Kimsey* case, the court took the view that, while a temporary injunction was not a just and proper measure under the circumstances, the safeguarding of the public interest required that the case be kept on the court's docket with permission to the Board to renew its application for relief if necessary.

²⁵ See also *Curry v. Union de Trabajadores* (footnote 29) where the court enjoined the respondent union from conduct violative of sec. 8 (b) (3) and 8 (d) in order to protect the public interest against irreparable injury.

²⁶ Cf. the *ABCO* case, *infra*.

²⁷ Compare the *Westinghouse* case, Fourteenth Annual Report (1949) p. 141.

²⁸ *Humphrey v. Teamsters Local 138 (Wilbert)*, 85 F. Supp. 473 (D. C., So. N. Y.).

²⁹ See *Greene v. General Drivers Union (Santa Fe Trail)*, footnote 23; *Curry v. Union de Trabajadores*, 86 F. Supp. 707 (D. C., P. R.), footnote 25; *Shore v. Teamsters Local 249 (Swift)*.

³⁰ See *Evans v. Metal Polishers Union (Climax)*, *supra*; *Penello v. United Mine Workers*, February 11, 1950 (D. C., D. C.), 25 LRRM 2374. Compare Fourteenth Annual Report (1949) pp. 141-142; Thirteenth Annual Report (1948) pp. 89-90.

7. Conduct Enjoined Under Section 10 (I)

a. Secondary Strikes and Boycotts

In the *Sterling Beverages* case, the respondent union, which had a dispute with Sterling Beverages, picketed the entrance to the loading platforms of Ruppert Brewery whenever Sterling's trucks arrived for the purpose of unloading and loading. The union insisted that the picketing had the lawful primary object to induce Sterling's drivers not to move any trucks over the brewery's premises in order to force Sterling to employ its members for these operations. However, the court considered it reasonable to believe that the union's conduct was violative of the secondary boycott provisions of section 8 (b) (4) (A) in that its "inescapable result, if not purpose" was to bring about a concerted refusal of the brewery's employees to unload and load Sterling's trucks in order to cause the brewery to cease doing business with Sterling. In the court's view, this result of the union's action could not be considered a mere incident where the picketing took place at the very entrance to the brewery's platforms. Citing the *Sealright* case,³¹ the court concluded that picketing carried on "upon or near the premises of an employer who is not a party to the dispute * * * becomes a secondary boycott."

Similarly, the court in *Alaska Salmon* held that picketing at certain docks and terminals was not in connection with a primary dispute with the operators of the shipping facilities, as contended, but was a secondary boycott intended to induce the operators' employees to refrain from handling the products of the Alaska Salmon Industry and its cannery members with whom the primary dispute existed. As in the *Sterling* case, the court held that the situation came within the rule of the *Sealright* case.³²

b. Conduct to Compel Recognition of Uncertified Unions

In two cases, *Wilbert* and *Best Housekeeping*, injunctions were granted to restrain conduct which was believed to violate section 8 (b) (4) (C) of the act in that it tended to force certain employers to deal with labor organizations other than the certified representatives of their employees. In the *Wilbert* case, the respondent union sought

³¹ *Printing Specialties Union v. LeBaron*, 171 F. 2d 321 (C. A. 9), Fourteenth Annual Report, pp. 135-136.

³² For other cases in which secondary boycotts were restrained, see *Evans v. Metal Polishers Union (Climax)*, footnote 23; *Greene v. General Drivers Local No. 886 (Santa Fe)*, footnote 23. See also *Shore v. Commercial Telegraphers (Pittsburgh Press)*, May 19, 1950 (D. C., W. Pa., Civ. No. 8831); *Graham v. International Longshoremen's Union (Matson Navigation)*, September 6, 1949 (D. C., No. Cal. 29106H); and *Elliott v. Local Union 227 (Waterman Steamship)*, November 11, 1949 (D. C., So. Tex., Civ. No. 5310), where temporary restraining orders were issued in connection with the Board's application for injunctions under sec. 10 (1).

to justify its strike and picketing activities on the ground that certain shipping and maintenance employees were outside the certified unit. Rejecting this contention, the court held that not only was the number of employees concerned very small but the evidence supported the conclusion that they were actually within the certified unit because they devoted only a part of their time to the excluded activities. Moreover, the court observed, if the respondent union had any legitimate representation claims, it should have resorted to the orderly processes of the Board rather than to self-help.

c. Conduct in Aid of Jurisdictional Disputes

In the *Goodwin* case, the court granted the Board's application for temporary relief because it was reasonable to believe that the respondent unions' picketing and other conduct was not merely in aid of a lawful controversy with the complaining employer, but was part of a jurisdictional dispute within the meaning of section 8 (b) (4) (D) aimed at forcing Goodwin to assign the work on composition shingles to members of the respondent Roofers Union instead of permitting members of the Carpenters' or Shinglers' unions to perform the work. The court's conclusion was based upon documentary evidence which showed that the respondents themselves referred to the dispute as a "jurisdictional" one; upon statements of union representatives which indicated both the jurisdictional nature of the present dispute and the long-standing controversy between Roofers and Carpenters regarding the installation of composition shingles; and upon the fact that spot decisions had been made on various occasions when similar disputes arose in other localities.

In the *West Virginia Electric* case,³³ the court restrained picketing and other activities believed to have been engaged in to force the assignment of work to members of one labor organization rather than to members of another union in a jurisdictional dispute.

8. Conduct Enjoined Under Section 10 (j)

The only section 10 (j) proceeding against an employer filed during the year was withdrawn prior to hearing because of the entry of a consent Board order determining the issues. This proceeding was initiated on charges that the employer had violated section 8 (a) (1) by entering into an exclusive bargaining contract with one of two unions engaged in a dispute over the representation of the employer's workers without demonstration of a majority representation of the

³³ *Shore v. Local Union No. 596, I. B. E. W. (West Virginia Electric)*, December 1 and 10, 1949 (D. C., No. W. Va., Civ. No. 92).

workers by the contracting union and while the representation question was pending before the Board.³⁴

Temporary relief pursuant to section 10 (j), following the issuance by the Board of a complaint alleging union practices prohibited by section 8 (b) of the act, other than those specified in section 8 (b) (4), was granted in several cases.

The most important of these cases in which injunctive relief was granted was *Penello v. United Mine Workers*.³⁵ The Board's complaint in this case alleged that the respondents violated section 8 (b) (2) and (3) of the act (1) by insisting upon the inclusion of an illegal union-shop provision in its bargaining agreements; (2) by insisting upon contractual welfare and retirement provisions for the benefit of its members only; (3) by insisting upon so-called "able and willing" and "memorial" clauses which had the effect of permitting the union unilaterally to fix terms of employment and abrogate or suspend its agreement; and (4) by refusing to resume bargaining negotiations when requested by the employers of the union's members.

According to the court, insistence upon a closed shop and welfare and retirement benefits for members only, was violative of section 8 (b) (2) and (3) because of the disregard of the provisions of section 8 (a) (3) which specify the type of permissible union security and the conditions upon which union-security agreements may be made.

The court also found that the union's insistence upon clauses in proposed contracts providing that the contracts "shall cover" the employees concerned only "during such time as such persons are *able and willing* to work," and that the union "may designate memorial periods," was likewise in conflict with the good-faith bargaining requirement of section 8 (b) (3). The court pointed out that, as interpreted by the union's president and as shown by the evidence, these clauses were intended to give the union control over coal production and, indirectly, over prices by giving the union power to determine unilaterally the periods during which its members should work. Moreover, the court held, as thus interpreted, the "willing and able" and "memorial periods" clauses could be used to circumvent the provisions of section 8 (d) and thus to defeat the congressional intent that existing collective agreements shall be terminated only upon notice and without immediate resort to strike. Insistence upon such clauses, the court concluded, is inconsistent with the statutory requirement that the parties to a proposed collective agreement bargain in good faith. Nor, the court held, was it material that previously the parties may have

³⁴ *Graham v. Ataska Salmon Industry* (D. C., W. Wash., Civ. No. 2555).

³⁵ 88 F. Supp. 935 (D. C., D. C.).

adopted similar clauses, because private parties cannot waive the provisions of the act.³⁶

The court also held that the union's alleged refusal to comply with the employers' request that bargaining negotiations be renewed was clearly violative of the bargaining mandate of section 8 (b) (3).

In *Curry v. Union de Trabajadores*,³⁷ the court enjoined the respondent union from striking or engaging in other concerted action for the purpose of forcing the employer to modify or terminate an existing collective agreement without observing the requirements of section 8 (d). In granting the injunction the court noted the seriousness of the disruption which the union's conduct caused in the building construction and related industries in Puerto Rico.

9. Cases in Which Injunctions Were Denied

The Board's application for injunctive relief was denied in five cases during the past year. However, in two of the cases the court was of the opinion that appropriate relief would be granted and the public interest safeguarded by retaining the cases on the court's docket.³⁸

In the *Western Express* case, unfair labor practice charges were filed alleging that the respondent union's conduct brought about the refusal of certain terminal employees to handle a trailer owned by a motor carrier with whom the union had a primary dispute. The court found that the employees of the terminal were unlawfully induced and encouraged not to handle the trailer, although, in the court's view, the unlawful inducement did not result in a strike, in view of the secondary employer's immediate acquiescence in the union's demands. Saying that the incident might be regarded as "isolated, trivial" and arising "out of a misunderstanding," the court ruled that "just and proper" relief would be afforded by retention of the case on the court's docket with leave to renew the application for an injunction should new violations be engaged in by the respondent union.³⁹

In reaching its conclusion, the court rejected the union's defense that its conduct did not violate the act because it was within the contemplation of the union's agreements with the primary and secondary employers. In the court's opinion, the acts in question were neither within the terms of these agreements nor could they be made lawful by contract so long as they were prohibited by the act. The court distinguished the Board's ruling in the *Conway's Express* case,⁴⁰ on

³⁶ Cf. *Western Express* case, *supra*.

³⁷ 86 F. Supp. 707 (D. C., P. R.).

³⁸ *Humphrey v. Local 294 (Western Express)*; *Graham v. Spokane Building Trades Council (Kimsey)*, *supra*.

³⁹ The court indicated that it might have dismissed the petition had the union unequivocally disclaimed its right to engage in secondary boycott activities in aid of its dispute with *Western Express*.

⁴⁰ 87 NLRB 972.

the ground that the contract relied upon there, unlike the one in the instant case, had been entered into prior to the effective date of the amended act.

In the *Kimsey* case, the denial of immediate injunctive relief was predicated on the court's doubts as to whether the Board would ultimately exercise its jurisdiction in the case and as to whether the unions' "unfair" listing of the primary employer and other conduct violated the secondary boycott provisions of the act, particularly since, in the court's opinion, the unions in their dispute with Kimsey had acted in good faith. Accordingly, the court considered that the "public interest" would be "safeguarded" merely by retention of the case on the court's docket for further action in the event respondent unions engaged in subsequent unlawful secondary boycott activities.⁴¹

In the *Cramer* case, the court denied the Board's application for an injunction, partly because of its doubt as to whether the Board would exercise jurisdiction in the matter.⁴²

In the *ABKO* case,⁴³ it was charged that the respondent union, asserting bargaining rights under an assignment from the certified representative, engaged in a strike and picketing activities in order to compel the employer to enter into bargaining negotiations. While holding that the certified representative's attempt to assign its authority was in conflict with the statutory provision for the designation of representatives in a secret Board-conducted election, the court denied injunctive relief on the ground that it was within the power of the Board to resolve the representation dispute speedily through its own administrative processes. The court also observed that there was no need for an injunction since the delay in the installation of ornamental fixtures in a housing project which was occasioned by the strike did not prevent the immediate occupancy of the apartments under construction.

In the *Rabinowe* case,⁴⁴ the court found the evidence insufficient to establish a probable unfair labor practice and denied the Board's petition for temporary relief without opinion.

⁴¹ The Board in its decision subsequently issued, see *supra*, p. 146, asserted jurisdiction in the matter and found that the unions had violated the act but not in the "unfair" listing of the primary employer.

⁴² *Brown v. Retail Salesmen's Union (Cramer)*, 89 F. Supp. 207 (D. C., No. Cal.). Subsequently the Board dismissed the complaint because it would not effectuate the policies of the act to assert jurisdiction over Cramer's retail stores.

⁴³ *Douds v. Local 24368, United Wire and Metal Workers (ABKO)*, 86 F. Supp. 542 (D. C., So. N. Y.).

⁴⁴ *Douds v. Teamsters Local 456 (Rabinowe)*, May 16, 1950 (D. C., So. N. Y.).

VIII

Miscellaneous Litigation

THE Board was engaged during the 1950 fiscal year in the litigation of a number of miscellaneous types of lawsuits. Several of these proceedings were instituted by private parties. In most of them, the Board, for its part, was engaged either in endeavoring to preserve authority conferred upon it by the statute, or in aiding the enforcement of its orders. The legal actions included proceedings to obtain enforcement of Board subpoenas necessary to the investigation of unfair labor practices and the successful resistance of private suits to obtain review of Board orders in representation cases directly rather than through the long-established channel of court of appeals review of the Board's final order in a refusal to bargain case. Also, in one case, a court of appeals sustained the Board's ruling that the filing of charges of jurisdictional dispute does not require the Board to conduct a hearing on the dispute when the Board's preliminary investigation indicates that the charges lack substance. In another case, a court of appeals granted a temporary restraining order under section 10 (e) to prevent an employer from dissipating his assets while the Board was seeking enforcement of an unfair labor practice order against him.

1. Subpoena Enforcement Proceedings

In *N. L. R. B. v. John S. Barnes Corp.*,¹ the court upheld the Board's authority to delegate to subordinates its statutory power to issue subpoenas. In the court's opinion, the power to delegate, while not expressly given in section 11 (1), is implied in the various provisions of the act which must be considered as a whole in the light of its purpose and legislative history. Thus, the court held that (1) the issuance of subpoenas is a necessary incident to the prosecuting and investigating functions which the Board, under section 5 of the act, may delegate to its agents; (2) the issuance of subpoenas is "necessary to carry out the provisions of the Act" and therefore is subject to the Board's rule-making power under section 6; and (3) delegation of the power to issue subpoenas is indispensable if the Board is to

¹ 178 F. 2d 156 (C. A. 7).

administer the broad purposes and policies of the act throughout the Nation promptly and effectively, and if, to that end, subpoenas are to be issued *forthwith* as required by section 11 (1). The court further observed that Congress was aware of the Board's previous practice of delegating the power to issue subpoenas when it amended section 11 (1) to make the issuance of subpoenas mandatory and to provide for the revocation of subpoenas issued. Failure of Congress to forbid such delegation in the amended section 11 (1), according to the court, "must be considered as legislative ratification of the Board's construction and procedure." The court also pointed out that the Board's delegation of its subpoena powers must likewise be sustained on the grounds which the Supreme Court assigned in upholding a similar delegation by the price administrator under the Emergency Price Control Act.² In the court's opinion, the Board no less than the price administrator is entrusted with a large program which requires "administrative flexibility" in order to permit "prompt and expeditious action on a multitude of fronts."³

In *Bland Lumber Co. v. N. L. R. B.*,⁴ the court of appeals dismissed the company's appeal from the order by which the district court (1) enforced a subpoena issued by the Board, and (2) restrained the company from taking any action to prevent other respondents from obeying the Board's subpoena.⁵ The court of appeals sustained the lower court's conclusion that the company could not resist enforcement of the subpoena on the ground that the Board lacked jurisdiction to entertain the representation proceeding in connection with which it was issued because the petitioning union had not complied with the filing and affidavit requirements of section 9 (f), (g), and (h). Relying chiefly on the rules laid down by the Supreme Court in the *Endicott-Johnson* case,⁶ the court pointed out that the question of the union's compliance with those requirements did not go to the Board's general jurisdiction over representation proceedings and was primarily a matter for the Board's administrative determination. The court further observed that Congress, in adopting the Administrative Procedure Act, specifically declined to make the jurisdiction of an administrative agency in a particular case litigable in a proceeding for the enforcement of a subpoena issued in the case, and that Congress thus enacted into law the principle established in the *Endicott-Johnson* case. The court also rejected the contention that the Board's subpoena was invalid in that it called for information from a common carrier regarding shipments to and from the respondent company in violation of the

² See *Fleming v. Mohawk Co.*, 331 U. S. 111.

³ The court held that the Supreme Court's ruling in *Cudahy Packing Co. v. Holland*, 315 U. S. 357, was not applicable.

⁴ 177 F. 2d 555 (C. A. 5).

⁵ See Fourteenth Annual Report, p. 148

⁶ *Endicott-Johnson Corporation v. Perkins*, 317 U. S. 501.

Interstate Commerce Act.⁷ That act, the court noted, while prohibiting carriers from giving certain information concerning interstate shipments, specifically excludes from its operation the furnishing of such information in response to any legal process. Moreover, the court held, the disclosures sought were lawful since the documents involved belonged to the railroad rather than the complainant and since they were not privileged on account of any confidential relation between the railroad and the company. In conclusion, the court affirmed the lower court's order restraining resort to State court action which would render its enforcement of the Board's subpoena ineffective and would subject parties complying with the subpoena to punishment for contempt.

