EIGHTEENTH ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR ENDED JUNE 30

1953

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OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

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1953

UNITED STATES GOVERNMENT PRINTING OFFICE

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NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD

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ABE MURDOCK | IVAR H. PETERSON
PHILIP RAY RODGERS[2] | ______________________[3]

FRANK M. KLEILER, *Executive Secretary*
IDA KLAUS, *Solicitor*
WILLIAM R. RINGER, *Chief Trial Examiner*
ARTHUR H. LANG, *Director, Division of Administration*
LOUIS G. SILVERBERG, *Director of Information*

Office of the General Counsel

GEORGE J. BOTT, *General Counsel*
WILLIAM O. MURDOCK, *Associate General Counsel*
DAVID P. FINDLING, *Associate General Counsel*
ELLISON D. SMITH, JR.,[4] *Associate General Counsel*

[1] Took office July 13, 1953, to serve the unexpired term of Paul M. Herzog, resigned.
[2] Took office August 28, 1953, vice John M. Houston, whose term expired
[3] Vacancy left by resignation of Paul L Styles, August 31, 1953.
[4] Resigned September 11, 1953

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., January 4, 1954

SIR: As provided in section 3 (c) of the Labor Management Relations Act, 1947, I submit herewith the Eighteenth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1953, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board.

This Report is limited to the 1953 fiscal year, during which time the members of the Board were Paul M. Herzog, Chairman, and Members John M. Houston, Abe Murdock, Paul L. Styles, and Ivar H. Peterson. Since the close of that fiscal year, Mr. Herzog and Mr. Styles have resigned and the term of Mr. Houston has expired. The undersigned has replaced Mr. Herzog as Chairman and Mr. Rodgers has replaced Mr. Houston.

Respectfully submitted,
GUY FARMER, Chairman

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

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I

Operations in Fiscal Year 1953

The five-Member Board and the independent General Counsel by separate but synchronized efforts during fiscal year 1953 succeeded in substantially reducing the time required to process contested cases of all types.

The median average time required to process contested representation cases had been reduced by the end of the fiscal year to 60 days.[1] This was a cut of one-third from the 90 days required in these cases during fiscal 1952, and a cut of 60 percent from the 151 days required in fiscal 1946.

The Board and the General Counsel also succeeded in cutting the median average time required for processing contested unfair labor practice cases to 350 days. This was a reduction of nearly 22 percent from the average of 447 days required to process these cases during fiscal 1952, and a reduction of 16 percent from the 417 days required in fiscal 1946.

These substantial cuts in the time required to handle cases stemmed from two sources:

1. The overhauling of the agency's processes from top to bottom, both in the field and in Washington, to cut out any action that was not absolutely necessary to fair handling of the cases.

2. Sufficient funds to hire enough personnel, both in the field and in Washington, to handle the cases on a virtually current basis.

The five-Member Board increased its output of decisions in contested cases by nearly one-fourth, achieving an all-time record of decisions issued in 3,053 contested cases. The General Counsel, at the same time, issued complaints in 950 unfair labor practice cases, which represented an increase of more than one-third over the preceding year and also established a new all-time record.

1. Time Cuts in Representation Cases

Work on the overhauling of the Board's processes began in 1951, when, as a result of a reduction in the agency's appropriation for

[1] The time figures in this chapter represent total time elapsed by the calendar, and hence include Saturdays, Sundays, and holidays, when the Board staff normally does not work Therefore, only 5 out of each 7 days normally represent worktime actually spent on the cases. Consequently, to arrive at the actual working time devoted to the cases it is necessary to reduce these figures by about 30 percent.

fiscal 1952,[2] the five-Member Board and the General Counsel concentrated their efforts on means of speeding up the processing of representation cases. The Board Members achieved a substantial saving in time by simplifying decisional forms used in cases which presented no novel issues.

Meanwhile, the General Counsel had gone to work on field procedures in representation cases. He established a committee on case handling, made up of field staff members, which came up with ideas for numerous time-saving changes in field procedures. Early in 1952, the General Counsel was able to put into effect a series of new procedures. The result was that the average time required from the filing of a petition for a representation election to the issuance of a notice of hearing on the petition was cut from 41 days to an average of 19 days by June 1952. By June 1953, this time had been cut to 4 days—a reduction of 90 percent.

At the decisional end in Washington, the cut was not so spectacular, but it was equally steady. Between July 1, 1951, and June 1953, the five-Member Board had cut the time it took to decide representation cases from an average of 53 days to 40 days. This was a cut of 24 percent.

A. Calendar Days Elapsed in Processing Representation Cases

Stage of case processing	Median average days				
	Fiscal 1946	Fiscal 1952	Fiscal 1953	First half of fiscal 1953	Second half of fiscal 1953
Contested representation cases:					
From filing of petition to issuance of notice of hearing	48	26	4	5	4
From issuance of notice of hearing to close of hearing	21	14	15	16	15
From close of hearing to issuance of Board decision [1]	82	50	45	48	41
Total time from filing of petition to issuance of Board decision	151	90	64	69	60
Representation cases disposed of by consent election: Time from filing of petition to election	(2)	(2)	24	26	22

[1] Includes a period of 7 days for the filing of briefs.
[2] Data unavailable

2. Time Cuts in Unfair Labor Practice Cases

The Board's greatest time-consumer is the contested unfair labor practice case. It also presents the greatest problems in effecting time savings, because it is in the nature of a trial and, therefore, requires

[2] See Seventeenth Annual Report, pp. 1–2

that due process of law be carefully observed and ample time allowed for all the parties to present their evidence and arguments. Nevertheless, the five-Member Board and the General Counsel, who have separate and independent responsibilities in this type of case, were able to score substantial cuts in time during fiscal 1953.

At the outset of the year, because of reduced staff and consequent concentration on representation cases, the time required for these cases was running at the record level of 521 days, compared with 447 days required in fiscal 1952. But, by the end of fiscal 1953 the median average time required for processing these cases had been cut to 317 days—a reduction of 39 percent from the time required in the first half of fiscal 1953 and a reduction of 29 percent from the time required in fiscal 1952. As a result, the Board and the General Counsel achieved an average of 350 days for the handling of these cases during the last half of fiscal 1953. This compares favorably with the 368 days averaged by the United States district courts in the disposition of cases during 1952.[3]

The reductions in time for the handling of unfair practice cases were achieved primarily in two areas—in the field investigation and in the Washington decisional process. The time required for hearings and for preparation of intermediate reports by trial examiners remained about constant.

In the field offices, the General Counsel's staff cut the time from filing a charge to the issuance of the complaint by nearly half during the course of fiscal 1953. During June 1953, the median average time required for the General Counsel's investigation and preparation of the final complaint in these cases had been reduced to 85 days. This compares with 160 days required in fiscal 1952, and 162 days required in the first half of fiscal 1953. This also brought the average for the last half of fiscal 1953 down to 108 days—a reduction of 33 percent from the time required in fiscal 1952.

In Washington, the Board Members were able to slash the time required between the issuance of the trial examiner's report and the issuance of the Board decision down to 92 days in June 1953. (This includes the 20 days which the statute allows the parties in making an appeal to the Board.) This was a reduction of 58 percent from the 221 days required in the first half of fiscal 1953, and 48 percent from the 178 days required in fiscal 1952.

Moreover, the Board Members at the same time substantially increased their decisions in their contested unfair labor practice cases. During the last half of fiscal 1953 they averaged 42 decisions per month in this type of case, or roughly 2 per working day. This is double the 21 per month they averaged in 1952. When it is con-

[3] Annual Report of the Director of the Administrative Office of the United States Courts, p 79.

sidered that in the average unfair labor practice case the record of testimony and other evidence currently totals about 600 pages, not merely to be read but ruled upon, 2 decisions per day is a substantial output for 5 Board Members. In addition, during this same period the Board Members turned out an average of 161 cases per month in contested representation cases, or better than 8 per day.

The General Counsel also succeeded in cutting the time required in unfair labor practice cases that were disposed of by settlement or other informal action. The time required in dismissals during the last half of fiscal 1953 averaged 79 days. This was a reduction of 44 percent from the 140 days averaged in fiscal 1946, and 16 percent from the 94 days required in fiscal 1952. The time required in cases which were later withdrawn by the parties was also cut—to 41 days from 65 days in 1946, and 48 days in fiscal 1952. Time on cases in which the parties were able finally to agree upon a settlement was reduced to 108 days during fiscal 1953. This was a reduction of about 16 percent from the 128 days averaged in 1952. However, they still run substantially above the 85 days averaged in 1946. The less spectacular improvement here results from the fact that successful settlement negotiations tend to set their own pace.

B. Calendar Days Elapsed in Processing Unfair Labor Practice Cases

Stage of case processing	Median average days				
	Fiscal 1946	Fiscal 1952	Fiscal 1953	First half of fiscal 1953	Second half of fiscal 1953
Contested unfair labor practice cases:					
From filing of charge to issuance of complaint	146	160	133	162	108
From issuance of complaint to close of hearing [1]	24	41	53	56	52
From close of hearing to issuance of intermediate report [2]	48	68	77	82	74
From intermediate report to issuance of Board decision [3]	199	178	161	221	116
Total time from filing of charge to Board decision	417	447	424	521	350
Unfair labor practice cases closed informally from filing of charge to final disposition for—					
Cases settled	85	128	108	109	108
Cases withdrawn	65	48	43	47	41
Cases dismissed [4]	140	94	85	91	79

[1] Includes a notice period of not less than 10 days
[2] Includes a period for filing briefs not to exceed 20 days, upon request of any party.
[3] Includes a period of 20 days for the filing of exceptions and supporting briefs by the parties.
[4] Includes a period of 10 days in which the complainant may file an appeal with the General Counsel from the regional director's dismissal Cases that have been appealed are not included in these figures.

3. Decisional Activities of Five-Member Board

The five-Member Board issued decisions in 3,053 cases which were brought to it on contest over either the facts or the application of the law. This was the largest number of contested cases decided during any 1 year of the Board's 18-year history. It was an increase of 24 percent over the 2,452 contested cases decided by the Board during fiscal 1952.

Of the contested cases decided, 526 were unfair labor practice cases. This was an all-time record output of decisions in this type of case, and represented an increase of 42 percent over the 369 such cases decided by the Board Members in fiscal 1952. Of the 526 contested unfair practice cases decided, 432 involved charges against employers and 94 involved charges against unions.

In addition, the Board issued formal decisions adopting the intermediate reports of trial examiners in 58 cases where no exceptions to the reports were filed by the parties. Of these, 47 were cases against employers and 11 were cases against unions. The Board also issued orders in 123 unfair labor practice cases by consent of the party charged with violation. Of these, 93 were cases against employers and 30 were against unions.

In representation cases, the Board directed 2,134 elections to determine whether or not the employees involved wished to choose a representative for collective bargaining. This was an increase of 18 percent over the 1,809 directed in fiscal 1952. The Board dismissed petitions in 393 cases. The 2,527 contested representation cases decided also was an all-time record. It represented an increase of 21 percent over the 2,083 such cases decided in fiscal 1952.

4. Activities of the General Counsel

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

Also, under an arrangement between the five-Member Board and the General Counsel,[4] members of the field staff under his supervision act as agents of the Board in the preliminary investigation of representation and union-shop deauthorization cases. In the latter capacity, the field staffs in the regional offices have authority to effect settlements or adjustments in representation and union-shop deauthorization cases and to conduct hearings on the issues involved in

[4] See Seventeenth Annual Report, p. 3, footnote 4.

contested cases. However, decisions in contested cases of all types are made by the five-Member Board.

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

a. Representation Cases

The field staff closed 7,355 representation cases during the 1953 fiscal year without necessity of formal decision by the Board Members. This was 74 percent of the 9,909 representation cases closed by the agency.

In the representation cases closed in the field, consent of the parties for holding an election was obtained in 4,313 cases. Petitions were dismissed by the regional directors in 713 cases. Recognition was granted by the employer in 125 cases without necessity for an election. In 2,199 cases, the petitions were withdrawn by the filing parties.

b. Unfair Labor Practice Cases

In the capacity of prosecutor of unfair labor practice cases, the General Counsel's staff during the 1953 fiscal year closed 5,103 unfair practice cases of all types without the necessity of formal action. This was 87 percent of the 5,868 unfair practice cases closed by the agency.

In addition, the regional directors, acting under the General Counsel's statutory authority, issued formal complaints alleging violations of the act in 950 cases. Of these, 757 were against employers and 193 against unions. Complaints against employers thus constituted 79.7 percent of those issued, and those against unions 20.3 percent. This compares with a ratio of charges filed during the year of 80.6 percent agtinst employers and 19.4 percent against union.

The 950 cases in which complaints were issued by the General Counsel in fiscal 1953 compares with 699 cases in fiscal 1952, an increase of 36 percent.

Of the 5,103 unfair labor practice cases which the field staff closed without formal action, 913, or 18 percent, were adjusted by various types of settlements, and 1,474, or 29 percent, were administratively dismissed after investigation. In the remaining 53 percent, the charges were withdrawn; in many cases, such withdrawals actually reflected a settlement of the matter at issue between the parties through the offices of the field staff. Of the charges against employers, 1,174, or 29 percent, were dismissed; 748, or 18 percent, were adjusted; and 2,183, or 53 percent, were withdrawn. Of charges against unions, 300, or 30 percent, were dismissed; 165, or 17 percent, were adjusted; and 522, or 53 percent, were withdrawn.

5. Division of Trial Examiners

Trial examiners for the Board, who conduct hearings in unfair practice cases, conducted hearings in 612 such cases during fiscal 1953 and issued intermediate reports and recommended orders in 530 cases.

This was an increase of 14 percent in the number of cases heard, compared with the 1952 fiscal year, and an increase of 22 percent in the number of cases in which intermediate reports were issued.

In 58 cases coming to the five-Member Board during the year, the trial examiners' reports were not contested by the parties. Twenty-seven of these intermediate reports recommended dismissal of the case in its entirety.

During the year, 61 cases were closed by compliance with the trial examiners' recommended orders. This was 11 percent of the cases in which intermediate reports were issued, compared with 16 percent in which direct compliance occurred in fiscal 1952.

6. Results of Representation Elections

The Board conducted a total of 6,191 representation elections of all types during the 1953 fiscal year.[5] This was a decrease of 9.8 percent from the 6,866 elections conducted in fiscal 1952.

In the 1953 representation elections, collective-bargaining agents were selected in 4,394 elections. This was 71 percent of the elections held, compared with selection of bargaining agents in 72 percent of the 1952 elections and 73 percent in 1951.

In these elections, bargaining agents were chosen to represent units totaling 589,319 employees, or 79 percent of those eligible to vote. This compares with 75 percent in fiscal 1952 and 84 percent in 1951.

Of 648,686 employees actually casting valid ballots in Board representation elections during the year, 501,844, or approximately 77 percent, cast ballots in favor of representation. Eighty-seven percent of the 747,943 who were eligible to vote cast valid ballots.

Of the representation elections, 164, or about 3 percent, were held solely as a result of petitions filed by employers. Bargaining represenatives were selected in 105 of these elections, or 64 percent. A total of 11,378 employees was eligible to vote in all elections held on employers' petitions, and 7,714 of these, or 68 percent, were in the units which chose collective-bargaining representatives.

Elections held on petitions filed by employees asking decertification of a currently recognized or certified bargaining representative numbered 141, or 2 percent of the elections held. A total of 9,945 employees was eligible to vote in these elections. The representative involved

[5] The term "representation election" embraces both certification elections, where a candidate bargaining agent is seeking certification, and decertification elections, where a group of employees is seeking to decertify a recognized or previously certified bargaining agent.

was decertified in 97 of the elections, or 69 percent; the representative won certification in 44. The units in which the union was decertified embraced 5,076 employees, or nearly 51 percent of the employees involved in this type of elections. The units in which the union received a majority embraced 4,869 employees, or 49 percent.

Unions affiliated with the American Federation of Labor won bargaining rights in 2,773 of the 4,375 elections in which they took part. This was 63 percent of the elections in which they participated.

Affiliates of the Congress of Industrial Organizations won 1,132 out of 2,186 elections. This was 52 percent.

Unaffiliated unions won 489 out of 815 elections. This was 60 percent.

7. Types of Unfair Labor Practices Charged

The most common type of unfair labor practice charged against employers continued to be illegal discrimination against employees because of their union activities or because of their lack of union membership.

Employers were charged with having engaged in such discrimination, usually because of employees' union activities, in 3,023 cases filed during the 1953 fiscal year. This was 68.6 percent of the 4,409 cases filed against employers.[6]

The second most common charge against employers was refusal to bargain in good faith with the representative of their employees. This was alleged in 1,347 cases, which was 30.6 percent of the cases filed against employers.