In *Louise Hamilton v. N. L. R. B.*,⁸ enforcement of the Board's subpoena was resisted on the ground that the Board was without jurisdiction to issue the complaint to which the subpoena related inasmuch as the complaint was barred by the 6-month limitation in section 10 (b),⁹ and the complaining union had not filed the documents and affidavits specified in section 9 (f), (g), and (h). As in the *Bland Lumber* case, the court held that the question raised by the respondent must be determined in the first instance by the Board in the unfair labor practice proceeding which was within its general jurisdiction under the act. The court concluded that respondent, whose rights had not been violated, could not disrupt the proceeding before the Board by seeking piecemeal judicial review of questions of law.

2. Suits for Review in Representation Cases

Three suits were instituted in United States district courts to obtain review of action taken or about to be taken by the Board in representation cases. All were dismissed.

In *Atlanta Metallic Casket Co. v. United Paperworkers of America*,¹⁰ the complaining employer sought a declaratory judgment nullifying the Board's certification of the union because of its alleged failure to comply with the filing and affidavit requirements of section 9 (f), (g), and (h). The court declined relief on the basis of the Board's argument that the court was without jurisdiction over the subject matter and that power to review Board certifications is vested exclusively in the courts of appeals in connection with proceedings for the enforcement of unfair labor practice orders based on a certification. The court pointed out that regardless of whether or not the union's compliance status was considered a jurisdictional fact, the

⁷ 49 U. S. C. 15 (11).

⁸ 177 F. 2d 676 (C. A. 9).

⁹ See *supra*, pp.

¹⁰ 87 F. Supp. 718 (D. C., No. Ga.).

employer was not entitled to declaratory relief and could obtain judicial review of the Board's certification only if its refusal to recognize the union should result in the issuance of an unfair labor practice order by the Board.

In *General Drivers, Local No. 886, AFL v. Elliott*¹¹ and *United Transport Workers of America v. Douds*,¹² the respective courts similarly declined to interfere with the Board's representation procedures on the ground of their alleged invalidity. In the *General Drivers* case, a union which was excluded from participation sought to enjoin the holding of an election, while in the *Transport Workers* case, the union which was unsuccessful in the election attempted to enjoin the Board and the employer from giving effect to the certification of another union.¹³

3. Suits to Compel or Enjoin Board Action

Three suits to compel Board action and one to restrain it also were instituted in United States district courts during the past fiscal year. All four were dismissed.

In *Camp v. Herzog*,¹⁴ the court dismissed a complaint requesting that the Board be restrained from proceeding with a determination whether the complaining attorney, who was alleged to have assaulted a Board representative in the course of a hearing, should be barred from further practice before the Board. The court held that the Board as an administrative agency had inherent power to control practice before it, a power which was unaffected by the provisions of the Administrative Procedure Act. The court further held that, in the absence of a final determination within the meaning of the Administrative Procedure Act, it was without jurisdiction to interfere with the administrative processes of the Board.

In two of the three cases in which specified action on the part of the Board was sought to be compelled, the court dismissed the proceeding for lack of jurisdiction. *Textile Workers Alliance v. Herzog*;¹⁵ *General Drivers, Local 886, A. F. L. v. N. L. R. B.*¹⁶ In the third case, the court sustained the Board's appeal from the lower court's order granting the relief requested by the petitioning union. *Herzog v. Parsons*.¹⁷

¹¹ August 1, 1949 (D. C., W. Okla., Civil Action No. 4433).

¹² June 8, 1950 (D. C., So. N. Y., Civil No. 57-209).

¹³ In *Florida Mattress Factory, Inc. v. London*, February 21, 1950 (D. C., So. Fla., No. 1850 Civil T.), the United States district court, upon removal, dismissed the action instituted in a State court in which the Board, at the instance of the employer, had been temporarily restrained from conducting a hearing in an unfair labor practice proceeding.

¹⁴ June 13, 1950 (D. C., D. C.).

¹⁵ February 4, 1950 (D. C., D. C., Civil Action No. 5336-49).

¹⁶ 179 F. 2d 492 (C. A. 10).

¹⁷ 181 F. 2d 781 (C. A., D. C.).

In the *Textile Workers* case, the complaint requested that the Board be directed to entertain the union's petition for certification contrary to the Board's established policy to suspend the determination of representatives pending the disposition of unfair labor practice charges against the employer involved. The court held that the Board's action was but a preliminary step in an administrative proceeding with which the court may not prematurely interfere.

In the *General Drivers* case, the court declined to reverse the refusal of the Board's General Counsel to issue a complaint based on the failure of an employer to recognize the complaining union which claimed majority status contrary to the Board's determination in a representation proceeding. Citing *Lincourt v. N. L. R. B.*,¹⁸ the court pointed out that the power of the General Counsel to issue complaints under section 10 (b) of the amended act is discretionary and is no more reviewable than the identical power which the original act vested in the Board. The court also dismissed the union's complaint insofar as it sought review of the Board's determination in the representation proceeding. That determination, the court observed, was not reviewable under section 10 (f) of the act since it was not "a final order," i. e., an order dismissing a complaint in whole or in part or remedying unfair labor practices found by the Board. The court also referred to the specific provisions of section 9 (d) which permit judicial review of representation proceedings only in connection with an unfair labor practice order which is based on the certification of a bargaining representative.

In *Herzog v. Parsons*, the court of appeals, reversing the lower court,¹⁹ sustained the Board's conclusion that the filing of section 10 (k) charges, alleging violations of the jurisdictional strike and boycott prohibitions of section 8 (b) (4) (D), does not require the Board to hear and determine the underlying jurisdictional dispute before it is determined in a preliminary investigation that there is reasonable cause to believe the charges are true. Contrary to the complaining union's contention, the court held that the Board's statutory power to make such a preliminary investigation was clearly indicated. Thus, the court pointed out that not only did section 3 (d) expressly vest the General Counsel with power to investigate *all* charges under section 10, but section 11 also conferred on the Board the investigatory powers necessary for the exercise of all of the Board's functions under both sections 9 and 10. The court concluded that, in the absence of any exclusionary language in section 10 (k) and other sections in connection with which 10 (k) must necessarily be

¹⁸ 170 F. 2d 306 (C A 1), Fourteenth Annual Report, p 152.

¹⁹ *Parsons v. Herzog*, 85 F. Supp. 19 (D. C., D. C.), Fourteenth Annual Report, pp. 152-153.

construed, a congressional intent to preclude the Board from making a preliminary investigation of the charges in advance of a 10 (k) determination may not be inferred. A contrary conclusion, the court observed, would have the incongruous result that, unlike other proceedings, the Board would have to conduct 10 (k) hearings on even the most frivolous charges without determining its jurisdiction over the parties or the conduct involved and without ascertaining whether the union which filed 8 (b) (4) (D) charges has complied with the filing and affidavit requirements of section 9 (f), (g), and (h). In view of the correctness of the Board's construction of section 10 (k), the court of appeals held that the lower court was without jurisdiction over the subject matter and that the union's complaint failed to state a cause of action.

4. Other Litigation

In *California Association of Employers v. Building and Construction Trades Council*,²⁰ the Board intervened for the purpose of seeking dismissal of an action for declaratory and injunctive relief concerning matters which the Board contended were within its exclusive jurisdiction. Affirming the lower court's denial of the relief sought, the court of appeals held that the complaint ultimately was concerned with the existence or threat of unfair labor practices and that the lower court therefore lacked jurisdiction. The court of appeals pointed out that the amended National Labor Relations Act left the Board's exclusive jurisdiction over unfair labor practices unimpaired and did not enlarge the rights of private litigants to judicial intervention. These principles, established in the *Amazon Cotton Mill*²¹ and *Dixie Motor Coach*²² cases, the court held, are equally applicable whether the relief sought is injunctive or declaratory in nature. The court of appeals also sustained the lower court's conclusion that in the manifest presence of a labor dispute injunctive relief was barred by the Norris-LaGuardia Act whose prohibitions had not been superseded by the injunction provisions of the amended National Labor Relations Act.

In *N. L. R. B. v. Fournier, Rome Lincoln-Mercury Corporation*,²³ the court granted the Board's motion for temporary relief under section 10 (e) for the purpose of preventing the employer from dissipating its assets during the pendency of proceedings for the enforcement of an unfair labor practice order of the Board.

²⁰ 178 F. 2d 175 (C. A. 9)

²¹ *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. 2d 183 (C. A. 4), Thirteenth Annual Report, pp. 78-79

²² *Amalgamated Association v. Dixie Motor Coach Corp.*, 170 F. 2d 902 (C. A. 8), Fourteenth Annual Report, pp. 153-154

²³ October 10, 1949 (C. A. 2).

IX

Fiscal Statement

The expenditures and obligations for fiscal year ended June 30, 1950, are as follows:

Salaries.....	\$6, 652, 933
Travel.....	775, 987
Transportation of things.....	13, 717
Communication services.....	220, 636
Rents and utility services.....	377, 012
Printing and reproduction.....	239, 450
Other contractual services.....	152, 484
Supplies and materials.....	97, 261
Equipment.....	65, 453
<hr/>	
Grand total, obligations, and expenditures for salaries and expenses.....	8, 594, 933

APPENDIX A

Definitions Of Types Of Cases Used In Tables

The following designations, used by the Board in numbering cases, will be used in the tables in appendix B to designate the various types of cases:

CA Cases

A charge of unfair labor practices against an employer under section 8 (a).

CB Cases

A charge of unfair labor practices against a union under section 8 (b) (1), (2), (3), (5), (6).

CC Cases

A charge of unfair labor practices against a union under section 8 (b) (4) (A), (B), (C).

CD Cases

A charge of unfair labor practices against a union under section 8 (b) (4) (D).

RC Cases

A petition by a labor organization or employees for certification of a representative for purposes of collective bargaining under section 9 (c) (1) (A) (i).

RM Cases

A petition by employer for certification of a representative for purposes of collective bargaining under section 9 (c) (1) (B).

RD Cases

A petition by employees under section 9 (c) (1) (A) (ii) asserting that the union previously certified or currently recognized by their employer as the bargaining representative, no longer represents a majority of the employees in the appropriate unit.

UA Cases

A petition by a labor organization under section 9 (e) (1) for a referendum to authorize it to make a contract requiring membership in such union as a condition of employment.

UD Cases

A petition by employees under section 9 (e) (2) asking for a referendum to rescind a bargaining agent's authority to make a union-shop contract under section 9 (e) (1).

C Cases

A charge of unfair labor practices against an employer under section 8 of the National Labor Relations Act, prior to amendment.

R Cases

A petition for certification of a representative for purposes of collective bargaining with an employer under section 9 of the National Labor Relations Act, prior to amendment.

APPENDIX B

Statistical Tables For Fiscal Year 1950

The following tables present a detailed statistical record of the cases received and handled by the National Labor Relations Board during the fiscal year 1950.

Table 1.—Number of cases received, closed, and pending by identification of complainant or petitioner, fiscal year 1950

	Number of cases					
	Identification of complainant or petitioner					
	Total	A F of L affiliates	C I O. affiliates	Unaffili- ated unions	Individ- uals	Employ- ers
All cases						
Cases pending July 1, 1949.....	5,722	2,290	1,137	608	1,358	329
Cases received July 1, 1949-June 30, 1950.....	21,632	10,107	4,630	3,386	2,214	1,295
Cases on docket July 1, 1949-June 30, 1950.....	27,354	12,397	5,767	3,994	3,572	1,624
Cases closed July 1, 1949-June 30, 1950.....	20,640	9,808	4,266	3,000	2,359	1,207
Cases pending June 30, 1950.....	6,714	2,589	1,501	994	1,213	417
Unfair labor practice cases						
Cases pending July 1, 1949.....	3,049	790	577	204	1,271	207
Cases received July 1, 1949-June 30, 1950.....	5,809	1,658	1,049	670	1,837	595
Cases on docket July 1, 1949-June 30, 1950.....	8,858	2,448	1,626	874	3,108	802
Cases closed July 1, 1949-June 30, 1950.....	5,615	1,609	916	549	1,994	547
Cases pending June 30, 1950.....	3,243	839	710	325	1,114	255
Representation cases						
Cases pending July 1, 1949.....	1,962	982	428	344	86	122
Cases received July 1, 1949-June 30, 1950.....	9,279	4,650	2,126	1,533	370	700
Cases on docket July 1, 1949-June 30, 1950.....	11,241	5,632	2,554	1,877	456	822
Cases closed July 1, 1949-June 30, 1950.....	8,761	4,363	2,006	1,375	357	660
Cases pending June 30, 1950.....	2,480	1,169	548	502	99	162
Union-shop authorization cases						
Cases pending July 1, 1949.....	¹ 711	518	132	60	41	-----
Cases received July 1, 1949-June 30, 1950.....	² 6,544	3,899	1,455	1,183	47	-----
Cases on docket July 1, 1949-June 30, 1950.....	² 7,255	4,417	1,587	1,243	48	-----
Cases closed July 1, 1949-June 30, 1950.....	³ 6,264	3,836	1,344	1,076	48	-----
Cases pending June 30, 1950.....	991	581	243	167	0	-----

¹ Includes 1 UD case.

² Includes 7 UD cases.

³ Includes 8 UD cases.

⁴ UD cases.

Table 1A.—Number of unfair labor practice cases received, closed, and pending by identification of complainant, fiscal year 1950

	Number of cases					
	Identification of complainant					
	A F of L affiliates	C I O affiliates	Unaffiliated unions	Individuals	Employers	Total
NLRA—C cases ¹						
Cases pending July 1, 1949.....	354	97	199	29	29	-----
Cases received July 1, 1949-June 30, 1950.....	-----	-----	-----	-----	-----	-----
Cases on docket July 1, 1949-June 30, 1950.....	354	97	199	29	29	-----
Cases closed July 1, 1949-June 30, 1950.....	123	49	47	10	17	-----
Cases pending June 30, 1950.....	231	48	152	19	12	-----
CA cases ¹						
Cases pending July 1, 1949.....	2,163	676	374	164	949	-----
Cases received July 1, 1949-June 30, 1950.....	² 4,472	1,614	1,023	613	1,222	-----
Cases on docket July 1, 1949-June 30, 1950.....	6,635	2,290	1,397	777	2,171	-----
Cases closed July 1, 1949-June 30, 1950.....	³ 4,261	1,517	853	497	1,394	-----
Cases pending June 30, 1950.....	2,374	773	544	280	777	-----
CB cases ¹						
Cases pending July 1, 1949.....	415	15	4	10	290	96
Cases received July 1, 1949-June 30, 1950.....	996	35	23	51	602	285
Cases on docket July 1, 1949-June 30, 1950.....	1,411	50	27	61	892	381
Cases closed July 1, 1949-June 30, 1950.....	876	34	14	38	571	219
Cases pending June 30, 1950.....	535	16	13	23	321	162
CC cases ¹						
Cases pending July 1, 1949.....	101	0	0	0	2	99
Cases received July 1, 1949-June 30, 1950.....	275	7	3	4	10	251
Cases on docket July 1, 1949-June 30, 1950.....	378	7	3	4	12	350
Cases closed July 1, 1949-June 30, 1950.....	293	5	2	3	8	275
Cases pending June 30, 1950.....	83	2	1	1	4	75
CD cases ¹						
Cases pending July 1, 1949.....	16	2	0	1	1	12
Cases received July 1, 1949-June 30, 1950.....	66	2	0	2	3	59
Cases on docket July 1, 1949-June 30, 1950.....	82	4	0	3	4	71
Cases closed July 1, 1949-June 30, 1950.....	62	4	0	1	4	53
Cases pending June 30, 1950.....	20	0	0	2	0	18

¹ See p. 217 for definition of types of cases² Includes 11 cases filed jointly by A. F. of L. and unaffiliated unions³ Includes 6 cases filed jointly by A. F. of L. and unaffiliated unions.

Table 1B.—Number of representation cases and union-shop authorization cases received, closed, and pending by identification of petitioner, fiscal year 1950

	Number of cases					
	Identification of petitioner					
	A. F. of L affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals	Employers	Total ¹
NLRA R cases ²						
Cases pending July 1, 1949.....	27	10	16	1	0	0
Cases received July 1, 1949-June 30, 1950.....	27	10	16	1	0	0
Cases on docket July 1, 1949-June 30, 1950.....	22	8	13	1	0	0
Cases closed July 1, 1949-June 30, 1950.....	5	2	3	0	0	0
Cases pending June 30, 1950.....						
RC cases ³						
Cases pending July 1, 1949.....	1,727	972	412	341	2	
Cases received July 1, 1949-June 30, 1950.....	8,206	4,547	2,124	1,524	11	
Cases on docket July 1, 1949-June 30, 1950.....	9,933	5,519	2,536	1,865	13	
Cases closed July 1, 1949-June 30, 1950.....	7,719	4,352	1,991	1,365	11	
Cases pending June 30, 1950.....	2,214	1,167	545	500	2	
RM cases ⁴						
Cases pending July 1, 1949.....	122					122
Cases received July 1, 1949-June 30, 1950.....	699					699
Cases on docket July 1, 1949-June 30, 1950.....	821					821
Cases closed July 1, 1949-June 30, 1950.....	659					659
Cases pending June 30, 1950.....	162					162
RD cases ⁵						
Cases pending July 1, 1949.....	86	0	0	2	84	0
Cases received July 1, 1949-June 30, 1950.....	374	3	2	9	359	1
Cases on docket July 1, 1949-June 30, 1950.....	460	3	2	11	443	1
Cases closed July 1, 1949-June 30, 1950.....	361	3	2	9	346	1
Cases pending June 30, 1950.....	99	0	0	2	97	0
UA cases ⁶						
Cases pending July 1, 1949.....	³ 711	518	132	60	⁶ 1	
Cases received July 1, 1949-June 30, 1950.....	⁴ 6,544	3,899	1,455	1,183	⁶ 7	
Cases on docket July 1, 1949-June 30, 1950.....	³ 7,255	4,417	1,587	1,243	⁶ 8	
Cases closed July 1, 1949-June 30, 1950.....	⁴ 6,264	3,836	1,344	1,076	⁶ 8	
Cases pending June 30, 1950.....	991	581	243	167	0	

¹ Cases filed jointly by 2 or more affiliates are shown only under one of the affiliates.

² See p. 217 for definitions of types of cases.

³ Includes 1 UD case.

⁴ Includes 7 UD cases.

⁵ Includes 8 UD cases.

⁶ UD cases.

Table 2.—Monthly distribution of cases received during fiscal year 1950

Month	Cases received									
	All cases	Number			Percent of yearly total			Percent of monthly total		
		Unfair labor practice cases	Representation cases	Union-shop authorization cases	Unfair labor practice cases	Representation cases	Union-shop authorization cases	Unfair labor practice cases	Representation cases	Union-shop authorization cases
Total.....	21, 632	5, 809	9, 279	16, 544	100 0	100.0	100 0	26 9	42. 9	30 2
<i>1949</i>										
July.....	1, 427	445	562	420	7 7	6 0	6 4	31 2	39. 4	29 4
August.....	1, 820	555	729	¹ 536	9 5	7 8	8 2	30. 5	40 1	29. 4
September.....	1, 597	451	704	442	7 8	7 6	6. 7	28 2	44 1	27 7
October.....	1, 593	475	630	488	8 2	6 8	7 5	29 8	39 6	30 6
November.....	1, 595	441	686	² 468	7 6	7 4	7 2	27. 7	43. 0	29 3
December.....	1, 719	411	760	³ 548	7 1	8 2	8 4	23. 9	44. 2	31. 9
<i>1950</i>										
January.....	1, 676	433	729	514	7 4	7 9	7. 9	25 8	43. 5	30 7
February.....	1, 878	476	896	¹ 506	8 2	9 7	7. 7	25. 4	47 7	26 9
March.....	2, 150	489	995	666	8. 4	10 7	10 2	22 7	46 3	31 0
April.....	2, 073	523	882	668	9 0	9. 5	10 2	25 2	42. 6	32 2
May.....	2, 086	562	827	² 697	9 7	8 9	10 6	26 9	39. 7	33 4
June.....	2, 018	548	879	² 591	9. 4	9. 5	9. 0	27. 1	43. 6	29. 3

¹ Includes 7 UD cases.² Includes 1 UD case.³ Includes 2 UD cases.

Table 3.—Types of unfair labor practices alleged in charges filed during fiscal year 1950

A. CHARGES FILED AGAINST EMPLOYERS UNDER SEC 8 (a)

	Number of cases showing specific allegations	Percent of total		Number of cases showing specific allegations	Percent of total
<i>Subsections of sec 8 (a)</i>					
Total.....	4,472	100 0	8 (a) (1) (2) (3) (4).....	5	.1
			8 (a) (1) (2) (3) (5).....	66	1.5
			8 (a) (1) (2) (4) (5).....	1	(1)
			8 (a) (1) (3) (4) (5).....	13	.3
			8 (a) (1) (2) (3) (4) (5).....	8	.2
8 (a) (1).....	352	7 9	<i>Recapitulation</i>		
8 (a) (1) (2).....	118	2 6	8 (a) (1).....	4,472	100.0
8 (a) (1) (3).....	2,333	52 2	8 (a) (2).....	570	12 7
8 (a) (1) (4).....	10	2	8 (a) (3).....	3,213	72 0
8 (a) (1) (5).....	690	15 4	8 (a) (4).....	98	2 2
8 (a) (1) (2) (3).....	284	6 4	8 (a) (5).....	1,309	29 3
8 (a) (1) (2) (4).....	1	0			
8 (a) (1) (2) (5).....	87	2 0			
8 (a) (1) (3) (4).....	60	1 3			
8 (a) (1) (3) (5).....	444	9 9			

¹ Less than 0 1 percent

B. CHARGES FILED AGAINST UNIONS UNDER SEC 8 (b)

	Number of cases showing specific allegations	Percent of total		Number of cases showing specific allegations	Percent of total
<i>Subsections of sec 8 (b)</i>					
Total.....	1,337	100 0	8 (b) (1) (2) (5).....	3	0 2
			8 (b) (1) (3) (4).....	2	.1
8 (b) (1).....	114	8 5	8 (b) (1) (4) (6).....	1	.1
8 (b) (2).....	281	19 5	8 (b) (1) (5) (6).....	1	.1
8 (b) (3).....	64	4 8	8 (b) (1) (2) (3) (4).....	6	5
8 (b) (4).....	244	18 3	8 (b) (1) (2) (3) (5).....	1	1
8 (b) (5).....	3	.2	8 (b) (1) (2) (4) (6).....	4	.3
8 (b) (6).....	12	.9	8 (b) (1) (2) (5) (6).....	1	.1
8 (b) (1) (2).....	441	33 0	<i>Recapitulation of allegations</i> ¹		
8 (b) (1) (3).....	61	4 6	8 (b) (1).....	722	54 0
8 (b) (1) (4).....	42	3 1	8 (b) (2).....	778	58 2
8 (b) (2) (3).....	2	.1	8 (b) (3).....	170	12 7
8 (b) (2) (4).....	11	.8	8 (b) (4).....	341	25 5
8 (b) (2) (5).....	2	.1	8 (b) (5).....	11	.8
8 (b) (3) (4).....	1	.1	8 (b) (6).....	34	2 5
8 (b) (3) (6).....	9	.7	<i>Analysis of sec 8 (b) (1)</i>		
8 (b) (4) (6).....	3	.2	8 (b) (1) (A).....	691	51 7
8 (b) (3) (4) (6).....	2	.1	8 (b) (1) (B).....	55	4 1
8 (b) (2) (3) (4) (6).....	1	.1			
8 (b) (1) (2) (3).....	21	1 6			
8 (b) (1) (2) (4).....	24	1 8			

¹ A single case may include allegations of violations of more than one section of the act

C. CHARGES FILED AGAINST UNIONS UNDER SEC 8 (b) (4)

	Number of cases showing specific allegations	Percent of total		Number of cases showing specific allegations	Percent of total
Total.....	341	100 0	8 (b) (4) (B) (C).....	2	0 6
			8 (b) (4) (A) (B) (C).....	8	2 3
8 (b) (4) (A).....	161	47 2	<i>Recapitulation of allegations</i> ¹		
8 (b) (4) (B).....	14	4 1	8 (b) (4) (A).....	238	69 8
8 (b) (4) (C).....	21	6 2	8 (b) (4) (B).....	89	26 1
8 (b) (4) (D).....	66	19 3	8 (b) (4) (C).....	34	10 0
8 (b) (4) (A) (B).....	65	19 1	8 (b) (4) (D).....	67	19 7
8 (b) (4) (A) (C).....	3	.9			
8 (b) (4) (A) (D).....	1	.3			

¹ A single case may include allegations of violations of more than one section of the act.

Table 4.—Geographic distribution of unfair labor practice, representation, and union-shop authorization cases received during fiscal year 1950

Division and State ¹	All cases	Unfair labor practice cases				Representation cases			Union-shop authorization cases ²
		CA ³	CB ³	CC ³	CD ³	RC ³	RM ³	RD ³	
New England.....	1,609	285	68	17	6	584	55	25	569
Maine.....	81	18	4	0	0	38	1	3	17
New Hampshire.....	72	9	1	0	0	32	1	3	26
Vermont.....	52	7	0	0	0	27	0	2	16
Massachusetts.....	870	156	47	10	2	309	33	10	303
Rhode Island.....	139	26	5	2	0	57	9	4	36
Connecticut.....	395	69	11	5	4	121	11	3	171
Middle Atlantic.....	4,873	1,033	283	74	16	1,768	213	63	³ 1,423
New York.....	2,680	640	189	47	3	964	93	28	716
New Jersey.....	896	153	27	9	4	372	60	10	⁴ 261
Pennsylvania.....	1,297	240	67	18	9	432	60	25	⁴ 446
East North Central.....	5,441	939	160	39	14	2,030	180	110	1,069
Ohio.....	1,650	254	31	11	1	685	82	27	559
Indiana.....	786	133	29	3	2	264	20	15	320
Illinois.....	1,501	296	60	13	10	493	41	26	562
Michigan.....	1,097	202	34	11	1	436	31	36	346
Wisconsin.....	407	54	6	1	0	152	6	6	182
West North Central.....	1,944	319	55	12	6	803	45	23	⁴ 681
Iowa.....	151	55	3	0	0	87	4	2	0
Minnesota.....	459	38	5	2	0	178	9	5	⁴ 222
Missouri.....	1,072	177	38	10	6	406	28	9	398
North Dakota.....	16	3	1	0	0	11	0	1	0
South Dakota.....	2	1	0	0	0	1	0	0	0
Nebraska.....	61	21	1	0	0	32	2	3	2
Kansas.....	183	24	7	0	0	88	2	3	59
South Atlantic.....	1,377	477	80	15	6	530	35	41	³ 193
Delaware.....	35	12	1	1	0	11	2	1	7
Maryland.....	283	62	17	3	3	113	9	12	⁴ 64
District of Columbia.....	128	18	5	0	1	38	2	1	⁴ 63
Virginia.....	153	60	7	1	1	78	3	3	0
West Virginia.....	191	35	28	10	1	62	7	5	43
North Carolina.....	141	79	3	0	0	52	1	6	0
South Carolina.....	89	38	4	0	0	28	0	3	16
Georgia.....	198	111	11	0	0	62	7	7	0
Florida.....	159	62	4	0	0	86	4	3	0
East South Central.....	807	226	46	10	1	336	17	21	150
Kentucky.....	239	51	16	4	0	85	1	9	73
Tennessee.....	237	89	9	3	0	124	7	4	1
Alabama.....	248	69	17	1	1	93	3	6	58
Mississippi.....	83	17	4	2	0	34	6	2	18
West South Central.....	942	293	46	16	2	429	30	24	102
Arkansas.....	107	38	4	1	0	58	2	3	1
Louisiana.....	195	53	16	4	0	68	4	3	47
Oklahoma.....	192	46	7	5	0	64	12	4	54
Texas.....	448	156	19	6	2	239	12	14	0
Mountain.....	735	135	18	18	3	320	16	11	⁴ 214
Montana.....	60	8	0	0	0	21	1	0	⁴ 30
Idaho.....	82	19	2	0	0	32	2	0	27
Wyoming.....	22	5	1	2	0	9	1	0	4
Colorado.....	267	47	2	6	3	115	1	5	88
New Mexico.....	170	34	3	2	0	89	3	4	35
Arizona.....	46	12	5	7	0	15	6	1	0
Utah.....	73	9	5	1	0	32	2	1	23
Nevada.....	15	1	0	0	0	7	0	0	7
Pacific.....	3,496	650	214	65	12	1,268	98	49	⁴ 1,140
Washington.....	559	72	51	4	1	194	16	9	212
Oregon.....	437	73	12	5	2	168	21	9	⁴ 171
California.....	2,500	505	151	56	9	906	61	31	787
Outlying areas.....	406	115	26	9	0	137	10	7	102
Alaska.....	74	12	8	6	0	9	1	1	37
Hawaii.....	30	7	1	0	0	14	0	4	4
Puerto Rico.....	302	96	17	3	0	114	9	2	61
Nation-wide.....	2	0	0	0	0	1	0	0	1

¹ The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce. ² See p. 217 for definitions of types of cases. ³ Includes 2 UD cases. ⁴ Includes 1 UD case.

Table 5.—Industrial distribution of unfair labor practice, representation, and union-shop authorization cases received during fiscal year 1950

Industrial group ¹	All cases	Unfair labor practice cases				Representation cases			Union-shop authorization cases ²
		CA ³	CB ³	CC ³	CD ³	RC ³	RM ³	RD ³	
Total.....	21,632	4,472	906	275	66	8,206	699	374	⁴ 6,544
Manufacturing.....	13,498	2,760	417	96	12	5,188	497	265	⁵ 4,263
Ordnance and accessories.....	9	0	0	0	0	9	0	0	0
Food and kindred products.....	2,380	399	93	39	5	884	62	29	⁶ 869
Tobacco manufactures.....	38	8	1	0	0	23	0	0	6
Textile-mill products.....	566	170	18	2	1	180	19	17	158
Apparel and other finished products made from fabrics and similar materials.....	620	225	36	9	1	170	24	9	146
Lumber and wood products.....	680	148	14	7	1	253	13	18	226
Furniture and fixtures.....	571	134	18	4	0	184	12	16	203
Paper and allied products.....	385	62	13	0	0	172	7	5	126
Printing, publishing, and allied industries.....	634	127	31	6	0	244	7	10	209
Chemicals and allied products.....	640	107	12	2	1	289	20	22	187
Products of petroleum and coal.....	250	70	10	3	0	105	12	7	43
Rubber products.....	144	40	5	0	0	64	1	3	31
Leather and leather products.....	307	79	12	0	1	100	6	1	108
Stone, clay, and glass products.....	634	107	14	7	1	218	7	17	263
Primary metal industries.....	792	139	19	1	1	306	8	9	309
Fabricated metal products (except machinery and transportation equipment).....	1,187	212	32	5	0	502	26	17	393
Machinery (except electrical).....	1,238	251	27	2	0	487	37	30	⁶ 404
Electrical machinery, equipment, and supplies.....	926	139	12	2	0	392	194	16	⁶ 171
Transportation equipment.....	608	110	18	3	0	268	7	22	180
Aircraft and parts.....	103	24	5	0	0	44	2	2	26
Ship and boat building and repairing.....	154	12	6	1	0	103	1	3	28
Automotive and other transportation equipment.....	351	74	7	2	0	121	4	17	126
Professional, scientific, and controlling instruments.....	222	32	4	0	0	100	7	8	71
Miscellaneous manufacturing.....	668	201	28	4	0	238	28	9	160
Agriculture, forestry, and fisheries.....	8	3	0	1	0	2	2	0	0
Mining.....	245	63	48	4	0	75	6	8	41
Metal mining.....	39	7	2	1	0	16	0	1	12
Coal mining.....	89	30	42	3	0	7	0	3	4
Crude petroleum and natural gas production.....	17	7	0	0	0	6	0	3	1
Nonmetallic mining and quarrying.....	100	19	4	0	0	46	6	1	24
Construction.....	774	247	236	48	37	138	3	1	64
Wholesale trade.....	1,886	288	34	26	3	847	52	31	605
Retail trade.....	2,170	406	79	26	1	937	75	23	⁶ 623
Finance, insurance, and real estate.....	105	39	3	0	0	37	4	1	21
Transportation, communication, and other public utilities.....	2,217	479	119	59	9	744	54	39	⁵ 714
Highway passenger transportation.....	292	78	14	0	0	120	7	6	67
Highway freight transportation.....	680	108	42	35	2	197	21	3	272
Water transportation.....	238	70	40	14	3	65	7	3	36
Warehousing and storage.....	250	27	11	7	2	90	6	5	102
Other transportation.....	65	20	2	1	0	30	0	0	12
Communication.....	459	137	7	1	1	151	10	8	144
Heat, light, power, water, and sanitary services.....	233	39	3	1	1	91	3	14	⁶ 81
Services.....	729	187	60	15	4	238	6	6	213

¹ Source Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945

² See p. 217 for definitions of types of cases.

³ Includes 7 UD cases

⁴ Includes 4 UD cases.

⁵ Includes 1 UD case.

⁶ Includes 2 UD cases.

Table 6.—Regional distribution of cases received during fiscal year 1950

Location of regional offices	All cases	Unfair labor practice cases	Representation cases	Union-shop authorization cases
Total.....	21,632	5,809	9,279	¹ 6,544
Boston.....	1,480	347	601	532
New York.....	2,808	877	1,190	² 741
Buffalo.....	581	178	209	194
Philadelphia.....	988	201	376	411
Baltimore and subregion.....	993	269	592	132
Baltimore.....	852	189	531	³ 132
Winston-Salem.....	141	80	61	0
Pittsburgh.....	605	225	233	³ 147
Detroit.....	1,030	232	473	325
Cleveland.....	1,008	215	480	313
Cincinnati and subregion.....	1,440	297	554	589
Cincinnati.....	903	186	386	331
Indianapolis.....	537	111	168	258
Atlanta.....	789	370	370	49
Chicago.....	1,723	361	676	686
St. Louis.....	991	257	380	354
New Orleans and subregion.....	527	191	247	89
New Orleans.....	356	125	143	88
Memphis.....	171	66	104	1
Fort Worth and subregions.....	807	279	439	89
Fort Worth.....	388	136	198	54
El Paso.....	211	56	120	35
Houston.....	208	87	121	0
Kansas City and subregion.....	959	223	437	299
Kansas City.....	663	154	305	204
Denver.....	296	69	132	95
Minneapolis.....	739	125	351	² 263
Seattle and subregion.....	1,212	278	481	453
Seattle.....	760	182	276	² 302
Portland.....	452	96	205	² 151
San Francisco.....	1,152	286	484	382
Los Angeles and subregion.....	1,500	482	583	435
Los Angeles.....	1,469	475	563	431
Honolulu.....	31	7	20	4
Santurce.....	300	116	123	61

¹ Includes 7 UD cases² Includes 1 UD case.³ Includes 2 UD cases.