The most common charge against unions was illegal restraint or coercion of employees in the exercise of their right to engage in union activity or to refrain from it. This was alleged in 632 cases, or 59.6 percent of the 1,060 cases filed against unions. The second most common charge against unions was that of causing or attempting to cause employers to discriminate illegally against employees, usually because of the employees' lack of union membership, in 604 cases during fiscal 1953. This was charged in 57 percent of the cases filed against unions. Other major charges against unions were secondary boycott, made in 250 cases, or 23.6 percent, and refusal to bargain in good faith, made in 134 cases, or 12.6 percent.

Employees made whole for illegal discrimination in cases closed during fiscal 1953 numbered 3,356 compared with 3,206 in the cases closed during fiscal 1952. Employees in the cases closed in fiscal 1953 were found to be entitled to a total of $1,357,180 in back pay for the periods during which they were illegally discharged or demoted. Of

[6] Percentages may add up to more than 100 because violations of more than 1 section often are charged in 1 case See table 2, appendix A.

the total back pay, $1,307,230 accrued in cases where employers were found in violation and $49,950 accrued in cases where unions were found in violation.

8. Fiscal Statement

The expenditures and obligations of the Board for fiscal year ended June 30, 1953, are as follows:

Salaries	$7,327,601
Travel	585,931
Transportation of things	20,995
Communication services	244,492
Rents and utility services	15,195
Printing and reproduction	277,613
Other contractual services	263,181
Services performed by other agencies	3,719
Supplies and materials	100,896
Equipment	48,039
Refunds, awards, and indemnities	10,040
Taxes and assessments	10,598
Grand total, obligations and expenditures for salaries and expenses	8,908,303

II

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. But the act does not require that the representative be selected by any particular procedure, as long as the representative is clearly the choice of a majority of the employees.

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

Once a petition has been properly filed, the Board has the statutory authority to determine the employees' choice of collective-bargaining representative in any business or industry affecting interstate commerce, with the major exceptions of agriculture, railroads, and airlines. It does not always exercise that power, however, where small or local enterprises are involved.[1] It also has the power to determine the unit of employees appropriate for collective bargaining.

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

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

[1] For a statement of the standards which the Board used in the fiscal year for asserting jurisdiction, see Seventeenth Annual Report, p. 9

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

This chapter treats only decisions of the Board during the 1953 fiscal year which involve novel questions or set new precedents. Discussions of the general principles applied by the Board during this fiscal year will be found in chapter IV of the Seventeenth Annual Report and chapter IV of the Sixteenth Annual Report.

1. Question of Representation

In the case of a petition for either certification or decertification, the Board must determine (a) whether or not there is a sufficient interest among the employees concerned to justify the holding of an election, and (b) whether a question concerning their representation exists, as required by section 9 (c) (1).

a. Showing of Employee Interest [2]

From a petitioning union or other candidate for bargaining agent, the Board requires a showing that at least 30 percent of the employees in the proposed bargaining unit desires representation.

A petition filed by an employer who has been presented with a representation claim need not be accompanied by proof of the claimant's interest or actual representation. During the fiscal year, a majority of the Board held that a question of representation validly raised by an employer petition continued to exist after withdrawal of the petition, so that the intervenor in the proceeding was not required to make a 30-percent interest showing later when it petitioned for the same unit in a new proceeding.[3]

b. Existence of a Question of Representation

Before the Board may direct a representation election, it must find that a question concerning representation exists.

In certification proceedings, the Board ordinarily directs an election if a specific request for recognition has been made by the petitioning representative and denied by the employer. The request need not be made in any particular form. All that is necessary is that the employer be advised of a claim to representation.[4] Moreover, the filing of a representation petition itself is a sufficient demand.

An employer's petition raises a valid question of representation if it is based on a current claim of a bargaining agent to represent all

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[2] For a fuller statement of the policies and related rulings concerning showing of employee interest, see Seventeenth Annual Report, pp. 28–30; Sixteenth Annual Report, pp 55–56

[3] *Pantasote Company*, 103 NLRB No 116, Member Peterson dissenting.

[4] See *Essex Wire Corp*, 102 NLRB No. 40.

employees in the proposed appropriate unit. In cases where an employer is faced with an incumbent union's request for a new contract, the Board has held that a valid question of representation exists and the employer's good faith and reasonableness in refusing to grant continued recognition is not properly before the Board in the representation proceeding initiated by the employer's petition.[5]

c. Qualification of Representative

It is the Board's policy to withhold certification from a labor organization if it is shown that it will not represent all employees in the unit, fairly and without discrimination.[6]

During the past year, the Board reviewed the question of equal representation in connection with a motion to revoke the certification of a union which charged nonmembers in the bargaining unit $15 for each grievance and $400 for each arbitration proceeding in which the union served as their representative.[7] The majority of the Board concluded that the imposition of these fees was in derogation of the certified union's duty to provide equal representation to all employees in the unit. Referring to the Board's earlier decision in the *Larus* case,[8] holding that the type of racial discrimination involved there ran counter to a certified union's basic responsibilities, the majority observed:

> The duty of equal representation, however, which is inherent in the exclusive representative status accorded by the statute, is not concerned alone with questions of race, color, or creed. The certified representative's exclusive authority to bargain and represent may be achieved by virtue of the support of a bare majority of the employees in the appropriate unit. Discrimination in the performance of the duties of the representative designed to deny equal treatment to those of the minority is to subvert the privilege and rights granted by the statute Whether such discrimination is based on union membership or the lack thereof, rather than on considerations of race, creed, or color is, in our opinion, irrelevant.
>
> We believe it is also clear that the presentation and adjustment of grievances is an activity which is subject to this requirement of nondiscriminatory representation by a certified union. The prominent part which grievance handling plays in the representation of employees is readily apparent. As the Board has stated previously, "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." The adjustment of grievances, viewed in the larger aspect, constitutes, to a great degree, the actual administration of a collective-bargaining contract. [Footnote omitted.]

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[5] See *Andrews Industries, Inc.*, 105 NLRB No. 115; see also *Philadelphia Electric Co.*, 95 NLRB 71, and cases cited there.

[6] See Sixteenth Annual Report. p. 63 Compare *National Clay Products Co.*, 98 NLRB 137.

[7] *Hughes Tool Co.*, 104 NLRB No 33. Chairman Herzog and Member Peterson dissenting. See further discussion of this case at p. 19. (Revocation of Certification)

[8] *Larus & Brother Co., Inc.*, 62 NLRB 1075. See also *Andrews Industries, Inc*, 105 NLRB No. 115.

The majority held that the provisos of section 9 (a) of the act which preserve the right of employees, under specified circumstances, to present grievances individually and to have them adjusted without the bargaining representative's intervention, do not diminish the certified representative's responsibilities. The majority held that those provisos only detract from the representative's exclusive position in handling grievances but do not affect the distinctly different matter of the representative's responsibility *concerning those grievances on which its aid is requested.* In conclusion, the majority stated that by demanding the payment of certain fees by nonmembers "as a prerequisite to their obtaining the assistance they are entitled to . . . the [union] has abused the privileged status it occupies as certified representative by using that status as a license to grant or deny representation according to its own arbitrary standards."

2. The Contract-Bar Rule

A petition concerning the representation of a specified group of employees as a general rule will not be entertained by the Board if the bargaining unit proposed by the petitioner is currently subject to a collective-bargaining agreement between the employer and the incumbent bargaining agent of the group. In order for this "contract-bar rule" to apply, however, there must be in existence a valid, written collective-bargaining agreement, which has been signed by the parties. A contract which is incomplete in some vital respects, as for instance, a contract which does not indicate when it is to take effect, is not a bar to an election.[9]

a. Duration of Contracts

It has been the Board's policy to give effect to an asserted contract only during what it considers a reasonable period. Until recently, a 2-year term was held to be such a period. Contracts for a longer or an indefinite period were held to be a bar to an election only during the first 2 years, at least in the absence of a showing that longer agreements are customary in the industry.

(1) Five-Year Contracts

During the past year, the Board reconsidered its reasonable period yardstick in the light of the fact that in a substantial portion of the automobile and automotive parts industry 5-year contracts, or contracts of a similar term, had become the practice.[10] In passing upon the reasonableness of a 5-year term for contract-bar purposes, the Board reemphasized that whenever a contract bar is urged two conflict-

[9] *George Banta Publishing Co.*, 100 NLRB 1377.