Table 7.—Disposition of unfair labor practice cases closed, by stage and method, during fiscal year 1950

Stage and method	All C cases		NLRA C cases ¹		CA cases ¹		Other C cases ¹	
	Number of cases	Per cent of cases closed	Number of cases	Per cent of cases closed	Number of cases	Per cent of cases closed	Number of cases	Per cent of cases closed
Total number of cases closed.....	5,615	100 0	123	100 0	4,261	100 0	1,231	100 0
Before formal action, total.....	5,098	90 8	4	3 2	3,982	93 5	1,112	90 3
Adjusted.....	1,324	23 6	1	.8	1,096	25 7	227	18 4
Withdrawn.....	2,637	47 0	1	.8	1,999	46 9	637	51 7
Dismissed.....	1,132	20 1	2	1 6	884	20 8	246	20 0
Closed otherwise.....	5	1	0	0	3	1	2	2
After 10 (k) ² notice of hearing, total.....	17	3					17	1 4
Before 10 (k) hearing.....	12	3					12	9
Adjusted.....	5	1					5	4
Withdrawn.....	6	2					6	4
Dismissed.....	1	(³)					1	.1
After 10 (k) hearing Dismissed.....	1	(³)					1	.1
After 10 (k) hearing and decision and determination of dispute: Compliance.....	2	(³)					2	.2
After 10 (k) hearing and decision. Dismissed.....	2	(³)					2	2
After complaint, total.....	500	8 9	119	96 8	279	6 5	102	8 3
Before hearing.....	111	2 0	2	1 6	69	1 6	40	3 2
Adjusted.....	71	1 3	1	.8	51	1 2	19	1 5
Withdrawn.....	35	.6	1	.8	15	.3	19	1 5
Dismissed.....	5	1	0	0	3	1	2	.2
After hearing.....	47	.8	4	3 3	39	.9	4	.4
Adjusted.....	13	2	1	.8	12	3	0	0
Compliance with intermediate re- port.....	20	.3	3	2 5	16	.3	1	1
Withdrawn.....	4	1	0	0	4	1	1	.1
Dismissed.....	10	2	0	0	8	2	2	.2
After Board decision.....	206	3 7	55	44 7	102	2 4	49	4 0
Compliance, total.....	128	2 3	45	36 6	65	1 5	18	1 5
Stipulated decision.....	5	1	0	0	5	.1	0	0
Contested decision.....	111	2 0	43	35 0	52	1 2	16	1 3
Order adopting intermediate report in absence of exceptions.....	12	2	2	1 6	8	2	2	.2
Dismissed, total.....	76	1 4	8	6 5	37	.9	31	2 5
Contested decision.....	61	1 1	6	4 9	26	.6	29	2 3
Order adopting intermediate report in absence of exceptions.....	15	.3	2	1 6	11	.3	2	.2
Closed otherwise.....	2	(³)	2	1 6	0	0	0	0
After court action.....	136	2 4	58	47 2	69	1 6	9	.7
Compliance with consent decree.....	84	1 5	13	10 6	62	1 4	9	7
Compliance with court order.....	33	6	30	24 4	3	.1	0	0
Dismissed.....	15	2	12	9 8	3	.1	0	0
Closed otherwise.....	4	.1	3	2 4	1	(³)	0	0

¹ See p. 217 for definitions of types of cases.² Applies to CD cases only.³ Less than 0.1 percent.⁴ Includes 1 case withdrawn after issuance of intermediate report.⁵ Includes 2 cases in which the Board order adopted the intermediate report in the absence of exceptions.

Table 8.—Disposition of representation cases closed, by stage and method, during fiscal year 1950

Stage and method	All R cases		NLRA R cases ¹		RC cases ¹		RM cases ¹		RD cases ¹	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed.....	8,761	100 0	22	100 0	7,719	100 0	659	100 0	361	100 0
Before formal action, total.....	6,336	72 3	3	13 6	5,661	73 4	406	61 6	263	72 9
Adjusted.....	3,863	44 1	2	9 1	3,668	47 5	139	21 1	54	15 0
Consent election.....	3,272	37 3	2	9 1	3,116	40 4	105	15 9	49	13 6
Stipulated election.....	472	5 4	0	0	448	5 8	19	2 9	5	1 4
Recognition.....	119	1 4	0	0	104	1 3	15	2 3	0	0
Withdrawn.....	1,982	22 6	0	0	1,687	21 9	165	25 0	130	36 0
Dismissed.....	471	5 4	1	4 5	289	3 7	102	15 5	79	21 9
Closed otherwise.....	20	2	0	0	20	3	0	0	0	0
After formal action, total.....	2,425	27 7	19	86 4	2,055	26 6	253	38 4	98	27 1
Before hearing.....	327	3 7	0	0	281	3 7	27	4 1	19	5 3
Adjusted.....	204	2 3	0	0	185	2 4	11	1 7	8	2 2
Consent election.....	136	1 6	0	0	120	1 5	10	1 5	6	1 7
Stipulated election.....	46	5	0	0	43	6	1	2	2	.5
Recognition.....	22	2	0	0	22	3	0	.0	0	0
Withdrawn.....	116	1 3	0	0	92	1 2	16	2 4	8	2 2
Dismissed.....	7	1	0	.0	4	1	0	.0	3	9
After hearing.....	243	2 8	1	4 6	206	2 6	25	3 8	11	3 0
Adjusted.....	146	1 7	0	.0	131	1 7	11	1 7	4	1 1
Consent election.....	107	1 2	0	.0	97	1 3	7	1 1	3	.8
Stipulated election.....	37	4	0	.0	32	4	4	6	1	.3
Recognition.....	2	1	0	.0	2	(?)	0	.0	0	.0
Withdrawn.....	87	1 0	1	4 6	72	9	11	1 7	3	3
Dismissed.....	10	1	0	.0	3	(?)	3	.4	4	1 1
After Board decision.....	1,855	21 2	18	81 8	1,568	20 3	201	30 5	68	18 8
Board ordered election.....	1,464	16 7	11	50 0	1,235	16 0	172	26 1	46	12 7
Dismissed without election.....	295	3 4	1	4 6	246	3 2	28	4 2	20	5 5
Withdrawn.....	495	1 1	5	22 7	87	1 1	1	2	2	.6
Closed otherwise.....	1	(?)	1	4 5	0	0	0	.0	0	0

¹ See p. 217 for definitions of types of cases

² Less than 0.1 percent.

³ Includes 1 case withdrawn after stipulated election.

⁴ Includes 12 cases (4 NLRA-R cases and 8 RC cases) withdrawn after voided Board ordered election.

⁵ Includes 2 cases withdrawn after decision voiding a stipulated election.

Table 9.—Disposition of union-shop authorization cases closed, by stage and method, during fiscal year 1950

Stage and method	Number of cases	Percent of cases closed
Total number of cases closed.....	¹ 6,264	100.0
Before formal action, total.....	6,254	99.8
Adjusted.....	5,556	88.7
Consent election—authorized.....	4,904	78.3
Consent election—not authorized.....	177	2.8
Stipulated election—authorized.....	3	.6
Stipulated election—not authorized.....	3	(²)
Regional director directed election—authorized.....	³ 411	6.6
Regional director directed election—not authorized.....	23	.4
Withdrawn.....	⁴ ⁵ 627	10.0
Dismissed.....	⁶ 68	1.1
Otherwise.....	3	(²)
After formal action, total.....	10	.2
After notice of hearing—withdrawn.....	2	.1
After hearing held—withdrawn.....	1	(²)
After board decision, dismissed.....	1	(²)
After board ordered election—authorized.....	6	.1

¹ Includes 8 UD cases.

² Less than 0.1 percent.

³ Includes 2 UD cases in which the employees voted against deauthorization.

⁴ Includes 1 case withdrawn after regional director directed election voided.

⁵ Includes 5 UD cases.

⁶ Includes 1 UD case.

Table 10.—Remedial action taken by employers in unfair labor practice cases closed during fiscal year 1950 ¹

Types of remedy	Total	Identification of complainant			
		A. F. of L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals
Cases					
Notices posted.....	1, 104	355	206	98	445
Recognition or other assistance withheld from employer-assisted union.....	233	19	9	12	193
Employer-dominated union disestablished.....	20	8	8	1	3
Workers placed on preferential hiring list.....	108	33	18	11	46
Collective bargaining begun.....	236	150	55	30	1
Workers					
Workers offered reinstatement to job.....	2, 111	1, 002	579	133	397
Workers receiving back pay.....	² 2, 259	970	609	173	507
Back-pay awards.....	\$1, 077, 850	\$451, 800	\$346, 490	\$119, 550	\$160, 010

¹ In addition to the remedial action shown below other forms of remedy were taken in 13 cases.

² Includes 88 workers who received back pay from both an employer and a union.

Table 11.—Remedial action taken by unions in unfair labor practice cases closed during fiscal year 1950 ¹

Types of remedy		Types of remedy	
Notices posted.....	<i>Cases</i> 184	Workers receiving back pay.....	<i>Workers</i> ² 101
Collective bargaining begun.....	15		
Union membership made available by agreement.....	<i>Workers</i> 15	Back-pay awards.....	\$12, 430
		Amount of union dues refunded to employees.....	1, 020

¹ In addition to the remedial action shown below other forms of remedy were taken in 11 cases.

² Includes 88 workers who received back pay from both an employer and a union.

Table 12.—Formal actions taken during fiscal year 1950

Formal actions taken	All cases		Unfair labor practice cases						Representation cases				Union-shop authorization cases ¹	
			NLRA C cases ¹		CA cases ¹		Other C cases ¹		NLRA R cases ¹		LMRA R cases ¹			
	Number of cases	Formal actions ²	Number of cases	Formal actions ²	Number of cases	Formal actions ²	Number of cases	Formal actions ²	Number of cases	Formal actions ²	Number of cases	Formal actions ²	Number of cases	Formal actions ²
Complaints issued.....	708	506	4	4	548	450	156	126						
Notices of hearing issued.....	2,625	2,017					18	17						
Cases heard.....	2,735	2,012	6	5	356	300	110	85	1	1	2,599	1,993	7	7
Intermediate reports issued.....	350	281	19	12	260	230	71	56			2,257	1,658	5	5
Decisions issued, total.....	2,951	³ 2,363	39	33	276	246	102	71	4	4	2,479	³ 1,987	51	51
Decisions and orders.....	⁴ 318	⁴ 244	37	31	200	179	81	55						
Decisions and consent orders.....	99	80	2	2	76	67	21	16						
Elections directed.....	1,634	³ 1,261							3	3	1,627	³ 1,256	4	4
Certifications and dismissals after stipulated elections.....	602	595							0	0	561	554	41	41
Dismissals on record.....	293	³ 199							1	1	291	³ 198	1	1
Certifications after regional director directed elections.....	5	5											5	5

¹ See p. 217 for definitions of types of cases.

² The figure for actions is less than the number of cases involved because a group of individual cases are sometimes consolidated for action. For example, where a LMRA CA case is consolidated with another LMRA C case, it is counted once under each type of case and once in the total. Therefore the sum of the figures under each type of case may add up to more than the total for all formal actions.

³ 21 decisions in consolidated cases wherein the Board directed an election in 1 case and dismissed in another case are counted both as directions of election and dismissals on record, but are counted only once in the total. Therefore the sum of the figures for each type of decision do not add to the total for all decisions issued.

⁴ Includes 41 cases decided by adoption of intermediate report in absence of exceptions. Of these, 3 were NLRA C, 23 were CA, and 10 were other C cases.

⁵ Includes 34 cases decided by adoption of intermediate report in absence of exceptions. Of these, 3 were NLRA C, 25 were CA, and 6 were other C cases.

Table 13.—Types of elections conducted during fiscal year 1950

Type of case	Total elections		Type of election							
	Number	Percent	Consent ¹		Stipulated ²		Regional director directed		Board ordered	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent
All elections, total.....	11,322	100 0	8,667	76 6	635	5 6	440	3 9	1,580	13 9
Eligible voters, total.....	1,972,759	100 0	931,363	47 2	160,596	8 1	368,051	18 7	512,749	26 0
Valid votes, total.....	1,690,733	100 0	802,765	47 5	132,686	7 8	300,412	17 8	454,870	26 9
NLRA, R cases, ³ total.....	14	100 0	1	7 1	0	0	-----	-----	13	92 9
Eligible voters.....	2,081	100 0	270	13 0	0	0	-----	-----	1,811	87 0
Valid votes.....	1,682	100 0	222	13 2	0	0	-----	-----	1,460	86 8
RC cases, ³ total.....	5,251	100 0	3,386	64 5	557	10 6	-----	-----	1,308	24 9
Eligible voters.....	604,006	100 0	219,931	36 4	89,744	14 9	-----	-----	294,331	48 7
Valid votes.....	534,187	100 0	194,459	36 4	81,214	15 2	-----	-----	258,514	48 4
RM cases, ³ total.....	354	100 0	118	33 3	24	6 8	-----	-----	212	59 9
Eligible voters.....	284,281	100 0	19,439	6 8	61,636	21 7	-----	-----	203,206	71 5
Valid votes.....	245,513	100 0	17,246	7 0	44,000	17 9	-----	-----	184,267	75 1
RD cases, ³ total.....	112	100 0	60	53 6	10	8 9	-----	-----	42	37 5
Eligible voters.....	9,474	100 0	5,240	55 3	1,329	14 0	-----	-----	2,905	30 7
Valid votes.....	8,485	100 0	4,746	55 9	1,256	14 8	-----	-----	2,483	29 3
UA cases, ³ total.....	4,591	100 0	5,102	91 3	44	.8	4,440	7 9	5	(⁴)
Eligible voters.....	1,072,917	100 0	686,483	64 0	7,887	.7	368,051	34 3	10,496	1 0
Valid votes.....	900,866	100 0	586,092	65 1	6,216	.7	300,412	33 3	8,146	.9

¹ Consent elections are held upon the agreement of all parties concerned and are certified by the regional director.

² Stipulated elections are held upon the agreement of all parties, but provide for certification by the Board.

³ See p 217 for types of cases.

⁴ Includes 2 UD elections in which 61 voters were eligible to vote and 59 cast valid votes.

⁵ Less than 0.1 percent

Table 14.—Size of unit in union-shop authorization polls conducted during fiscal year 1950

Size of unit (number of employees)	Number of cases	Percent	Size of unit (number of employees)	Number of cases	Percent
1 to 19.....	2,473	44 2	200 to 399.....	311	5 6
20 to 39.....	877	15 7	400 to 699.....	191	3 4
40 to 59.....	480	8 6	700 to 999.....	82	1 5
60 to 79.....	293	5 2	1,000 and over.....	127	2 3
80 to 99.....	231	4 1	Total.....	5,591	100 0
100 to 199.....	526	9 4			

Table 15.—Number of collective bargaining elections and number of votes cast for participating unions during fiscal year 1950

A. ELECTIONS

Participating unions	Number of elections	Elections won by							
		A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		No union	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total.....	5,619	2,101	37.4	1,199	21.3	886	15.8	1,433	25.5
A. F. of L. affiliates.....	2,465	1,705	69.2					760	30.8
C. I. O. affiliates.....	1,156			776	68.3			360	31.7
Unaffiliated unions.....	690					496	71.9	194	28.1
2 A. F. of L. affiliates.....	103	99	91.7					9	8.3
A. F. of L. affiliates—C. I. O. affiliates.....	390	179	45.9	169	43.3			42	10.8
A. F. of L. affiliates—unaffiliated unions.....	224	83	37.0			126	56.3	15	6.7
2 C. I. O. affiliates.....	16			16	100.0			0	0.0
C. I. O. affiliates—unaffiliated unions.....	419			205	48.9	171	40.8	43	10.3
2 unaffiliated unions.....	45					42	93.3	3	6.7
3 A. F. of L. affiliates.....	1	1	100.0					0	0.0
2 A. F. of L. affiliates—C. I. O. affiliates.....	10	4	40.0	4	40.0			2	20.0
2 A. F. of L. affiliates—unaffiliated unions.....	9	4	44.4			5	55.6	0	0.0
A. F. of L. affiliates—2 C. I. O. affiliates.....	2	0	0.0	2	100.0			0	0.0
A. F. of L. affiliates—2 unaffiliated unions.....	4	2	50.0			2	50.0	0	0.0
A. F. of L. affiliates—C. I. O. affiliates—unaffiliated unions.....	49	22	44.9	15	30.6	11	22.4	1	2.1
C. I. O. affiliates—2 unaffiliated unions.....	46			12	26.1	30	65.2	4	8.7
3 unaffiliated unions.....	1					1	100.0	0	0.0
2 A. F. of L. affiliates—C. I. O. affiliates—unaffiliated unions.....	1	0	0.0	0	0.0	1	100.0	0	0.0
A. F. of L. affiliates—C. I. O. affiliates—2 unaffiliated unions.....	2	2	100.0	0	0.0	0	0.0	0	0.0
C. I. O. affiliates—3 unaffiliated unions.....	1			0	0.0	1	100.0	0	0.0