[10] See *General Motors Corp , Detroit Transmission Division,* 102 NLRB No. 115.

ing interests must be balanced: Stabilizing labor relations for the duration of the contract and protecting the employees' full freedom to choose representatives. The Board then said:

> We have carefully analyzed the history of collective bargaining between General Motors and UAW–CIO from 1937 to the present, including the trend toward agreements of longer duration in the automotive industry, and cannot be unmindful of the salutary and stabilizing effect of that relationship. We believe that the time has arrived when stability of labor relations can better be served, without unreasonably restricting employees in their right to change representatives, by holding as a bar collective-bargaining agreements even for 5 years' duration when, as here, not only General Motors but also a substantial part of the industry concerned is covered by contracts with a similar term In place of the former test predicated on "custom in the industry," the test to be applied here determines reasonableness of contract duration for contract-bar purposes on the basis of whether a substantial part of the industry is covered by contracts of a similar term. This test, in the Board's opinion, is more practicable, is in keeping with present-day normal economic developments, and will better effectuate the policies of the Act. [Footnotes omitted] [11]

The Board made it clear, however, that it was not passing on the question whether the new "substantial part of industry" test could also be applied to contracts of more than 5 years' duration. Subsequently, the Board had occasion to note that a national 5-year agreement for the automotive industry was a bar to an election for any group of employees subject to its terms regardless of whether or not the particular group was itself engaged in the manufacture of automobiles or automotive parts.[12]

Five-year contracts were also held to bar elections in the farm equipment industry, a substantial part of which was found to have such contracts,[13] as well as in the abrasive industry where 65 percent of the employees was covered by similar contracts.[14]

(2) Indefinite or Contingent Duration

In one case, a majority of the Board held that a contract terminable at a fixed date, or in the alternative upon the decertification of the contracting union or the certification of another union by the Board, was a contract of no definite fixed period of duration and therefore was not a bar to a present election.[15] The majority also held that since another union filed a petition for certification on the very day that the contracting union requested recognition, the contingency upon which the alternative termination of the contract was conditioned had occurred so that the contract was not a bar.

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[11] As to the application of the test to the automotive parts industry, see *Bendix Products Division, Bendix Aviation Corp*, 102 NLRB No 114

[12] *General Motors Corp. (Milwaukee Plant)*, 102 NLRB No. 124

[13] *Allis Chalmers Mfg Co*, 102 NLRB No 116, *International Harvester Co*, 103 NLRB No. 13.

[14] *The Carborundum Co*, 105 NLRB No 16

[15] *American News Co, Inc*, 102 NLRB No 7 Member Peterson dissenting

A strike-settlement agreement providing for the continuation of the terms of an expired contract until a new contract may be negotiated was held not a bar to an election because it was a contract of indefinite duration, temporary and provisional in character.[16]

b. Union-Security Agreements

In keeping with its policy not to give effect to contracts whose terms conflict with the basic policies of the act, the Board has disregarded contracts containing union-security provisions which do not conform to the requirements and limitations of section 8 (a) (3) of the act.[17] In two cases during the past year, the Board was faced with novel contentions regarding the validity of union-security provisions on which the existence of a contract bar depended.

In one case,[18] the petitioning union asserted that the union-security provisions in the alleged contract were invalid because (1) they were illegal under applicable State law, and (2) they incorporated a "harmony pledge" requiring the employee to "discipline" any employee who is not a member of the union if he does "anything that might undermine the union." On the first point, the Board noted that the effect of the State statute cited was not clear and that, in the absence of an authoritative construction of the statute by the highest State court, it was not for the Board to undertake to determine the legality of the union-security clause under the statute. As o the "harmony clause," the Board was of the view that the language of the clause was vague and ambiguous and it could not be held in conflict with section 8 (a) (3) absent a showing that the clause had been discriminatorily applied.

In the other case,[19] the challenged union-security agreement was signed at a time when the contracting union was not in compliance with the requirements of section 9 (f), (g), and (h). However, the agreement, by its terms, deferred its effectiveness until such time as the union had achieved full compliance and notice of such compliance had been furnished the employer.[20] A majority of the Board panel[21] held that the contract in question was a bar since it must be deemed

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[16] *The Alliance Mfg Co*, 101 NLRB 112 The Board in this case rejected the further contention that the settlement agreement precluded an election since it had the force of a Board certification under the rule of *Poole Foundry & Machine Co*, 192 F 2d 740 (C A 4), certiorari denied 342 U S 954 (Seventeenth Annual Report, p 238) The Board pointed out that, unlike the settlement in the *Poole* case, the present settlement was not a Board-approved settlement of unfair labor practice charges but only a private settlement of a strike not conditioned on the withdrawal of pending charges

[17] See Seventeenth Annual Report, pp 39-44; Sixteenth Annual Report, pp 65-68

[18] *Continental Can Company, Inc*, 100 NLRB 682

[19] *Northwest Magnesite Co*, 101 NLRB 77

[20] Section 8 (a) (3) provides that an otherwise valid union-security agreement may be entered into by an employer only if the contracting union "has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance"

[21] Members Murdock and Peterson Chairman Herzog dissenting

to have been "made" not at the time when it was signed, but as of the time when it became effective, that is, upon the employer's notification of the union's subsequent compliance.

c. Effect of Rival Representation Claims or Petitions

An important factor in determining the existence of a contract bar is the time when the asserted contract was made in relation to the informal or formal representation claims of a rival union. In order to prevent the contract-bar rule from being used to preclude the periodic change of bargaining representatives, the Board has adopted the general policy of disregarding original or renewal contracts made—or to become effective—after the assertion of representation claims or the filing of representation petitions by a union other than the contracting representative.[22]

(1) Petition by Noncomplying Union

However, the Board has held that a petition filed by a union which has not complied with the filing requirements of the act does not operate to forestall a contract from barring an election.[23] In this case, the petitioning union filed its petition before the incumbent union and the employer had executed a new contract, but it did not come into initial compliance with section 9 (f), (g), and (h) of the act until after the contract had been executed.

In a unanimous opinion, the Board said:

> The Act sets forth in precise terms that the Board may not investigate a petition for representation unless the petitioner is in compliance with the Section 9 filing provisions. Under the circumstances, and giving full effect to this statutory prohibition, we believe that this Board should not question the validity of a bargaining agreement because of a petition filed at a time when the Board could not, under the Act, have investigated the question concerning representation purportedly raised by such petition. We believe that a noncomplying union which files a petition while it is unable to use the Board's facilities because of its own failure to satisfy the filing requirements . . . takes a calculated risk that an employer and another labor organization may, during the period of the petitioner's statutory incapacity, execute a valid agreement which will serve as a bar The policies of Section 9 of the Act will thus best be effectuated because labor organizations will recognize the necessity of complying with the filing requirements of that section before seeking recourse to the processes of the Board.

(2) Premature Extension of Contracts

A contract is not a bar for its entire duration if the parties have prematurely extended its term before the time when a representation petition could ordinarily be filed.[24] In the case of the premature ex-

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[22] Seventeenth Annual Report, p. 48; Sixteenth Annual Report, pp 75–76

[23] *Standard Oil Co.*, 101 NLRB 1329.

[24] For a discussion of premature petitions, see Sixteenth Annual Report, p 76

tension of a contract the Board considers it effective as a bar to an election only to the extent that it would have been so without the extension.[25]

One case during fiscal 1953 presented a novel factual situation involving a question of premature extension.[26] A newly consolidated union contended that its current contract with the employer was a new contract rather than an extension of the contract of a sister union with which the union had become consolidated. The Board held that the alleged consolidation was mainly a change in the union's designation and affiliation which did not result in the termination of the original contract. Consequently, the Board concluded, the new contract made following the consolidation was, in effect, an extension of the original contract to which the premature extension doctrine applied. The Board also noted that in an earlier case the old union successfully urged the original contract as a bar at a time when the subsequent consolidation had already been decided upon. Under these circumstances, the Board observed, the parties were estopped from contending that the consolidation had the effect of changing the identity of the contracting local so as to render inapplicable the premature extension rule.

On the other hand, a new contract made for the purpose of eliminating an unlawful union-security clause in the parties' old contract was held to be effective as a bar to an election.[27] The Board said that this conclusion was made necessary by its rule that the premature extension doctrine applies only where the extended agreement itself was a bar to an election, but not where, as here, the original agreement was never a bar because of its illegal union-security clause.

(3) Automatic Contract Renewal—Timeliness of Petition

Contracts providing for their automatic renewal at a fixed date continue to constitute a bar to an election unless a rival petition is filed before the renewal—or so-called "Mill B"—date.[28] However, the Board has recently modified its rules as to the timeliness of petitions in relation to automatic contract renewals so as to give effect to the provisions of section 8 (d) of the act which favor renegotiation of contracts during the 60-day period preceding their termination date. Thus, the Board now considers a new contract made within the 60-day period a bar to a petition filed *before* the contract's automatic renewal date.[29] Therefore, in order to guard against the eventuality of the effective renewal of a contract within the statutory 60-day period, a

[25] Seventeenth Annual Report, pp. 50–51; Sixteenth Annual Report, pp 80–81.
[26] *New Jersey Oyster Planters and Packers Association, Inc*, 101 NLRB 538
[27] *Kenrose Mfg. Co, Inc.*, 101 NLRB 267.
[28] Seventeenth Annual Report, pp. 49–50; Sixteenth Annual Report, pp 77–78
[29] Seventeenth Annual Report, p 50; Sixteenth Annual Report, pp. 78–80

rival petition should be filed at least 61 days before the old contract's expiration date.

In another case where the timeliness of a petition had to be determined by the Board during fiscal 1953, the contract provided for automatic renewal absent written notice of termination "not more than 60 days and not less than 30 days" before the contract's anniversary date.[30] The Board held that the contract had a 30-day renewal date and remained open during the period between the sixtieth and thirtieth days preceding its anniversary date. The petition, filed before that date, was held timely.

In another situation, the Board took into consideration the necessary delay in issuing its decision in determining the timeliness of a petition in relation to a contract.[31] The Board had dismissed the petition upon finding that a contract, whose renewal date was about 30 days away, effectively barred an election. However, when passing on the union's motion for reconsideration, the Board concluded that the overall equities in the case required the reversal of the dismissal. The Board noted that the unavoidable delay in the issuing of its original decision contributed to the union's inability to refile its petition in time to forestall automatic renewal of the contract.

(d) Contract No Bar to Union-Shop Deauthorization Poll

Section 9 (e) (1) of the act provides that employees "covered by a [union-security] agreement . . . made pursuant to section 8 (a) (3) (ii)" of the act may petition for a referendum to determine whether or not the employees wish to rescind the contracting union's authority to make such a union-security agreement. In acting upon a petition filed under this section, a majority of the Board took the view that the normal contract-bar principles do not apply and that a contract containing a union-shop provision could not preclude such a deauthorization referendum during its term.[32] The majority in this case also declined to suspend the effect of an affirmative deauthorization vote until the contract's expiration date. In the opinion of the majority, the congressional objective was to relieve employees of the obligations under a union-security agreement immediately upon the expression of their desire for such relief in a referendum under section 9 (e) (1).

3. Effect of Prior Determinations

To enable a newly certified bargaining agent to establish bargaining relations and negotiate a contract, the Board has long followed the policy of considering a certification as a 1-year bar to any redetermina-

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[30] *General Electric Co*, 101 NLRB 619.

[31] *General Electric Co*, 100 NLRB 1318, 100 NLRB 1317

[32] *Great Atlantic & Pacific Tea Co*, 100 NLRB 1494, Members Murdock and Styles dissenting, petition for reconsideration denied, 102 NLRB No 16

tion of the representative in the same unit. The Board's policy is reinforced by section 9 (c) (3) of the amended act, which prohibits the holding of more than one Board election in the same unit during any 12-month period.

Under the Board's 1-year rule, a petition filed within 1 year from the date of the incumbent union's certification will be dismissed in the absence of unusual circumstances. This rule was strengthened during the past fiscal year when the Board dispensed with the practice of docketing petitions filed during the twelfth month of the certification year.[33]

Where litigation of the bargaining rights of the certified agent intervenes, the agent is normally permitted to have a year to establish itself after the Board's order affirming those rights or the court decree enforcing the Board's order.[34] While a Board-approved settlement agreement disposing of refusal-to-bargain charges may take the place of a bargaining order if it is intended to have that effect,[35] a private settlement not participated in by the Board will not be accorded the force of a Board certification or bargaining order.[36]

4. Revocation of Certification

In exercising its power to determine and certify bargaining representatives under section 9 of the act, the Board has repeatedly asserted its correlated power to police and revoke certifications in the face of various forms of conduct held incompatible with the representative's duties.[37] During the 1953 fiscal year, the Board held that its policing power over its certifications was likewise available in cases involving defective compliance with section 9 (h). Accordingly, after a union officer was convicted of filing a false non-Communist affidavit under section 9 (h), the Board declared the union's certification to be of "no further force and effect." [38]

In a recent case, a majority of the Board held that the revocation procedure invoked under the circumstances of the earlier cases could, and should, be applied to nullify the certification of a union which refused to make its grievance and arbitration services available to non-

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[33] *Centr-O-Cast & Engineering Co.*, 100 NLRB 1507.

[34] Seventeenth Annual Report, pp. 53–54; Sixteenth Annual Report, p. 83.

[35] See *Poole Foundry & Machine Co. v. N. L. R. B.*, 192 F. 2d 740 (C. A. 4), enforcing 95 NLRB 34, certiorari denied 342 U. S. 954. Seventeenth Annual Report, p. 238.

[36] *Alliance Mfg. Co.*, 101 NLRB 112; compare *Jasper Seating Co.*, 101 NLRB 322.

[37] For cases before 1947 amendment, see *Larus & Brother Co., Inc.*, 62 NLRB 1075. See also *Carter Manufacturing Company*, 59 NLRB 204; *Southwestern Portland Cement Company*, 61 NLRB 1217; *Atlanta Oak Flooring Co.*, 62 NLRB 973; *General Motors Corporation (Chevrolet Shell Division)*, 62 NLRB 427; *Wichita Falls Foundry & Machine Co.*, 69 NLRB 458; and *R. K. O. Pictures, Inc., et al.*, 61 NLRB 112. For cases after 1947 amendment, *Veneer Products, Inc.*, 81 NLRB 492; *Bronx County News Corporation*, 89 NLRB 1567; and *The Coleman Company, Inc.*, 101 NLRB 120.

[38] *Consolidated Cigar Corp.*, 4–RC–996, December 19, 1952. See also *Sunbeam Corp.*, 89 NLRB 469, 98 NLRB 525; *Lane Wells Co.*, 79 NLRB 252.

members except upon the payment of substantial fees.[39] In the view of the majority, the Board's authority to protect certifications against abuse was not circumscribed by the 1947 amendments to the act. The legislative history of those amendments, according to the majority, does not justify the conclusion that the addition of section 8 (b), defining union unfair labor practices, was a substitution, replacement, or cancellation of the Board's authority to rescind certifications under section 9. The majority also observed that the existence of a concurrent remedy for the unfair labor practices under section 8 (b), aside from procedural difficulties, would not be adequate to protect Board certifications against all abuses resulting from the certified bargaining agent's neglect of its affirmative duties.[40]

5. Unit of Employees Appropriate for Bargaining

The Board has the duty under the act to determine what group of employees constitutes a unit appropriate for bargaining with their employer, to "assure to employees the fullest freedom in exercising the rights guaranteed by this Act." [41]

In determining bargaining units, the Board has consistently declined to consider special factors unrelated to work interests and functions. The Board will not establish bargaining units on the basis of race, nationality, or sex.[42]

a. Collective-Bargaining History

The history of collective bargaining pertaining to any group of employees whose representation is under consideration often plays an important part in determining the appropriate unit. While the Board does not consider itself bound by the applicable bargaining history in deciding whether a unit is appropriate,[43] it generally does

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[39] *Hughes Tool Co.*, 104 NLRB No 33, Chairman Herzog and Member Peterson dissenting For discussion of other aspects of this case, see p 12

[40] While finding that the union's conduct in the case was sufficient ground for revocation of its certificate, the Board only directed the union to discontinue the objectionable practices and to post notices to that effect because of special circumstances. The Board took into consideration that, in addition to being a case of first impression, the certification in this case was held jointly with another union which had not similarly discriminated against nonmembers.