B ELIGIBLE VOTERS AND VALID VOTES CAST

Participating unions	Em- ployees eligible to vote	Percent casting valid votes	Valid votes cast for								Employ- ees in units choosing representa- tion	
			Total valid votes cast	A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		No union		
				Number	Percent	Number	Percent	Number	Percent	Number		Percent
Total.....	890,374	87.8	781,382	145,013	18.5	330,217	42.3	174,202	22.3	131,950	16.9	753,598
A. F. of L. affiliates.....	126,952	87.1	110,562	65,605	59.3					44,957	40.7	72,850
C. I. O. affiliates.....	184,643	83.9	154,938			103,504	66.8			51,434	33.2	134,584
Unaffiliated unions.....	38,543	89.9	34,663					21,892	63.2	12,771	36.8	20,513
2 A. F. of L. affiliates.....	9,417	86.5	8,143	7,804	95.8					339	4.2	9,036
A. F. of L. affiliates—C. I. O. affiliates.....	129,567	86.7	112,276	50,758	45.2	51,996	46.3			9,522	8.5	121,896
A. F. of L. affiliates—unaffiliated unions.....	45,421	88.2	40,062	15,280	38.2			23,042	57.5	1,740	4.3	44,648
2 C. I. O. affiliates.....	9,264	87.5	7,738			7,665	99.1			73	.9	9,264
C. I. O. affiliates—unaffiliated unions.....	309,206	90.3	279,315			156,510	56.0	112,434	40.3	10,371	3.7	303,846
2 unaffiliated unions.....	4,727	86.5	4,087					3,927	96.1	160	3.9	4,512
3 A. F. of L. affiliates.....	44	93.2	41	39	95.1					2	4.9	44
2 A. F. of L. affiliates—C. I. O. affiliates.....	876	86.0	753	336	44.6	272	36.1			145	19.3	725
2 A. F. of L. affiliates—unaffiliated unions.....	1,005	93.6	941	599	63.7			326	34.6	16	1.7	1,005
A. F. of L. affiliates—2 C. I. O. affiliates.....	651	88.0	573	78	13.6	492	85.9			3	.5	651
A. F. of L. affiliates—2 unaffiliated unions.....	1,815	93.8	1,702	561	33.0			1,117	65.6	24	1.4	1,815
A. F. of L. affiliates—C. I. O. affiliates—unaffiliated unions.....	12,763	90.1	11,497	2,814	24.5	4,572	39.8	3,990	34.7	121	1.0	12,758
C. I. O. affiliates—2 unaffiliated unions.....	12,427	90.9	11,291			5,097	45.1	5,961	52.8	233	2.1	12,398
3 unaffiliated unions.....	761	93.8	714					706	98.9	8	1.1	761
2 A. F. of L. affiliates—C. I. O. affiliates—unaffiliated unions.....	4	100.0	4	1	25.0	0	.0	3	75.0	0	0	4
A. F. of L. affiliates—C. I. O. affiliates—2 unaffiliated unions.....	2,230	91.0	2,029	1,138	56.1	109	5.4	752	37.0	30	1.5	2,230
C. I. O. affiliates—3 unaffiliated unions.....	58	91.4	53			0	.0	52	98.1	1	1.9	58

Table 16.—Number of decertification elections and number of votes cast for participating unions during fiscal year 1950

A. ELECTIONS

Participating unions	Number of elections	Elections won by							
		A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		No union	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total.....	112	12	10 7	23	20 5	2	1 8	75	67 0
A. F. of L. affiliates.....	46	12	26 1					34	73 9
C. I. O. affiliates.....	49			22	44 9			27	55 1
Unaffiliated unions.....	16					2	12 5	14	87 5
A. F. of L. affiliates—C. I. O. affiliates.....	1	0		1	100 0			0	.0

B. ELIGIBLE VOTERS AND VALID VOTES CAST

Participating unions	Em- ployees eligible to vote	Per- cent cast- ing valid votes	Valid votes cast for								Em- ployees in units choos- ing repre- sentation	
			Total	A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		No union		
				Number	Percent	Number	Percent	Number	Percent	Number		Percent
Total.....	9,474	89 6	8,485	1,037	12 2	3,065	36. 1	219	2 6	4,164	49 1	5,440
A. F. of L. affiliates.....	2,613	87 7	2,292	1,037	45 2					1,255	54 8	1,078
C. I. O. affiliates.....	6,012	90 2	5,424			3,057	56 4			2,367	43 6	4,224
Unaffiliated unions.....	840	90 5	760					219	28 8	541	71 2	129
A. F. of L. affiliates— C. I. O. affiliates.....	9	100 0	9	0	.0	8	88 9			1	11. 1	9

Table 17.—Number of union-shop authorization polls and number of votes cast for participating unions during fiscal year 1950

A POLLS

Participating unions	Number of polls	Number of polls							
		A. F. of L. affiliates authorized		C. I. O. affiliates authorized		Unaffiliated unions authorized		No union shop authorized	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total.....	5,591	3,231	57.8	1,192	21.3	954	17.1	214	3.8
A. F. of L. affiliates.....	3,384	3,231	95.5					153	4.5
C. I. O. affiliates.....	1,223			1,192	97.4			31	2.6
Unaffiliated unions.....	984					954	97.0	30	3.0

B ELIGIBLE VOTERS AND VALID VOTES CAST

Participating unions	Employees eligible to vote	Percent casting valid votes	Valid votes cast for union shop by affiliation of petitioner							Valid votes cast against union shop		Employees in units authorizing union shop
			Total valid votes cast	A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		Number	Percent	
				Number	Percent	Number	Percent	Number	Percent			
Total.....	1,072,917	84.0	900,866	251,606	27.9	434,131	48.2	119,452	13.3	95,677	10.6	1,045,162
A. F. of L. affiliates.....	312,049	87.2	272,101	251,606	92.5					20,495	7.5	307,823
C. I. O. affiliates.....	594,932	82.5	490,849			434,131	88.4			56,718	11.6	575,187
Unaffiliated unions.....	165,936	83.1	137,916					119,452	86.6	18,464	13.4	162,152

Table 18.—Industrial distribution of collective bargaining elections, winner, eligible voters, and valid votes cast, during fiscal year 1950

Industrial group ¹	Elections		Winner								Eligible voters		Valid votes cast	
	Number	Percent	A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		No union		Number	Percent	Number	Percent
			Number	Percent	Number	Percent	Number	Percent	Number	Percent				
Total.....	5,619	100 0	2 101	37 4	1,199	21 3	886	15 8	1,433	25 5	890,374	100 0	781,382	100 0
Manufacturing.....	3,722	66 2	1,241	33 3	1,007	27 1	569	15 3	905	24 3	695,748	78 1	623,262	79 8
Ordnance and accessories.....	6	1	2	33 3	1	16 7	2	33 3	1	16 7	774	1	738	1
Food and kindred products.....	567	10 1	299	52 7	77	13 6	32	5 6	159	28 1	43,331	4 9	36,870	4 7
Tobacco manufacturers.....	14	3	5	35 7	6	42 9	0	0	3	21 4	17,116	1 9	14,619	1 9
Textile-mill products.....	153	2 7	27	17 6	45	29 4	16	10 5	65	42 5	42,407	4 7	38,559	4 9
Apparel and other finished products made from fabrics and similar materials.....	114	2 0	45	39 5	35	30 7	1	.9	33	28 9	12,122	1 4	11,071	1 4
Lumber and wood products.....	185	3 3	79	42 7	53	28 6	4	2 2	49	26 5	14,246	1 6	12,855	1 7
Furniture and fixtures.....	108	1 9	44	40 7	22	20 4	6	5 6	36	33 3	11,477	1 3	10,477	1 4
Paper and allied products.....	120	2 2	63	52 5	19	15 8	6	5 0	32	26 7	14,289	1 6	13,055	1 7
Printing, publishing, and allied industries.....	146	2 6	60	41 1	32	21 9	20	13 7	34	23 3	4,979	5	4,570	.6
Chemicals and allied products.....	241	4 3	87	36 1	54	22 4	38	15 8	62	25 7	20,803	2 3	18,952	2 4
Products of petroleum and coal.....	95	1 7	25	26 3	34	35 8	17	17 9	19	20 0	15,158	1 7	13,036	1 7
Rubber products.....	42	7	13	31 0	13	31 0	3	7 1	13	30 9	2,947	3	2,734	.4
Leather and leather products.....	67	1 2	14	20 9	26	38 8	10	14 9	17	25 4	13,001	1 5	11,841	1 5
Stone, clay, and glass products.....	142	2 5	71	50 0	25	17 6	14	9 9	32	22 5	16,840	1 9	15,017	1 9
Primary metal industries.....	245	4 4	76	31 0	86	35 1	38	15 5	45	18 4	38,016	4 2	33,134	4 2
Fabricated metal products (except machinery and transportation equipment).....	328	5 8	104	31 7	91	27 7	53	16 2	80	24 4	33,730	3 8	30,032	3 8
Machinery (except electrical).....	364	6 5	70	19 2	110	30 2	107	29 4	77	21 2	65,669	7 4	59,522	7 6
Electrical machinery, equipment, and supplies.....	400	7 1	65	16 3	149	37 2	132	33 0	54	13 5	253,619	28 5	229,547	29 4
Transportation equipment.....	147	2 6	26	17 7	53	36 1	39	26 5	29	19 7	48,482	5 4	42,169	5 4
Aircraft and parts.....	36	6	5	13 9	11	30 5	14	38 9	6	16 7	24,378	2 7	20,818	2 7
Ship and boat building and repairing.....	20	4	8	40 0	4	20 0	6	30 0	2	10 0	11,986	1 3	10,596	1 3
Automotive and other transportation equipment.....	91	1 6	13	14 3	38	41 7	19	20 9	21	23 1	12,118	1 4	10,755	1 4
Professional, scientific, and controlling instruments. Miscellaneous manufacturing.....	86	1 5	15	17 4	33	38 4	17	19 8	21	24 4	12,993	1 5	12,104	1 5
	152	2 7	51	33 6	43	28 3	14	9 2	44	28 9	14,109	1 6	12,380	1 6
Fisheries.....	1	(²)	0	0	0	0	0	0	1	100 0	19	(²)	17	(²)

Mining.....	60	1 1	10	16 7	12	20 0	29	48 3	9	15 0	9,353	1 1	8,017	1 0
Metal mining.....	13	.2	3	23 1	7	53 8	3	23 1	0	0	5,811	.7	4,917	.6
Coal mining.....	4	1	0	.0	0	.0	3	75 0	1	25 0	99	(?)	94	(?)
Crude petroleum and natural gas production.....	4	1	0	0	2	50 0	1	25 0	1	25 0	392	.1	311	(?)
Nonmetallic mining and quarrying.....	39	7	7	17 9	3	7.7	22	56 5	7	17 9	3,051	.3	2,695	.4
Construction.....	58	1 0	33	56 9	1	1.7	7	12 1	17	29 3	1,758	.2	1,416	.2
Wholesale trade.....	536	9.6	308	57.5	56	10 4	43	8 0	129	24 1	17,962	2 0	15,846	2 0
Retail trade.....	602	10.7	211	35.0	41	6 8	124	20 6	226	37 6	32,956	3 7	28,710	3 7
Finance, insurance, and real estate.....	19	.4	8	42.1	4	21 1	2	10 5	5	26 3	19,952	2.2	17,665	2 3
Transportation, communication, and other public utilities.....	490	8 7	233	47 6	59	12 0	80	16 3	118	24 1	104,142	11 7	79,212	10 1
Highway passenger transportation.....	63	1 1	20	31 8	4	6 3	17	27 0	22	34 9	3,421	.4	2,924	.4
Highway freight transportation.....	138	2 5	62	44 9	5	3 6	25	18 1	46	33 4	1,991	.2	1,722	.2
Water transportation.....	42	7	18	42 8	5	11 9	13	31 0	6	14 3	2,139	.2	1,694	.2
Warehousing and storage.....	52	.9	31	59 6	9	17 3	3	5 8	9	17.3	1,745	.2	1,575	.2
Other transportation.....	21	.4	1	4 8	6	28 6	5	23 8	9	42 8	3,373	.4	3,112	.4
Communication.....	109	1 9	67	61 5	16	14 7	17	15 6	9	8.2	73,300	8.2	53,129	6 8
Heat, light, power, water, and sanitary services.....	65	1 2	34	52 3	14	21.5	0	0	17	26 2	18,173	2.1	15,056	1 9
Services.....	131	2 3	57	43.5	19	14 5	32	24 4	23	17.6	8,484	1 0	7,237	.9

¹ Source Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945.

² Less than 0.1 percent.

Table 19.—Industrial distribution of decertification elections, winner, eligible voters, and valid votes cast, during fiscal year 1950

Industrial group 1	Elections		Winner								Eligible voters		Valid votes cast	
	Number	Per cent	A. F. of L affiliates		C. I. O. affiliates		Unaffiliated unions		No union		Number	Per cent	Number	Per cent
			Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent				
Total.....	112	100.0	12	10.7	23	20.5	2	1.8	75	67.0	9,474	100.0	8,485	100.0
Manufacturing.....	80	71.4	6	7.5	20	25.0	1	1.3	53	66.2	8,152	86.0	7,297	86.0
Food and kindred products.....	13	11.6	4	30.8	1	7.7	0	0	8	61.5	584	6.2	456	5.4
Textile-mill products.....	5	4.5	0	0	4	80.0	0	0	1	20.0	2,660	28.1	2,394	28.2
Apparel and other finished products made from fabrics and similar material.....	2	1.8	0	0	0	0	0	0	2	100.0	43	.4	36	.4
Lumber and wood products.....	6	5.3	0	.0	1	16.7	0	0	5	83.3	552	5.8	504	5.9
Furniture and fixtures.....	5	4.5	0	0	0	0	0	0	5	100.0	270	2.8	250	3.0
Paper and allied products.....	2	1.8	0	.0	1	50.0	0	0	1	50.0	185	1.9	173	2.0
Chemicals and allied products.....	9	8.0	0	0	0	0	0	0	9	100.0	663	7.0	603	7.1
Products of petroleum and coal.....	4	3.6	0	.0	0	0	0	0	4	100.0	141	1.5	131	1.5
Rubber products.....	2	1.8	1	50.0	1	50.0	0	0	0	0	606	6.4	562	6.6
Leather and leather products.....	1	.9	0	0	0	0	0	0	1	100.0	226	2.4	213	2.5
Stone, clay, and glass products.....	4	3.6	0	.0	1	25.0	0	0	3	75.0	262	2.8	234	2.8
Primary metal industries.....	3	2.6	1	33.4	1	33.3	0	0	1	33.3	651	6.9	523	6.2
Fabricated metal products (except machinery and transportation equipment).....	1	.9	0	.0	0	0	0	0	1	100.0	27	.3	25	.3
Machinery (except electrical).....	10	8.9	0	.0	3	30.0	0	0	7	70.0	573	6.0	524	6.2
Electrical machinery, equipment, and supplies.....	5	4.5	0	.0	2	40.0	0	0	3	60.0	247	2.6	238	2.8
Automotive transportation equipment.....	7	6.2	0	0	5	71.4	1	14.3	1	14.3	332	3.5	304	3.6
Professional, scientific, and controlling instruments.....	1	.9	0	0	0	0	0	0	1	100.0	130	1.4	127	1.5
Mining—crude petroleum and natural gas production.....	3	2.7	0	0	1	33.3	0	0	2	66.7	150	1.6	123	1.5
Wholesale trade.....	11	9.8	4	36.4	2	18.2	0	0	5	45.4	385	4.1	377	4.4
Retail trade.....	7	6.3	1	14.3	0	0	1	14.3	5	71.4	378	4.0	316	3.7

Transportation, communication, and other public utilities.....	10	8.9	1	10.0	0	0	0	.0	9	90.0	395	4.2	358	4.2
Highway passenger transportation.....	1	.9	0	.0	0	.0	0	.0	1	100.0	24	.3	21	.2
Highway freight transportation.....	2	1.8	0	.0	0	0	0	.0	2	100.0	39	.4	36	.4
Water transportation.....	1	.9	0	.0	0	.0	0	.0	1	100.0	85	.9	76	.9
Warehousing and storage.....	1	.9	0	.0	0	.0	0	.0	1	100.0	4	(²)	4	.1
Communication.....	2	1.8	0	0	0	.0	0	.0	2	100.0	15	.2	15	.2
Heat, light, power, and sanitary services.....	3	2.6	1	33.3	0	0	0	.0	2	66.7	228	2.4	206	2.4
Services.....	1	9	0	.0	0	0	0	.0	1	100.0	14	.1	14	.2

¹ Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945.

² Less than 0.1 percent.