[41] Sec 9 (b). For a fuller discussion of unit problems, see Seventeenth Annual Report, pp 55–93

[42] See *J. A. Simplot Co*, 100 NLRB 771, where the Board declined to exclude Indians from a unit of employees engaged in mining operations within an Indian reservation and pursuant to leases from a Tribal Council. The Board found no basis for denying these employees the benefits of self-organization Compare *Seidmon, d/b/a Southwestern Co.*, 102 NLRB No. 152, where the Board reaffirmed the eligibility of aliens to vote in Board elections. The employer there had contended that his employees were not entitled to the benefits of the act because they were "enemy aliens" within the meaning of the registration provisions of the Immigration and Nationality (McCarran) Act

[43] *National Cash Register Company*, 95 NLRB 27; *Stack & Company*, 97 NLRB 1492, Member Murdock dissenting.

not disturb a well-established bargaining pattern unless strong reasons exist for doing so.[44]

Ordinarily, the bargaining history which the Board considers is that of the employees sought to be represented, but in some cases the Board has also considered, as a factor in unit determinations, the established bargaining practices of other similar groups of employees in the locality or industry. Also, the proper unit for a given group of employees has at times been determined on the basis of the established bargaining pattern for other groups of the same employer. However, a majority of the Board anounced during the past year that

> bargaining history for one group of organized employees, although persuasive, should not invariably control the bargaining pattern for every other group of unorganized employees. When the nature of their work is sufficiently different, the bargaining history or lack thereof of the very group of employees concerned should not, we believe, be ignored by giving effect to the pattern established by another group not directly involved.[45]

b. Units of Craft Employees

The act does not require that craftsmen be granted separate units, but it does provide that the Board shall not reject such a unit merely because a different unit was established by a prior Board determination.[46]

For separate representation, a craft group must include all members of the craft among the employees. In toolrooms and machine shops, the Board has in the past permitted employees to sever from plantwide units on a departmental basis when the work of the department centered around a substantial nucleus of skilled craftsmen.[47] However, during fiscal 1953, the Board announced the following change in policy:[48]

> [*D*]*epartmental* severance of a toolroom or machine shop will be granted hereafter only in those cases where the skills of the employees forming the craft nucleus in the department are not duplicated elsewhere in the plant. Where the evidence shows that the craftsmen in the departmental unit requested are the only ones of their type in the plant, the Board will continue to sever such a group on a departmental basis, joining the lesser skilled and unskilled employees in the department with the highly skilled craftsmen. However, where there are other employees in the plant possessing and using substantially the same skills as the highly skilled craftsmen in the department sought to be severed, the Board is of the opinion that it is of primary importance that all the craftsmen in the

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[44] See Sixteenth Annual Report, p 86

[45] *Seagram & Sons, Inc.*, 101 NLRB 101, Member Murdock dissenting

[46] For a fuller discussion of the rules and policies on craft units, see Seventeenth Annual Report, pp. 60-64, Sixteenth Annual Report, pp 88-90

[47] See *Robertshaw-Fulton Controls Co*, 77 NLRB 316

[48] *Westinghouse Electric Corp.*, 101 NLRB 441, Chairman Herzog dissented on the ground that the severance of the toolroom in this case resulted in the dismemberment of a long-established unit at the insistence of a union which had advocated the broader unit until its defeat by another union

plant of the same type be included in the same unit and that such a craft group should not be diluted by the inclusion of lesser skilled or completely unskilled employees Severance in such cases will be granted only on the traditional craft basis, i. e, the voting group will be restricted to all members of the craft in the plant subject only to the inclusion of regularly assigned helpers and apprentices The Board will no longer find appropriate a unit that is part craft, part departmental. [Footnotes omitted]

c. Units in Integrated Industries

During the past year, craft severance was denied powerhouse employees in a ferro-alloy and calcium carbide plant whose production processes were almost identical with those of the basic aluminum industry.[49] Likewise, the high degree of integration in an atomic energy plant, engaged exclusively in separating uranium 235 from other uranium isotopes, was held to preclude the severance of maintenance electricians.[50]

The Board has consistently declined to apply the integration rule to nonbasic industries, or to manufacturing processes which are not integrated to such a degree that only a plantwide unit can function properly.[51]

d. Multiemployer Units

The appropriateness of a bargaining unit composed of employees of more than one employer must be decided in cases where a group of employers conduct collective-bargaining negotiations jointly as members of an association or through a joint bargaining agent.[52]

Heretofore, the Board held that the pattern of organization for an unrepresented category of employees should normally follow the multiemployer pattern established for other employees of the same employer.[53] However, the Board recently pointed out that this general rule cannot be rigidly applied and, for instance, was not applicable in a case where two separate industries were involved and where the industry in which the unrepresented group was engaged had not been

[49] *Electro-Metallurgical Co*, 101 NLRB 577, Chairman Herzog and Member Peterson dissenting.

[50] *Carbide and Carbon Chemicals Co*, 102 NLRB No 121 Craft units were held appropriate in atomic energy research plants See *California Research & Development Co*, 100 NLRB 1385, and cases cited there

[51] See Seventeenth Annual Report, pp 64–65, and Sixteenth Annual Report, p. 92, for cases in this category involving plants producing such products as copper, tin, rubber, pulp and paper, Portland cement, butadiene, or manufacturing aircraft, printing equipment, and radios or radio parts To these industries were added during 1953, brick manufacturing (*Whiteacre Greer Fireproofing Co*, 100 NLRB 1107), tire and tube manufacturing (*Armstrong Tire and Rubber Co*, 104 NLRB No 105); fabrication of finished wood products (*Burke Millwork Co*, 100 NLRB 522), glass containers (*Knox Glass Bottle Co.*, 101 NLRB 36) As to plants producing steel tubing from stainless or carbon steel, and metal products from pressed sheet steel, see *Globe Steel Tubes Co.*, 101 NLRB 772, and *Rheem Mfg Co*, 100 NLRB 564 A plant producing caustic soda and chlorine was involved in *Mathieson Alabama Chemical Corp*, 101 NLRB 1079

[52] For fuller discussion of the Board policies on multiemployer units, see Seventeenth Annual Report, pp 72–76, Sixteenth Annual Report, pp 102–105.

[53] See Seventeenth Annual Report, p 76

covered by association bargaining.[54] Subsequently, in the *Seagram* case,[55] the Board expressed in more general terms the principle that an unorganized employee group should not invariably be bound by the bargaining pattern for another group of the same employer. Following the announcement of the *Seagram* doctrine, the Board, in a number of cases, declined to establish multiemployer units for various unrepresented groups of employees on the basis of association bargaining for other groups of the same association members.[56]

e. Units in Broadcasting Industries

In dealing with broadcasting personnel, a majority of the Board during fiscal 1953 took the position that employees who regularly or frequently appear before the microphone may properly be included in a separate unit.

In rejecting the Board's original view that the sole appropriate unit was one encompassing all employees engaged in announcing and programming duties,[57] the majority observed that performers appearing before the microphone

> perform a kind of work requiring a kind of talent, experience, and background which is distinguishable from that of the other program employees, and which gives rise to interests in the terms and conditions of employment which are sufficiently different from those of other employees to warrant separate representation for collective bargaining Voice, diction, personality, the ability to persuade through the spoken word—these are the tests by which announcers are judged, and these are qualifications wholly unrelated to the jobs performed by . . . others. These special and highly individualistic qualifications necessarily serve to distinguish [those who appear before the microphone] from other employees . . .

The majority of the Board in another case also held that these principles apply equally in the case of a combined radio and television station.[58]

In one case, the Board established a nationwide unit for free-lance writers employed on network and syndicated programs.[59] The Board determined the scope of the unit on the basis of the integration and centralized control of network operators, the similarity of the skills, techniques, and duties of the writers involved, the degree of the writers' mobility, and the extensive collective-bargaining history on a sys-

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[54] *Niagara Beer Distributors Association,* 100 NLRB 1515

[55] 101 NLRB 101, see p. 21, above.

[56] *Miller & Miller Motor Freight Lines,* 101 NLRB 581, *Lounsbury Chevrolet Co*, 101 NLRB 1752, *Fireboard Products, Inc*, 102 NLRB No 43 *Columbia Broadcasting System, Inc*, 102 NLRB No 123

[57] *Hampton Roads Broadcasting Corp (WGH)*, 100 NLRB 238 amending *Hampton Roads Broadcasting Corp*, 98 NLRB 1090. See also *Norfolk Broadcasting Corp (WNOR)*, 100 NLRB 224, *Pennsylvania Broadcasting Co*, 100 NLRB 254 *Hawley Broadcasting Co*, 100 NLRB 791

[58] *WTAR Radio Corp*, 100 NLRB 2?0

[59] *National Broadcasting Co*, 104 NLRB No 72

temwide, multiemployer basis for other free-lance employees in the broadcasting industry. The Board declined to include in the unit free-lance writers employed by advertising agencies which had not been bargained for as part of a multiemployer unit including other free-lance writers.