Table 20.—Industrial distribution of union-shop authorization polls, outcome, eligible voters, and valid votes cast, during fiscal year 1950

Industrial group 1	Polls		Winner								Eligible voters		Valid votes cast	
	Number	Percent	A. F. of L. affiliates		C. I. O. affiliates		Unaffiliated unions		No union		Number	Percent	Number	Percent
			Number	Percent	Number	Percent	Number	Percent	Number	Percent				
Total.....	5,591	100.0	3,231	57.8	1,192	21.3	954	17.1	214	3.8	1,072,917	100.0	900,866	100.0
Manufacturing.....	3,669	65.6	1,934	52.7	1,005	27.4	613	16.7	117	3.2	846,682	78.9	717,064	79.6
Food and kindred products.....	732	13.1	515	70.3	136	18.6	51	7.0	30	4.1	135,912	12.7	113,658	12.6
Tobacco manufacturers.....	4	.1	2	50.0	2	50.0	0	.0	0	0	2,509	2	2,244	.2
Textile-mill products.....	140	2.5	37	26.4	42	30.0	60	42.9	1	.7	30,841	2.9	27,376	3.0
Apparel and other finished products made from fabrics and similar materials.....	127	2.3	86	67.7	35	27.6	5	3.9	1	.8	15,968	1.5	14,402	1.6
Lumber and wood products.....	206	3.7	115	55.8	71	34.5	4	1.9	16	7.8	20,038	1.9	17,036	1.9
Furniture and fixtures.....	169	3.0	99	58.6	59	34.9	7	4.1	4	2.4	15,125	1.4	13,156	1.5
Paper and allied products.....	124	2.2	83	67.0	21	16.9	14	11.3	6	4.8	11,980	1.1	9,941	1.1
Printing, publishing, and allied industries.....	202	3.6	123	60.9	38	18.8	29	14.4	12	5.9	15,928	1.5	13,430	1.5
Chemicals and allied products.....	160	2.9	105	65.6	36	22.5	17	10.6	2	1.3	14,144	1.3	12,258	1.4
Products of petroleum and coal.....	33	.6	17	51.5	11	33.3	2	6.1	3	9.1	4,042	.4	2,922	.3
Rubber products.....	27	.5	9	33.3	14	51.9	3	11.1	1	3.7	8,040	.7	6,309	.7
Leather and leather products.....	95	1.7	73	76.8	15	15.8	6	6.3	1	1.1	25,540	2.4	22,323	2.5
Stone, clay, and glass products.....	237	4.2	199	84.0	18	7.6	16	6.7	4	1.7	20,255	1.9	17,619	2.0
Primary metal industries.....	276	4.9	98	35.5	134	48.5	35	12.7	9	3.3	55,067	5.1	46,269	5.1
Fabricated metal products (except machinery and transportation equipment).....	340	6.1	134	39.4	118	34.7	79	23.2	9	2.7	40,042	3.7	35,113	3.9
Machinery (except electrical).....	333	6.0	54	16.2	111	33.3	158	47.5	10	3.0	80,849	7.5	69,031	7.7
Electrical machinery, equipment and supplies.....	134	2.4	51	38.1	28	20.9	54	40.3	1	.7	32,264	3.0	27,942	3.1
Transportation equipment.....	141	2.5	40	28.4	56	39.7	42	29.8	3	2.1	294,713	27.5	245,894	27.3
Aircraft and parts.....	21	.4	2	9.5	6	28.6	12	57.1	1	4.8	30,598	2.9	24,082	2.7
Ship and boat building and repairing.....	26	.4	17	65.4	3	11.5	6	23.1	0	.0	1,386	.1	1,233	.1
Automotive and other transportation equipment.....	94	1.7	21	22.4	47	50.0	24	25.5	2	2.1	262,729	24.5	220,579	24.5
Professional, scientific, and controlling instruments.....	53	.9	26	49.0	16	30.2	9	17.0	2	3.8	7,335	.7	6,558	.7
Miscellaneous manufacturing.....	136	2.4	68	50.0	44	32.3	22	16.2	2	1.5	16,090	1.5	13,583	1.5

Mining.....	34	.6	17	50 0	8	23 5	9	26 5	0	.0	2,209	.2	1,870	2
Metal mining.....	5	.1	2	40 0	1	20 0	2	40 0	0	.0	1,122	.1	849	.1
Coal mining.....	4	.1	3	75 0	0	.0	1	25 0	0	.0	116	(²)	103	(²)
Crude petroleum and natural-gas production.....	1	(²)	0	.0	1	100 0	0	.0	0	.0	7	(²)	7	(²)
Nonmetallic mining and quarrying.....	24	.4	12	50 0	6	25 0	6	25 0	0	.0	964	1	911	1
Construction.....	55	1 0	46	83 6	1	1.8	4	7.3	4	7 3	10,317	1 0	7,701	.8
Wholesale trade.....	486	8 7	359	73 9	57	11 7	45	9 3	25	5 1	21,678	2 0	19,524	2 2
Retail trade.....	537	9.6	331	61 6	46	8 6	132	24 6	28	5 2	40,482	3.8	33,132	3 7
Finance, insurance, and real estate.....	17	.3	10	58 8	2	11 8	4	23 5	1	5 9	6,193	.6	4,803	5
Transportation, communication, and other public utilities.....	618	11.1	459	74 3	39	6 3	89	14 4	31	5 0	126,931	11.8	100,503	11.2
Highway passenger transportation.....	55	1 0	24	43 6	1	1 8	25	45.5	5	9 1	3,377	.3	2,809	.3
Highway freight transportation.....	261	4 7	213	81.6	3	1 2	35	13 4	10	3 8	6,219	.6	5,301	.6
Water transportation.....	25	.5	20	80 0	2	8.0	2	8 0	1	4 0	4,762	.4	3,736	.4
Warehousing and storage.....	78	1.4	57	73.1	12	15 4	4	5 1	5	6 4	4,617	.4	4,172	.5
Other transportation.....	12	.2	7	58 3	2	16.7	1	8 3	2	16 7	12,371	1.2	10,131	1 1
Communication.....	120	2.1	92	76 7	9	7.5	13	10 8	6	5 0	36,482	3 4	26,766	3 0
Heat, light, water, and sanitary services.....	67	1.2	46	68 7	10	14.9	9	13 4	2	3 0	59,103	5 5	47,588	5 3
Services.....	175	3 1	75	42 9	34	19.4	58	33.1	8	4 6	18,425	1.7	16,269	1.8

¹ Source Standard Industrial Classification, Division of Statistical Standards, U S. Bureau of the Budget, Washington, 1945.

² Less than 0.1 percent.

Table 21.—Geographic distribution of collective bargaining elections, eligible voters, and number of votes cast for participating unions, during fiscal year 1950

Division and State ¹	Number of elections	Elections won by				Em- ployees eligible to vote	Valid votes cast for					Em- ployees in units choosing representation
		A F of L affiliates	C I O affiliates	Unaffil- iated unions	No union		Total	A F of L affiliates	C I O affiliates	Unaffil- iated unions	No union	
New England.....	446	176	110	48	112	95,945	87,286	11,429	40,552	19,193	16,112	78,148
Maine.....	21	10	1	3	7	2,375	2,112	818	347	38	909	1,199
New Hampshire.....	27	10	5	0	12	4,414	4,151	482	1,663	77	1,929	3,067
Vermont.....	18	7	1	0	10	1,129	1,037	365	50	0	622	352
Massachusetts.....	254	111	68	26	49	58,079	53,006	5,856	26,652	14,413	6,085	51,366
Rhode Island.....	42	13	5	8	16	5,307	4,696	883	1,407	765	1,641	3,372
Connecticut.....	84	25	30	11	18	24,641	22,284	3,025	10,433	3,900	4,926	18,792
Middle Atlantic.....	1,161	445	286	191	239	240,238	218,353	36,098	96,807	63,152	22,296	220,406
New York.....	591	264	126	92	109	96,939	87,387	18,672	38,394	21,306	9,015	89,962
New Jersey.....	246	72	73	49	52	47,477	43,583	5,730	21,270	12,179	4,404	42,883
Pennsylvania.....	324	109	87	50	78	95,822	87,383	11,696	37,143	29,667	8,877	87,561
East North Central.....	1,443	457	387	230	369	221,002	195,296	30,360	96,790	39,287	28,859	194,169
Ohio.....	462	125	144	87	106	109,828	96,235	7,607	58,884	18,538	11,206	100,466
Indiana.....	185	62	50	18	55	31,896	28,350	5,202	15,490	3,874	3,784	28,206
Illinois.....	368	147	58	70	93	50,262	44,875	13,956	11,110	11,914	7,895	42,572
Michigan.....	322	82	108	35	97	19,088	17,034	2,214	8,062	2,229	4,520	14,060
Wisconsin.....	106	41	27	20	18	9,928	8,802	1,381	3,244	2,732	1,445	8,865
West North Central.....	643	281	107	125	130	42,195	37,410	10,035	13,857	7,294	6,224	36,095
Iowa.....	65	32	14	8	11	5,697	5,240	1,697	1,476	692	1,375	4,396
Minnesota.....	136	47	35	29	25	10,009	8,799	2,181	3,122	2,179	1,317	8,331
Missouri.....	322	147	43	72	60	22,340	19,681	4,802	8,192	4,041	2,646	20,139
North Dakota.....	13	6	0	5	2	188	175	55	0	84	36	171
South Dakota.....	4	1	1	0	2	37	36	5	15	0	16	30
Nebraska.....	26	13	4	1	8	834	760	273	209	4	274	526
Kansas.....	77	35	10	10	22	3,090	2,719	1,022	843	294	560	2,505

South Atlantic.....	387	138	68	37	144	113,912	90,400	12,997	40,989	8,374	28,040	78,293
Delaware.....	8	3	2	0	3	1,345	1,220	414	220	0	586	559
Maryland.....	79	38	6	10	25	6,962	6,393	1,057	1,820	2,225	1,291	5,536
District of Columbia.....	32	14	7	5	6	932	841	362	168	27	284	761
Virginia.....	57	17	11	4	25	5,803	5,356	595	2,027	524	2,210	2,698
West Virginia.....	41	15	6	3	17	7,052	6,542	719	3,062	403	2,358	2,636
North Carolina.....	46	7	15	2	22	24,059	22,062	3,735	3,817	4,629	9,881	7,525
South Carolina.....	15	3	2	1	9	5,178	4,645	884	1,447	30	2,284	2,313
Georgia.....	47	9	12	5	21	53,566	36,561	889	28,129	235	7,308	49,252
Florida.....	62	32	7	7	16	9,015	6,780	4,342	299	301	1,838	7,013
East South Central.....	245	99	43	17	86	28,243	25,313	5,796	8,573	4,977	5,967	20,960
Kentucky.....	72	41	8	4	19	9,138	8,218	1,608	3,218	2,241	1,151	8,083
Tennessee.....	89	24	18	11	36	11,474	10,393	1,772	3,640	2,401	2,580	8,227
Alabama.....	61	26	11	1	23	4,306	3,930	1,399	832	171	1,528	2,220
Mississippi.....	23	8	6	1	8	3,325	2,772	1,017	883	164	708	2,430
West South Central.....	296	91	74	41	90	39,513	34,901	4,450	14,210	8,600	7,641	31,799
Arkansas.....	41	12	13	3	13	4,367	3,925	716	1,781	43	1,385	2,879
Louisiana.....	36	14	10	4	8	6,664	5,896	1,004	2,794	1,641	457	6,221
Oklahoma.....	59	18	7	8	26	3,456	3,060	731	795	364	1,170	1,878
Texas.....	160	47	44	26	43	25,026	22,020	1,999	8,840	6,552	4,629	20,821
Mountain.....	220	103	21	40	56	9,374	8,153	2,807	1,692	2,024	1,630	7,697
Montana.....	12	5	3	2	2	265	231	38	102	38	53	211
Idaho.....	24	14	0	4	6	877	767	367	12	174	200	610
Wyoming.....	12	3	4	2	3	503	421	96	112	86	127	432
Colorado.....	69	41	6	2	20	1,963	1,801	848	300	117	536	1,395
New Mexico.....	50	17	0	20	13	2,496	2,246	711	136	1,053	346	2,127
Arizona.....	16	7	3	2	4	1,995	1,508	455	638	306	109	1,869
Utah.....	30	14	5	5	6	1,205	1,118	270	378	226	244	1,007
Nevada.....	7	2	0	3	2	70	61	22	0	24	15	46
Pacific.....	684	282	91	126	185	91,828	77,842	29,251	16,302	18,812	13,477	79,339
Washington.....	100	49	10	19	22	25,617	21,420	6,330	1,319	10,174	3,597	21,163
Oregon.....	116	52	23	10	31	10,350	9,295	1,738	3,900	190	3,467	8,439
California.....	468	181	58	97	132	55,861	47,127	21,183	11,083	8,448	6,413	49,737
Outlying areas.....	94	29	12	31	22	8,124	6,428	1,790	445	2,489	1,704	6,689
Alaska.....	8	4	2	0	2	1,640	1,018	541	58	0	419	1,624
Hawaii.....	12	5	0	4	3	1,323	1,188	543	0	354	291	1,056
Puerto Rico.....	74	20	10	27	17	5,161	4,222	706	387	2,135	994	4,009

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

Table 22.—Geographic distribution of decertification elections, eligible voters, and number of votes cast for participating unions, during fiscal year 1950

Division and State ¹	Number of elections	Elections won by				Em- ployees eligible to vote	Valid votes cast for					Em- ployees in units choosing representa- tion
		A. F. of L. affiliates	C. I. O. affiliates	Unaffili- ated unions	No union		Total	A. F. of L. affiliates	C. I. O. affiliates	Unaffili- ated unions	No union	
New England.....	12	1	2	0	9	326	290	60	47	0	183	82
Maine.....	1				1	4	4				4	0
New Hampshire.....	2				2	98	81	7	10		64	0
Vermont.....	2		2			49	48		30		18	49
Massachusetts.....	5				5	118	106	29	7		70	0
Rhode Island.....	0					0	0				0	0
Connecticut.....	2	1			1	57	51	24			27	33
Middle Atlantic.....	12	0	2	0	10	958	897	29	430	6	432	527
New York.....	5				5	145	138	26	8		104	0
New Jersey.....	0					0	0				0	0
Pennsylvania.....	7		2		5	813	759	3	422	6	328	527
East North Central.....	28	2	10	1	15	1,984	1,784	263	597	127	797	1,428
Ohio.....	7	1	2		4	543	498	238	40	40	180	328
Indiana.....	7	1	2	1	3	496	423	17	181	49	176	438
Illinois.....	2				2	38	33	1		11	21	0
Michigan.....	10		6		4	845	775		376	22	377	662
Wisconsin.....	2				2	62	55	7		5	43	0
West North Central.....	6	1	0	0	5	458	445	111	84	6	244	102
Iowa.....	0					0	0				0	0
Minnesota.....	3				3	332	322	60	80		182	0
Missouri.....	1	1				102	99	51			48	102
North Dakota.....	0					0	0				0	0
South Dakota.....	0					0	0				0	0
Nebraska.....	1				1	10	10		4		6	0
Kansas.....	1				1	14	14			6	8	0
South Atlantic.....	13	2	5	0	6	2,942	2,665	81	1,523	0	1,061	2,365
Delaware.....	0					0	0				0	0
Maryland.....	3	2			1	156	145	77			68	133
District of Columbia.....	0					0	0				0	0
Virginia.....	1				1	226	213		70		143	0
West Virginia.....	3		1		2	248	234	4	112		118	111

North Carolina.....	4		2		2	1,606	1,393		900		493	1,415
South Carolina.....	0					0	0					0
Georgia.....	1		1			680	656		427		229	680
Florida.....	1		1			26	24		14		10	26
East South Central.....	5	1	0	0	4	200	165	15	0	6	144	15
Kentucky.....	3	1			2	29	29	12		1	16	15
Tennessee.....	1				1	8	7	3			4	0
Alabama.....	1				1	163	129			5	124	0
Mississippi.....	0					0	0					0
West South Central.....	6	0	1	0	5	741	675	109	151	0	415	230
Arkansas.....	1		1			230	212		150		62	230
Louisiana.....	1				1	229	202	15			187	0
Oklahoma.....	0					0	0					0
Texas.....	4				4	282	261	94	1		166	0
Mountain.....	1	0	0	0	1	320	249	0	30	0	219	0
Montana.....	0					0	0					0
Idaho.....	0					0	0					0
Wyoming.....	0					0	0					0
Colorado.....	1				1	320	249		30		219	0
New Mexico.....	0					0	0					0
Arizona.....	0					0	0					0
Utah.....	0					0	0					0
Nevada.....	0					0	0					0
Pacific.....	28	5	3	1	19	1,460	1,239	369	170	74	626	691
Washington.....	4				4	116	109	7	36		66	0
Oregon.....	5	1		1	3	118	117	13	10	33	61	65
California.....	19	4	3		12	1,226	1,013	349	124	41	499	626
Outlying areas.....	1	0	0	0	1	85	76	0	33	0	43	0
Alaska.....	0					0	0					0
Hawaii.....	0					0	0					0
Puerto Rico.....	1				1	85	76		33		43	0

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

Table 23.—Geographic distribution of union-shop authorization polls, outcome, eligible voters, and valid votes cast during fiscal year 1950