During the past year, the Board also had to determine the status of motion picture cameramen hired by a television station from a pool of available cameramen as needed to take film for the television of current events.[60] The Board concluded that, particularly because their work was directed in detail by the employer's directors of program, news events, or publicity, the cameramen were employees rather than independent contractors.[61]

The Board recently held that the functions of radio directors involved "responsible" direction of musicians and engineers and they therefore are supervisors within the meaning of section 2 (11).[62]

f. Agricultural Laborers

Section 2 (3) specifically excludes "any individual employed as an agricultural laborer" from the coverage of the act. The determination whether an employee is an "agricultural laborer," must be made in accordance with the definition of the term in section 3 (f) of the Fair Labor Standard Act of 1938, as required by continuing riders to the acts of Congress annually appropriating funds for the Board.[63]

As to what constitutes the "raising of livestock" in the definition of "agriculture" in section 3 (f) of the Fair Labor Standards Act, the Board has been advised by the Department of Labor that it is not material that the livestock is raised for the employer's own commercial or industrial purposes, or that the livestock is not bred on the premises, or that the feed is purchased and not produced; and that it is the nature of the feeding operation itself which is controlling. In view of the Department's interpretation, the Board held during the past year that feed lot employees who care for livestock not only over a brief period of a few days pending its sale, but for substantial periods, such as 80 to 150 days, must be considered agricultural la-

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[60] *The Pulitzer Publishing Co.*, 101 NLRB 1005.

[61] Compare *Scripps-Howard Radio, Inc.*, 100 NLRB 293 Here, a majority of the Board (Members Houston and Styles dissenting) declined to include in a television talent unit free-lance performers drawn from a pool whose members worked for about 50 advertising agencies engaged in producing commercial programs. The majority found that these freelancers were direct employees of the advertising agencies in the conventional sense and therefore could not be deemed employees of the television station even though they were subject to the direction of the station's staff directors. The majority distinguished *American Broadcasting Co.*, 96 NLRB 815.

See also *WTAR Radio Corp*, 100 NLRB 250, where the same Board majority likewise excluded from a unit two nonstaff artists who were hired and paid by their sponsors, rather than the broadcasting station.

[62] *American Broadcasting Co.*, 100 NLRB 620, *WTAR Radio Corp.*, 100 NLRB 250 (producer-directors).

[63] See Seventeenth Annual Report, pp. 89–91; Sixteenth Annual Report, pp. 115–117.

borers. Such feed lot operations of a meat packing company, in the Board's opinion, constitute a distinct enterprise, separate and apart from the company's nonagricultural packing plant operations.[64]

6. Conduct of Representation Elections

When the Board finds that a question of representation exists, it can be resolved only through an election by secret ballot. The act leaves generally to the discretion of the Board the determination of the voting eligibility of employees, the mechanics of conducting elections, and the certification of election results.[65]

a. Eligibility To Vote

Generally, 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 the issuance of the direction of election.

(1) Intermittent Employees in Broadcasting and Movies

During the past year, questions of eligibility have arisen in a number of cases in the motion picture and broadcasting industries. In such cases the Board has taken into consideration the occasional and temporary nature of the work of such categories as actors, cameramen, soundmen, and various motion picture production employees. These employees have been held entitled to vote if, during the 9-month period preceding the date of the direction of election, they had a minimum of 3 days' employment in a proposed multiemployer unit, or 2 days' employment in the requested single-employer unit.[66]

(2) Strikers

Section 9 (c) (3) provides that strikers not entitled to reinstatement shall not be eligible to vote. The Board has heretofore held that this statutory exclusion applies in the case of economic strikers who have been permanently replaced or whose jobs have been abolished.[67]

During fiscal 1953 the Board further held that strikers who have engaged in conduct for which they may be lawfully discharged or denied reinstatement do not automatically lose their employee status and their right to vote in an election.[68] In the Board's view, where no discharge or denial of reinstatement takes place, or where it occurs

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[64] *Swift & Company*, 104 NLRB No 120 ; *G. K Livestock Co*, 104 NLRB No. 121.

[65] For general rules governing elections, see sec 102 61, Rules and Regulations, Series 6. effective June 3, 1952, as amended

[66] See *Television Film Producers Association*, 93 NLRB 929; *Society of Independent Motion Picture Producers*, 94 NLRB 110: *Transfilm, Inc*, 100 NLRB 78; see also *Pulitzer Publishing Co.*, 101 NLRB 1005, where a 13-month rather than a 9-month period was used because of the special circumstances in the case.

[67] Seventeenth Annual Report, p. 95.

[68] *Union Mfg. Co.*, 101 NLRB 181.

after the eligibility date of the election has passed, the employee whose status has not been altered or challenged as of the election date is entitled to vote. In reaching this conclusion, the Board also pointed out that absent legitimate intervention on the part of the employer a striker loses his employment and voting rights only by his acceptance of other permanent employment or the operation of section 8 (d) which provides for automatic loss of employee status where employees engage in a strike during the 60-day period immediately preceding the termination of a collective-bargaining contract.

b. 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 in selecting a bargaining representative.[69]

If these standards have not been met, any party to the election may file, within 5 days after receipt of the tally of ballots, objections to the conduct of the election or conduct affecting its results.[70] However, the Board ruled during the fiscal year, it is not necessary that the party filing objections be the aggrieved party.[71]

(1) Unprotested Preelection Misconduct

During the past year, the Board reconsidered its policy, announced in the *Denton Sleeping Garment* case,[72] to disregard objections to an election on the basis of conduct of which the objecting party had knowledge before the election and regarding which it had neither filed charges nor otherwise protested until after the election. Experience had demonstrated, the Board observed, that the rule of estoppel in this form hindered rather than facilitated fair elections.[73] The Board said:

> Under present Board practice, any party may, by engaging in conduct which interferes with an election, and by its timing of that conduct, substantially control the course of the Board's election processes. In the event of such interference, the other parties and the employees are confronted with the choice of either (a) requesting a postponement of the election, with the substantial delay that involves in ascertaining the employees' desires until the effects of the interference have been dissipated, or (b) accepting the equally difficult choice of proceeding with the election in the face of such interference, knowing that a second election cannot be held for at least another 12 months, should the interference have its intended effect and the election therefore not reflect the employees' true desires. In either event, the free expression of the employees' desires is inhibited, the selection of a bargaining representative and the

[69] For additional discussion, see Seventeenth Annual Report, pp. 99–106; Sixteenth Annual Report, pp. 128–136

[70] Sec. 102 61, Rules and Regulations, Series 6, as amended

[71] *Scavullo, d/b/a Legion Utensils Co*, 103 NLRB No 39

[72] *Denton Sleeping Garment Mills, Inc*, 93 NLRB 329 (1951)

[73] *Great Atlantic & Pacific Tea Co*, 101 NLRB 1118

orderly progress of collective bargaining should that be the employees' desire may be substantially delayed, and a wrongdoer stands to profit from his own wrong. [Footnote omitted.]

In order to remedy this situation, the Board announced, hereafter any substantial interference which occurs during the crucial period before an election may constitute a basis for setting aside the election. The Board said:

whether or not charges have been filed, the Board has decided to consider on the merits any alleged interference which occurs or has occurred after either (1) the execution by the parties of a consent-election agreement or a stipulation for certification upon consent election, or (2) the date of issuance by the Regional Director of a notice of hearing, as the case may be; no waivers will be required with respect to charges based thereon. The Board will not, however, consider election objections based upon interference which may occur prior to these dates. [Footnote omitted.]

(2) Preelection Propaganda

If the Board finds that preelection propaganda has created an atmosphere in which employees were unlikely to express themselves freely as to their choice of a bargaining agent, the election held under such circumstances will be voided. The Board has held that union or employer propaganda which contains either promises of benefits or threats of reprisals calculated to influence the employees' choice ordinarily is ground for setting aside the election.[74]

However, as to propaganda which merely tends to mislead, the Board has repeatedly stated its policy not to police or censor election propaganda but to leave "to the good sense of the voters the appraisal of such matters and to opposing parties the task of correcting inaccurate and untruthful statements."[75] On the other hand, the Board has also pointed out that an election may be invalidated by propaganda which "has lowered the standard of campaigning to the point where it may be said that the uninhibited desires of the employees cannot be determined in an election."[76]

In determining whether preelection propaganda has interfered with the holding of a free election, the Board looks not only to the content of the propaganda but also to the circumstances under which it is disseminated. Thus, the Board has found that an employer improperly interferes with the right of employees freely to select representatives if, just before the election, he delivers an electioneering speech to employees during working hours but denies the union which appears on the ballot an opportunity to present its view under substantially identical circumstances.[77] In the Board's opinion, it is the discrimi-

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[74] Seventeenth Annual Report, pp 100–101

[75] See *Stewart-Warner Corp*, 102 NLRB No 130, Member Murdock dissented in this case on the ground that the misrepresentations involved amounted to a threat of reprisal but promise of benefit

[76] *United Aircraft Corp*, 103 NLRB No 15

[77] See *Bonwit Teller, Inc*, Seventeenth Annual Report, pp 102–103.