Division and State 1	Total number of polls	Number of polls				Em- ployees eligible to vote	Total valid votes cast	Valid votes cast for union shop by affiliation of peti- tioners			Valid votes cast against union shop	Em- ployees in units authoriz- ing union shop
		A F of L affiliates author- ized	C I O. affiliates author- ized	Unaffili- ated unions author- ized	No union author- ized			A F of L affili- ates	C. I. O. affili- ates	Unaffili- ated unions		
New England.....	516	317	141	38	20	50,410	41,880	15,214	17,752	3,534	5,380	49,926
Maine.....	18	8	1	8	1	1,067	915	241	175	399	100	1,057
New Hampshire.....	23	14	7	1	1	4,003	3,364	812	2,087	118	347	3,983
Vermont.....	14	5	6	0	3	649	560	142	381	0	37	619
Massachusetts.....	277	166	85	16	10	27,225	22,194	9,070	9,283	723	3,118	26,939
Rhode Island.....	32	14	10	6	2	5,411	4,469	1,269	1,030	1,515	655	5,373
Connecticut.....	152	110	32	7	3	12,055	10,378	3,680	4,796	779	1,123	11,955
Middle Atlantic.....	1,181	576	340	230	35	285,254	235,331	60,931	93,741	55,477	25,182	282,649
New York.....	600	320	170	96	14	150,010	122,917	32,531	50,974	25,395	14,017	147,903
New Jersey.....	198	90	51	51	6	54,361	42,386	13,314	16,043	9,168	3,861	54,178
Pennsylvania.....	383	166	119	83	15	80,883	70,028	15,086	26,724	20,914	7,304	80,568
East North Central.....	1,684	1,005	409	219	51	476,450	401,001	64,015	266,148	25,643	45,195	455,547
Ohio.....	447	261	107	58	21	66,246	55,677	16,370	28,604	4,493	6,210	65,683
Indiana.....	275	199	57	16	3	32,185	27,702	9,246	12,676	3,500	2,280	31,977
Illinois.....	529	351	80	81	17	80,471	66,931	25,042	23,046	9,343	9,500	60,894
Michigan.....	270	106	126	31	7	274,001	229,773	8,934	193,594	2,103	25,142	273,482
Wisconsin.....	163	88	39	33	3	23,547	20,918	4,423	8,228	6,204	2,063	23,511
West North Central.....	564	349	76	117	22	57,269	47,224	20,912	16,585	6,113	3,614	56,771
Iowa.....	0	0	0	0	0	0	0	0	0	0	0	0
Minnesota.....	186	97	33	49	7	22,120	17,963	2,673	9,545	4,306	1,439	21,984
Missouri.....	325	216	32	67	10	27,974	23,916	17,459	2,848	1,732	1,877	27,792
North Dakota.....	0	0	0	0	0	0	0	0	0	0	0	0
South Dakota.....	0	0	0	0	0	0	0	0	0	0	0	0
Nebraska.....	0	0	0	0	0	0	0	0	0	0	0	0
Kansas.....	53	36	11	1	5	7,175	5,345	780	4,192	75	298	6,995

South Atlantic.....	172	125	18	22	7	18,315	15,669	8,342	2,182	4,083	1,062	18,220
Delaware.....	8	4	1	3	0	803	706	151	6	462	87	803
Maryland.....	52	30	9	9	4	4,709	4,102	1,292	1,741	637	432	4,639
District of Columbia.....	60	49	2	8	1	4,907	3,764	664	91	2,808	201	4,905
Virginia.....	0	0	0	0	0	0	0	0	0	0	0	0
West Virginia.....	40	32	5	1	2	2,141	1,825	1,356	279	40	150	2,118
North Carolina.....	0	0	0	0	0	0	0	0	0	0	0	0
South Carolina.....	12	10	1	1	0	5,755	5,272	4,879	65	136	192	5,755
Georgia.....	0	0	0	0	0	0	0	0	0	0	0	0
Florida.....	0	0	0	0	0	0	0	0	0	0	0	0
East South Central.....	130	102	16	7	5	13,104	11,214	5,038	4,269	590	1,317	12,971
Kentucky.....	57	43	8	3	3	8,813	7,668	3,054	3,293	421	900	8,731
Tennessee.....	0	0	0	0	0	0	0	0	0	0	0	0
Alabama.....	54	41	7	4	2	2,998	2,389	1,392	557	169	271	2,947
Mississippi.....	19	18	1	0	0	1,293	1,157	592	419	0	146	1,293
West South Central.....	99	72	11	8	8	9,917	8,142	5,573	1,712	363	494	9,648
Arkansas.....	1	0	1	0	0	22	20	0	20	0	0	22
Louisiana.....	39	29	5	2	3	7,565	6,107	4,632	1,142	76	257	7,451
Oklahoma.....	59	43	5	6	5	2,330	2,015	941	550	287	237	2,175
Texas.....	0	0	0	0	0	0	0	0	0	0	0	0
Mountain.....	189	133	18	20	18	10,550	8,844	4,880	2,603	531	830	10,202
Montana.....	22	14	2	4	2	641	583	468	34	36	45	618
Idaho.....	28	20	2	4	2	549	496	328	60	9	99	538
Wyoming.....	3	0	1	1	1	149	143	0	7	88	48	144
Colorado.....	80	59	9	4	8	7,158	5,856	2,861	2,371	143	481	6,985
New Mexico.....	28	24	0	2	2	1,219	1,026	846	0	89	91	1,104
Arizona.....	0	0	0	0	0	0	0	0	0	0	0	0
Utah.....	21	14	3	2	2	586	518	299	121	44	54	560
Nevada.....	7	2	1	3	1	248	222	78	10	122	12	243
Pacific.....	971	505	159	263	44	147,293	128,129	65,461	28,871	21,516	12,281	145,396
Washington.....	196	99	40	53	4	15,026	13,377	2,985	7,742	1,508	1,142	14,922
Oregon.....	137	80	33	9	15	8,990	7,535	3,243	3,421	154	717	8,063
California.....	638	326	86	201	25	123,277	107,217	59,233	17,708	19,854	10,422	122,411
Outlying areas.....	85	47	4	30	4	4,355	3,432	1,240	268	1,602	322	3,832
Alaska.....	36	33	1	1	1	1,082	909	547	70	197	95	1,077
Hawaii.....	1	1	0	0	0	3	3	3	0	0	0	3
Puerto Rico.....	48	13	3	29	3	3,270	2,520	690	198	1,405	227	2,752

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

Table 24.—Record of injunctions petitioned for under sec. 10 (j) and 10 (l) during fiscal year 1948

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings withdrawn or dismissed	Date of Board decision and/or order
				Date issued	Date lifted				
10-CC-1.....	Carpenters, Local 74 (Watson Specialty Store).	Sept. 22, 1947	10 (l).....				Oct. 23, 1947		Nov. 22, 1948
2-CC-4, 7.....	International Longshoremen's Association, et al (Cargill Inc. & Cargo Carriers; Oil Transfer Corp.).	Oct. 2, 1947	10 (l).....	Oct. 2, 1947	Oct. 7, 1947			¹ Oct. 23, 1947	
9-CC-2.....	United Mine Workers, et al. (Jackson Construction Co.).	Oct. 8, 1947	10 (l).....					¹ Dec. 2, 1947	(¹)
2-CC-12.....	Teamsters, Local 294 (Montgomery Ward)	Nov. 29, 1947	10 (l).....					do.....	
2-CC-14.....	Teamsters, Local 294 (Conway's Express)	do.....	10 (j).....			Jan. 17, 1948			Dec. 16, 1949
17-CC-1.....	Carpenters (Klassen, Hodgson & Wadsworth)	Dec. 1, 1947	10 (l).....			Jan. 8, 1948			Feb. 18, 1949
2-CC-16, 18....	Metropolitan Federation of Architects, Local 231 (Project Engineering & Design Service).	Dec. 2, 1947	10 (l).....				Jan. 26, 1948		¹ Sept. 29, 1948
2-CC-23, 24....	Wine, Liquor & Distillery Workers, Local 1, AFL (Schenley Distillers & Jardine Liquor Corp.)	Dec. 8, 1947	10 (l).....	Dec. 11, 1947	Jan. 8, 1948		Jan. 26, 1948	Aug. 12, 1948	July 22, 1948
21-CC-13.....	Printing Specialty & Paper Converters, Local 388 (Sealright Pacific, Ltd.).	Dec. 17, 1947	10 (l).....			Feb. 16, 1948			Mar. 24, 1949
9-CB-5.....	International Typographical Union, et al. (American Newspaper Publishers Association)	Jan. 16, 1948	10 (j).....			Mar. 27, 1948			Oct. 28, 1949
15-CC-1, 2, 3, 4.	Teamsters, Local 201, AFL (International Rice Milling et al.)	Jan. 19, 1948	10 (l).....			⁴ Feb. 17, 1948			June 20, 1949
15-CC-5.....	Carpenters, Local 1796, AFL (Montgomery Fair Co.)	Jan. 27, 1948	10 (l).....			Feb. 17, 1948			Mar. 18, 1949
7-CA-37.....	General Motors Corp. (UAW-CIO).....	Jan. 29, 1948	10 ¹ (j).....	Jan. 29, 1948	June 1, 1948			June 1, 1948	Feb. 18, 1949
30-CC-2.....	Carpenters, Local 55, AFL (Gould & Preisner).	Mar. 8, 1948	10 (j).....				Mar. 31, 1948		Apr. 13, 1949
21-CB-8.....	Amalgamated Meat Cutters, Local 421, 537, 439, 551, AFL (Great Atlantic & Pacific Tea Co.).	Mar. 8, 1948	10 (j).....					April 20, 1948	Mar. 1, 1949
2-CC-30.....	American Communications Association CIO and Local 40, CIO (Commercial Cable Co., et al.).	Mar. 17, 1948	10 (l).....			(¹)		Sept. 21, 1948	
7-CC-2.....	Bricklayers, Local 1, AFL (Osterink Construction Co.).	April 1, 1948	10 (l).....			June 23, 1948			Mar. 18, 1949
5-CB-9.....	United Mine Workers & Lewis (Southern Coal Producers Association).	May 24, 1948	10 (j).....			June 4, 1948		Nov. 10, 1948	(¹)

2-CC-40-----	International Brotherhood of Electrical Workers, Local 501, AFL (Samuel Langer).	June 17, 1948	10 (i)----	-----	-----	June 29, 1948	-----	-----	Apr. 12, 1949
21-CC-25, 26, 27, 28, 29, 34.	Kern County Farm Labor Union, et al. (Di Georgio Wine & Fruit Cos.).	June 18, 1948	10 (i)----	-----	-----	July 14, 1948	-----	-----	Dec. 16, 1949
19-CA-95-----	Boeing Airplane Co. (Machinists Aeronautical Industrial Lodge No. 751).	June 11, 1948	10 (j)----	-----	-----	-----	June 19, 1948	-----	Nov. 22, 1948

See end of fiscal year 1950 table for footnotes.

Table 25.—Record of injunctions petitioned for under sec. 10 (j) and 10 (l) during fiscal year 1949

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings withdrawn or dismissed	Date of Board decision and/or order
				Date issued	Date lifted				
17-CC-2.....	Building and Construction Trades Council of Kansas City, etc, et al (Ralph J. Steele)	July 3, 1948	10 (l)....	July 9, 1948	Nov. 6, 1948		Nov. 6, 1948		(1)
5-CB-14.....	United Mine Workers and Lewis (Jones and Laughlin Steel Corp, et al).	July 8, 1948	10 (j)....				July 15, 1948		May 27, 1949
2-CC-59, 2-CD-18.....	International Alliance Theatrical Stage Employees (American Broadcasting Co, Inc).	Aug. 9, 1948	10 (l)....	Aug. 9, 1948	June 21, 1949				(1)
10-CC-11.....	Electrical Workers, Local 1160, AFL (Roane Anderson Co)	Aug. 17, 1948	10 (l)....			Sept. 1, 1948			Apr. 4, 1949
35-CC-7.....	Electrical Workers, CIO (Ryan Construction Corp)	Aug. 20, 1948	10 (l)....			Aug. 27, 1948			July 28, 1949
2-CC-44.....	Mine, Mill and Smelter Workers, Local 701, CIO (Sterling Die Casting Co, Inc).	Aug. 25, 1948	10 (l)....			(2)		Apr. 1, 1949	(1)
8-CC-4.....	Oil Workers, Loc 346, CIO (Pure Oil Co.)	Aug. 30, 1948	10 (l)....			(2)			June 17, 1949
30-CC-4.....	Denver Building and Construction Trades Council, et al (Grauman Co).	Aug. 30, 1948	10 (l)....				Sept. 22, 1948		Dec. 16, 1949
2-CC-62.....	Department Store Employees Union, Local 1250 (Oppenheim Collins & Co, Inc)	Sept. 8, 1948	10 (l)....			Sept 14, 1948			May 4, 1949
6-CC-17.....	Building and Construction Trades Council of Pittsburgh and Vicinity, et al. (Petredis & Fryer)	Sept 16, 1948	10 (l)....			Sept. 30, 1948			July 19, 1949
2-CC-61.....	Teamsters, Local 807, AFL (Schultz Refrigerated Service, Inc.).	Sept. 21, 1948	10 (l)....			Oct. 14, 1948			Dec. 9, 1949
13-CC-5, 7.....	Painters, Chicago Glaziers, Local 27, AFL, et al. (Johet Contractors Association, et al).	Sept. 28, 1948	10 (l)....			Nov. 19, 1948			June 26, 1950
2-CC-50, 51.....	Teamsters, Local 138, AFL, et al. (Phulan, Inc).	Oct. 7, 1948	10 (l)....			Oct. 15, 1948			Nov. 23, 1948
2-CC-64, 65, 66.....	Service Trade Chauffeurs, Salesmen, Warehousemen and Helpers, Local 145, et al. (Howland Dry Goods Co, Meigs & Co., Inc, and D. M. Read Co)	Oct. 8, 1948	10 (l)....			(2)			Aug. 31, 1949
20-CC-30.....	Oil Workers, CIO, et al. (Union Oil Co. of California).	Oct. 12, 1948	10 (l)....			Oct. 27, 1948		Feb. 7, 1949	(1)
15-CC-10, 11, 12, 13, 14, 15.....	Pacific Coast Marine Firemen, etc, and Marine Cooks, CIO, et al. (Todd Johnson Dry Docks, Inc).	Oct. 14, 1948	10 (l)....			Oct 27, 1948			Apr. 26, 1949

10-CC-15-----	Gadsden Building Trades Council, AFL, et al. (Gadsden Heating & Sheet Metal Co).	Oct. 27, 1948	10 (1)			(9)	June 7, 1949	(1)
36-CC-1, 2, 3, 36-CD-1, 2, 3	Longshoremen, Local 12, CIO, et al. (Irwin Lyons Lumber Co)	Oct 29, 1948	10 (1)		(2)			Nov. 17, 1949
10-CC-16-----	Plumbers, Local 498, AFL (Pettus-Bannister Co)	Nov. 4, 1948	10 (1)		(2)			June 21, 1950
2-CC-73, 74----	Retail and Wholesale Employees Union, Local 830, et al. (Federated Purchasers, Inc.).	Jan. 14, 1949	10 (1)		Feb 3, 1949			Mar. 16, 1949
35-CC-11-----	Metal Polishers, AFL, Local 171 (Climax Machinery Co).	Apr. 27, 1949	10 (1)		July 27, 1949			Nov. 4, 1949
21-CD-19-----	Los Angeles Building and Construction Trades Council, et al., AFL (Westinghouse Electric Co).	May 3, 1949	10 (1)		June 16, 1949			
2-CC-89-----	Confectionery and Tobacco Jobbers Employees Union, Local 1175, AFL (Montoya Trading Co).	May 9, 1949	10 (1)		May 25, 1949		July 29, 1949	(1)
19-CD-4, 5-----	Longshoremen, Local 16, CIO (Juneau-Spruce Corp).	May 12, 1949	10 (1)		May 14, 1949			
30-CC-5, 6, 7----	Denver Building and Construction Trades Council (Churches, William G.).	May 18, 1949	10 (1)		(2)			June 16, 1950
1-CC-22, 23, 35, 36, 37, 38.	Building and Trades Council and Electrical Workers, et al. (N. Benvenuti & Sons and Alexander Jarvis Co).	May 19, 1949	10 (1)		(2)		Oct 31, 1949	(1)
21-CC-60-----	Building and Construction Trades Council, AFL (Santa Ana Lumber Co)	May 19, 1949	10 (1)		June 13, 1949		Nov. 19, 1949	Dec. 16, 1949
19-CC-12-----	Spokane Building and Trades Council, et al AFL (Kinsey Manufacturing Co).	May 20, 1949	10 (1)			6 Oct. 13, 1949		May 5, 1950
9-CC-21-----	Electrical Workers, Local 16, AFL (Schneider, Al J Co, Inc)	May 26, 1949	10 (1)			June 1, 1949		Nov. 18, 1949
2-CC-93-----	Teamsters, Local 807, AFL (Sterling Beverages, Inc).	May 27, 1949	10 (1)		July 29, 1949			June 16, 1950
8-CC-7-----	Electrical Workers, Local 688, AFL (Camlin, W J, Co)	June 7, 1949	10 (1)				1 Oct. 24, 1949	
9-CC-23-----	Parkersburg Building and Construction Trades Council, AFL (Litman Motor Freight Co).	June 15, 1949	10 (1)		(2)		1 Oct. 14, 1949	

See end of fiscal year 1950 table for footnotes.

Table 26.—Record of injunctions petitioned for under sec. 10 (j) and 10 (l) during fiscal year 1950

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings withdrawn or dismissed	Date of Board decision and/or order
				Date issued	Date lifted				
1-CC-44, 45.....	United Electrical Workers, CIO, Local 262 (Keystone Manufacturing Co.).	July 25, 1949	10 (l).....					¹ Nov. 14, 1949	(l)
20-CD-5.....	Roofers and Waterproofers, Local 40 (Dan Goodwin).	July 19, 1949	10 (l).....			Sept. 1, 1949			Feb. 23, 1950
2-CC-104.....	United Wire and Metal Workers, Local 24368, AFL (ABKO Products Inc.).	July 20, 1949	10 (l).....				Aug. 3, 1949		(l)
2-CC-107.....	International Brotherhood of Teamsters, Local 138, AFL (Wilbert Products Co., et al)	Aug. 5, 1949	10 (l).....			Aug. 19, 1949			Nov. 30, 1949
2-CC-108.....	Newspaper and Mail Deliverers Union of New York and vicinity (Interborough News Co)	Aug 23, 1949	10 (l).....			(²)			
20-CC-43, 44.....	International Longshoreman Union, CIO (Matson Terminals Inc., Elano)	Sept 6, 1949	10 (l).....	Sept. 6, 1949	¹ Dec. 12, 1949			¹ Dec. 12, 1949	(l)
38-CB-30.....	Union De Trabajadores de la Industrial de Cemento (Ponce Cement Corp.).	Sept 22, 1949	10 (j).....			Oct. 3, 1949			Apr. 24, 1950
16-CC-9.....	General Drivers, Chauffeurs and Helpers, Local 886, AFL (Santa Fe Trail Transportation Co).	Oct 17, 1949	10 (l).....			Oct 20, 1949			Feb. 13, 1950
36-CC-8.....	Salem Trades and Labor Council, et al (Valley Concrete Co).	Oct. 26, 1949	10 (l).....					¹ Feb 13, 1950	
2-CC-118.....	Retail and Wholesale Workers Union, Local 65 (Best Housekeeping Co)	Oct. 28, 1949	10 (l).....			Nov 29, 1949			June 15, 1950
6-CD-3.....	International Brotherhood of Electrical Workers, Local 596, AFL (West Virginia Electric Co).	Nov. 22, 1949	10 (l).....	Dec. 1, 1949		Dec 8, 1949			June 21, 1950
39-CC-7.....	Oil Workers, Local 227, CIO (Waterman Steamship Corp).	Nov. 19, 1949	10 (l).....	Nov. 19, 1949	¹ Nov. 23, 1949			¹ Nov. 23, 1949	(l)
2-CC-119.....	Teamsters, Local 294, AFL (Western Express Co., Inc)	Nov. 18, 1949	10 (l).....				Jan. 13, 1950		
33-CB-6, 7, 8.....	Mine, Mill and Smelter Workers (Potash Co of America, et al).	Jan. 9, 1950	10 (j).....			⁴ Jan. 10, 1950			June 9, 1950
5-CB-43, 47.....	United Mine Workers (Southern Coal Producers Association)	Jan. 18, 1950	10 (j).....			Feb. 11, 1950			
20-CC-53.....	AFL-Retail Shoe and Textile Salesmen's Union, Local 410 (Cramer, A. E., Inc)	Jan. 26, 1950	10 (l).....				Mar. 6, 1950		May 18, 1950
6-CC-41.....	AFL-Teamster, Locals 249 and 635 (Swift and Co).	Mar. 7, 1950	10 (l).....			Mar. 22, 1950			
20-CC-55.....	AFL-Seafarers Sailor's Union of Pacific (Moore Drydock Co.).	Mar. 3, 1950	10 (l).....			Mar 14, 1950			

2-CC-138.....	AFL-Teamsters, Local 456 (E. Rabinow & Co.).	Apr. 12, 1950	10 (I)				May 16, 1950	
32-CC-3.....	AFL-Teamsters, Local 878 (Arkansas Express Inc.)	Apr. 19, 1950	10 (I)			(2)		
19-CA-301.....	Alaska Salmon Industry Inc. (Food Workers Cannery Workers and Farm Laborers, Local 77).	May 23, 1950	10 (I)					⁴ June 7, 1950
21-CC-89.....	AFL-Los Angeles Building and Construction Trades Council (Blanchard Lumber Co.).	May 12, 1950	10 (I)				¹ May 19, 1950	
20-OB-128, 129.....	AFL-Teamsters, Local 85 (Distributor's Association of Northern California)	May 18, 1950	10 (I)					⁴ June 22, 1950
6-CC-44.....	AFL-Commercial Telegraphers Union, Division 47 (Pittsburgh Press Co.)	May 19, 1950	10 (I)	May 19, 1950	May 22, 1950			¹ June 9, 1950
18-CC-9.....	National Brotherhood of Electrical Workers, Local 292, et al. (A and A Electric Co.)	May 12, 1950	10 (I)					¹ June 22, 1950
19-CC 27, 28, 29.....	CIO-Longshoremen, Locals 7C and 19 (Alaska Salmon Industry, Inc)	May 22, 1950	10 (I)	May 27, 1950		June 1, 1950		
20-CC-60.....	CIO-Longshoremen, Local 6 (Purdy Stores, Ltd.)	May 2, 1950	10 (I)					⁴ June 22, 1950
16-CC-14.....	AFL-Meat Cutters, Local 303 (Western, Inc.)	May 17, 1950	10 (I)					
21-CC-92.....	AFL-Boilermakers Lodge 92, et al. (Richfield Oil Corp).	May 22, 1950	10 (I)			(2)		

¹ Dispute settled and proceeding discontinued

² Because of suspension of unfair labor practice, case carried on inactive court docket only.

³ Petition dismissed because Board declined jurisdiction of employer in "R" proceeding.

⁴ By consent.

⁵ Reversed on appeal and remanded

⁶ Case retained on court docket for further proceedings if appropriate.

⁷ Case closed on compliance with intermediate report.

NOTE.—Discretionary injunction indicated by 10 (J); Mandatory injunction indicated by 10 (I).

APPENDIX C

NLRB Regional Offices

The following listing presents the directing personnel, locations, and territories of the regional offices of the National Labor Relations Board.

First Region—Boston 8, Mass., 24 School Street. Director, Bernard L. Alpert; chief law officer, Samuel G. Zack.

Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; and Connecticut except Fairfield County.

Second Region—New York 16, N. Y., 2 Park Avenue. Director, Charles T. Douds; chief law officer, Helen Humphrey.

Fairfield County in Connecticut; in New York State, the counties of Albany, Bronx, Clinton, Columbia, Dutchess, Essex, Greene, Kings, Nassau, New York, Orange, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Suffolk, Sullivan, Ulster, Warren, Washington, and Westchester [for remainder of New York State, see Third Region]; in New Jersey, the counties of Bergen, Essex, Hudson, Passaic, and Union.

Third Region—Buffalo 3, N. Y., 350 Ellcott Square Building, 295 Main Street. Director, Merle D. Vincent, Jr.; chief law officer, John C. McRee.

New York State except those counties included in the Second Region.

Fourth Region—Philadelphia 7, Pa., 1500 Bankers Securities Building. Director, Bennet F. Schauffler; chief law officer, Ramey Donovan.

New Jersey except those counties included in the Second Region; in Pennsylvania, the counties of Adams, Berks, Bradford, Bucks, Carbon, Chester, Columbia, Cumberland, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York [for remainder of Pennsylvania, see Sixth Region]; New Castle County in Delaware.

Fifth Region—Baltimore 2, Md., Sixth Floor, 37 Commerce Street. Director, John A. Penello; chief law officer, David Sachs.

Kent and Sussex Counties in Delaware; Maryland; District of Columbia; Virginia; North Carolina; in West Virginia, the counties of Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, and Pendleton [for remainder of West Virginia, see Sixth and Ninth Regions].

Subregion 34—Nissen Building, Winston-Salem, N. C. Officer in charge, Reed Johnston. North Carolina.

Sixth Region—Pittsburgh 22, Pa., 2107 Clark Building. Director, Henry Shore; chief law officer, W. G. Stuart Sherman.

Pennsylvania except those counties included in the Fourth Region; in West Virginia, the counties of Barbour, Brooke, Doddridge, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Pocahontas, Preston, Randolph, Taylor, Tucker, Upshur, Webster, and Wetzel.

Seventh Region—Detroit 26, Mich., 1740 National Bank Building. Director, Frank H. Bowen; chief law officer, Harry Casselman.

In Michigan, the counties of Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kala-

mazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Macomb, Manistee, Mason, Mecosta, Midlane, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, St. Clair, St. Joseph, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford [for remainder of Michigan, see Eighteenth Region].

Eighth Region—Cleveland 14, Ohio, Ninth-Chester Building. Director, John A. Hull, Jr.; chief law officer, Philip Fusco.

In Ohio, the counties of Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Champaign, Columbiana, Coshocton, Crawford, Cuyahoga, Darke, Defiance, Delaware, Erie, Fulton, Geauga, Guernsey, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Knox, Lake, Licking, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Mercer, Miami, Morro, Muskingum, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Wayne, Williams, Wood, and Wyandot [for remainder of Ohio, see the Ninth Region].

Ninth Region—Cincinnati 2, Ohio, Ingalls Building, Fourth and Vine Streets. Director, Jack G. Evans; chief law officer, Allen Sinsheimer.

Kentucky; Ohio except those counties included in the Eighth Region; in West Virginia, the counties not included in the Fifth and Sixth Regions.

Subregion 35—342 Massachusetts Avenue, Indianapolis 4, Ind Officer in charge, F. Robert Volger. In Indiana, the counties of Bartholomew, Blackford, Boone, Brown, Clark, Clay, Crawford, Daviess, Dearborn, Decatur, Delaware, Dubois, Fayette, Floyd, Franklin, Gibson, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Jackson, Jay, Jefferson, Jennings, Johnson, Knox, Lawrence, Madison, Marion, Martin, Monroe, Montgomery, Morgan, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Randolph, Ripley, Rush, Scott, Shelby, Spencer, Sullivan, Switzerland, Union, Vanderburgh, Vermillion, Vigo, Warrick, Washington, and Wayne [for remainder of Indiana, see Thirteenth Region].

Tenth Region—Atlanta 3, Ga, 50 Seventh Street, N. E. Director, John C. Getreu; chief law officer, William M. Pate.

Georgia; South Carolina; in Alabama, the counties of Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, DeKalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston [for remainder of Alabama, see Fifteenth Region]; in Tennessee, the counties of Anderson, Bedford, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Cheatham, Claiborne, Clay, Cocke, Coffee, Cumberland, Davidson, De Kalb, Dickson, Fentress, Franklin, Giles, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lawrence, Lewis, Lincoln, Loudon, McMinn, Macon, Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore, Morgan, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Smith, Stewart, Sullivan, Sumner, Trousdale, Unicoi, Union, Van Buren, Warren, Washington, Wayne, White, Williamson, and Wilson [for remainder of Tennessee, see Subregion 32]; in Florida, the counties of Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, Dade, De Soto, Dixie, Duval, Flagler, Gadsden, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, and Wakulla [for remainder of Florida, see Fifteenth Region].

Thirteenth Region—Chicago 3, Ill., Midland Building, 176 West Adams Street. Director, Ross M. Madden; chief law officer, Robert Ackerberg.

In Wisconsin, the counties of Brown, Calumet, Dane, Dodge, Door, Fond du Lac, Green, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha, Winnebago [for remainder of Wisconsin, see Eighteenth

Region]; in Illinois, the counties of Boone, Bureau, Carroll, Cass, Campaign, Cook, De Kalb, De Witt, Douglas, Du Page, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lee, Livingston, Logan, McDonough, McHenry, McLean, Macon, Marshall, Mason, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Piatt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, Woodford [for remainder of Illinois, see Fourteenth Region]; Indiana except those counties included in Subregion 35.

Fourteenth Region—St. Louis 2, Mo., 520 Boatmen's Bank Building, 314 North Broadway. Director, V. Lee McMahon; chief law officer, Harry G. Carlson.

Illinois, except those counties included in the Thirteenth Region; in Missouri, the counties of Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Knox, Lewis, Lincoln, Madison, Maries, Marion, Mississippi, Monroe, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne [for remainder of Missouri, see Seventeenth Region].

Fifteenth Region—New Orleans 13, La., 3rd Floor, 1539 Jackson Ave. Director, John F. LeBus; chief law officer, Richard Keenan.

Louisiana; in Arkansas, the counties of Ashley, Bradley, Calhoun, Chicot, Clark, Cleveland, Columbia, Dallas, Desha, Drew, Hempstead, Howard, Lafayette, Lincoln, Little River, Miller, Nevada, Pike, Quachita, Sevier, and Union [for remainder of Arkansas, see Subregion 32]; in Mississippi, the counties of Adams, Amite, Attala, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Copia, Covington, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kamper, Lamar, Lauderdale, Lawrence, Leake, Leflore, Lincoln, Lowndes, Madison, Marion, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo [for remainder of Mississippi, see Subregion 32]; Alabama except those counties included in the Tenth Region; Florida except those counties included in the Tenth Region.

Subregion 32—714 Falls Building, 22 North Front Street, Memphis 3, Tenn. Officer in charge, Anthony Sabella. Arkansas except those counties included in the Fifteenth Region; Tennessee except those counties included in the Tenth Region; Mississippi except those counties included in the Fifteenth Region.

Sixteenth Region—Fort Worth 2, Tex., 1101 Texas & Pacific Building. Director, Edwin A. Elliot; chief law officer, Elmer P. Davis.

Oklahoma; in Texas, the counties of Anderson, Angelina, Archer, Armstrong, Bailey, Baylor, Bell, Bosque, Bowie, Briscoe, Brown, Burnet, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ellis, Erath, Falls, Fannin, Fisher, Floyd, Foard, Franklin, Freestone, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hill, Hockely, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kaufman, Kent, Kimble, King, Knox, Lamar, Lamb, Lampasas, Leon, Limestone, Lipscomb, Llano, Lubbock, McCulloch, McLennan, Madison, Marion, Mason, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Farmer, Potter, Rains, Randall, Reagan, Red River, Roberts, Robertson, Rockwell, Runnels, Rusk, Sabine, San Augustine, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Throckmorton, Titus, Tom Green, Trinity, Upshur, Van Zandt, Wheeler, Wichita, Wilbarger, Williamson, Wise, Wood, and Young [for remainder of Texas, see Subregions 32 and 39].

- Subregion 33—**El Paso, Tex.**, 504 North Kansas. Officer in charge, Aubrey McEachern. New Mexico; in Texas, the counties of Andrews, Borden, Brewster, Crane, Culberson, Dawson, Ector, El Paso, Gaines, Hudspeth, Jeff Davis, Loving, Lynn, Martin, Midland, Pecos, Presidio, Reeves, Terrell, Terry, Upton, Ward, Winkler, Yoakum [for remainder of Texas, see Sixteenth Region and Subregion 33].
- Subregion 39—**Houston, Tex.**, 509 Milam Building. Officer in charge, Clifford W. Potter. All of Texas except the counties included in the Sixteenth Region and in Subregion 33.
- Seventeenth Region—**Kansas City 6, Mo.**, 1411 Fidelity Building, 911 Walnut Street. Director, Hugh E Sperry; chief law officer, Robert S. Fousek. Nebraska; Kansas; Missouri except those counties included in the Fourteenth Region.
- Subregion 30—411 Ernest and Cramer Building, 930 Seventeenth Street, **Denver 2, Colo.** Officer in charge, Clyde F. Waers. Wyoming; Colorado.
- Eighteenth Region—**Minneapolis 1, Minn.**, 601 Metropolitan Life Building, Second Avenue S and Third Street. Director, C. Edward Knapp; chief law officer, Clarence Meter. North Dakota; South Dakota; Minnesota; Iowa; Wisconsin except those counties included in the Thirteenth Region, Michigan except those counties included in the Seventh Region.
- Nineteenth Region—**Seattle 4, Wash.**, 515 Smith Tower Building. Director, Thomas P. Graham, Jr.; chief law officer, Patrick H. Walker. Alaska; Montana; Idaho; Washington except Clark County.
- Subregion 36—715 Mead Building, **Portland 4, Oreg.** Officer in charge, Robert J. Wiener. Oregon; Clark County in Washington.
- Twentieth Region—**San Francisco 3, Calif.**, 663 Pacific Building, 821 Market Street. Director, Gerald A. Brown; chief law officer, Louis Penfield. Nevada; Utah; in California, the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Eldorado, Fresno, Glenn, Humboldt, Inyo, Kings, Lake, Lassen, Madera, Marin, Mariposa, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Trinity, Tulare, Tuolumne, Yolo, and Yuba [for remainder of California, see Twenty-first Region].
- Twenty-first Region—**Los Angeles 14, Calif.**, 111 West Seventh Street. Director, Howard F. LeBaron; chief law officer, Charles K. Hackler. Arizona; California except those counties included in the Twentieth Region.
- Subregion 37—341 Federal Building, **Honolulu 2, T. H.** Officer in charge, Arnold F. Wills. Territory of Hawaii.
- Twenty-fourth Region—**Santurce, P. R.**, P. O. Box 3656. Director, Salvatore Cosentino; chief law officer, George L. Weasler. Puerto Rico.