natory use by the employer of company time and property for campaign purposes which destroys the validity of the subsequent election. Whether or not such utilization of his property by the employer is in conflict with an existing company rule forbidding union solicitation during working hours, such as was present in *Bonwit Teller*, is not controlling.[78] Nor does the Board consider the discriminatory denial of the use of company time and property offset by the fact that the union had opportunity to discuss election issues through other media.[79]

During fiscal 1953, elections also were set aside where the employer addressed the employees such a short time before the election that the timing of the speech in effect amounted to a refusal to consider a request by the union to reply.[80]

However, the Board has made it clear that the *Bonwit Teller* rule is not to be construed as guaranteeing campaign unions "the last word" before the election.[81] The Board pointed out that the determinative factor is "whether the timing of the speeches was such as deliberately to preclude a presentation of the union's view." Thus, it was held not improper for an employer to make a further election speech after the union had been granted its request to reply to the employer's initial address. And a request that the union be permitted to reply should the employer "choose" to address the employees on company time was held to entitle the union only to reply to any future speech but not to the employer's previous address.[82] Nor did the Board find interference with an election where the campaigning union was permitted to reply to the employer's preelection speech to the assembled employees by addressing the employees in groups in the employer's presence.[83] The Board was of the opinion that under the circumstances the union had an opportunity to reply "under substantially equal conditions." In another recent case, the Board declined to invalidate an election at the instance of the unsuccessful intervening union because of the employer's remarks encouraging the employees to vote against both petitioner and intervenor.[84] The Board held that, although both unions had been denied an opportunity to reply to the employer's speech under like circumstances, the situation was subject to the rule that an election will not be set aside because of employer interference where to do so would nullify the success of a winning union and would permit the wrongdoer to profit by its illegal acts.[85]

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[78] Compare *Onondaga Pottery Co.*, 100 NLRB 1143; *Shirlington Supermarket, Inc.*, 102 NLRB No 36. As the question whether the discrimination of this type in the absence of a no-solicitation rule also constitutes an unfair labor practice, see pp 30–32 of this Report.

[79] See *Onondaga Pottery Co.*, 100 NLRB 1143.

[80] *Shirlington Supermarket, Inc*, 102 NLRB No. 36; *Foreman & Clark, Inc*, 101 NLRB 40; *Hills Brothers Co*, 100 NLRB 964

[81] *Snively Groves, Inc.*, 102 NLRB No. 162.

[82] *The Muter Co.*, 104 NLRB No 144.

[83] *F. W Woolworth Co*, 105 NLRB No. 20.

[84] *Showell Poultry Co.*, 105 NLRB No. 70.

[85] See *Keeslim Poultry Co*, 97 NLRB 467.

III

Unfair Labor Practices

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

This chapter treats only decisions of the Board during the 1953 fiscal year which involve novel questions or set new precedents. Discussions of the general principles applied by the Board during this fiscal year will be found in chapter V of the Seventeenth Annual Report and chapter V of the Sixteenth Annual Report.

A. Unfair Labor Practices of Employers

In general, the act requires an employer to bargain in good faith with the representative chosen by a majority of a group of employees which is appropriate for collective bargaining. To assure the freedom of employees in bargaining, the act forbids an employer to interfere with the right of employees to engage in concerted activities directed toward collective bargaining, or to assist or dominate an organization of employees which is formed, or is being formed, for the purpose of bargaining. The act also specifically forbids an employer from discriminating in the terms or conditions of employment against employees either because of their participation in the concerted activities protected by the act, or because of their refusal to participate in such activities except under a valid union shop.

1. Interference With Employees' Rights

Section 8 (a) (1) of the act forbids an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights to engage in, or refrain from, collective bargaining and self-organizational activities as guaranteed by section 7.[1] Violations of this general

[1] For further discussion, see Seventeenth Annual Report, pp. 109–127, Sixteenth Annual Report, pp. 92–101.

prohibition may take the form of (1) any of the types of conduct specifically identified in subsections 2 through 5 of section 8, or (2) any other conduct which independently tends to restrain or coerce employees in exercising their statutory rights. Discussion here is limited to the independent violations.

During fiscal 1953, the Board had to determine the extent to which the section 7 guarantee of the employee's right to refrain from union activities is limited by the union-security proviso of section 8 (a) (3). The immediate question presented was whether an employer unlawfully interfered with that right by deducting from the wages of a union employee a fine imposed for his nonattendance at a union meeting. The deduction was not provided for in the applicable union-shop agreement and had not been authorized by the employee. A majority of the Board held that the employer's action violated section 8 (a) (1) and could not be justified under the union-security proviso of section 8 (a) (3).[2] The majority pointed out that this proviso, being a limitation on the employees' statutory freedom to refrain from union activities, must be strictly construed. According to the majority, all that the proviso permits is to require employees under a valid union-shop agreement to acquire or maintain union membership by tendering the necessary dues and initiation fees. This limited *membership* requirement may not be construed as imposing upon the employees concerned additional membership obligations such as the participation in union activities, the majority held. Therefore, the unauthorized deduction of the nonattendance fine by the employer was an unwarranted intrusion on the employee's statutory rights in that it tended to force the employee to attend union meetings against his will.

An employer's undermining of the authority of the employees' accredited bargaining representative by unilateral concessions and direct negotiation with individual employees and strikers also has been held to constitute illegal interference. During the past year, the Board held that section 7 (e) of the Fair Labor Standards Act, providing for certain overtime contracts under specified conditions, does not require modification of this rule to permit employers to enter into such contracts with individual employees without consulting their accredited bargaining representative.[3]

a. Rules Restricting Union Activities

The Board has consistently held that an employer, in the interest of plant efficiency and discipline, may prohibit union activities on the premises during the actual *working* time, but such prohibitions ordinarily constitute unlawful interference with employee rights if

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[2] *Injection Molding Co.*, 104 NLRB No. 91, Member Murdock dissenting on this point.
[3] *Stewart Oil Co.*, 100 NLRB 4

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they extend to the employees' *free* time. There are, however, two principal exceptions to this rule. Thus, in the case of retail department stores, the Board has recognized that in view of their business methods union solicitation of employees may be prohibited on selling floors and related areas even during the employees' nonworking time. Moreover, the Board has generally held that, in order to keep plant premises clean and orderly, employers may prohibit the distribution of union literature at all times, at least where it is not evident that literature distribution cannot be effectively made away from the plant premises.

Even a valid rule, however, violates the act if it is enforced in a discriminatory manner. Thus, an employer may not prohibit union solicitation without also prohibiting other forms of solicitation, or enforce a valid rule against one union while permitting solicitation by another union.[4] Under the rule announced in the *Bonwit Teller* case,[5] it is also a violation of the act for an employer to campaign against a union in breach of the employer's own rules, and to deny the union's request for an opportunity to reply to the employer's antiunion speeches under similar conditions.[6]

In several instances, the Board again had occasion to test the validity of restrictive rules in the light of the employer's operational necessities and the employees' interest in the unimpaired exercise of their organizational rights. Thus, one case presented the question whether a tense post-strike situation in a plant justified rules prohibiting (1) union activity on nonworking time, and (2) the wearing of steward and committeemen buttons, or union "loyalty" streamers.[7] Upon a careful appraisal of the circumstances and other actions taken by the employer, the Board concluded that these rules were not necessary to prevent friction and clashes between the adherents of rival unions, and that they had no reasonable relation to the asserted objective. The adoption and enforcement of the rules were therefore held to violate section 8 (a) (1).

In another case, a no-solicitation rule providing for immediate discharge for "union activity on company time or on company premises" was held unlawful, even if, as the employer contended, this broad prohibition was modified by a further rule which permitted employees to carry on such activities in the locker rooms after first giving notice to the shop superintendent.[8] The Board pointed out that, even assuming that the employer's second supplementary rule had the as-

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[4] Seventeenth Annual Report, pp 114–118, Sixteenth Annual Report, pp 146–148

[5] *Bonwit Teller, Inc*, 96 NLRB 608 enforced in this respect, 197 F 2d 640 (C. A 2) See discussion. Seventeenth Annual Report, pp 115, 225–226

[6] For recent application of the rules see *Metropolitan Auto Parts, Inc*, 102 NLRB No 171. and cases cited there Compare the court's views in *N L R B v American Tube Bending Co.*, (C A 2), decided June 15, 1953

[7] *Boeing Airplane Co*, 103 NLRB No 115

[8] *Armstrong & Hand, Inc*, 104 NLRB No. 70

serted limiting effect, it could not cure the illegality of the no-solicitation rule because, as held in a prior case,[9] a requirement that employees obtain permission to engage in union activities on company property on their own time is itself a violation of section 8 (a) (1).

One case again involved the question of the extent to which retail department stores may curtail union activities to avoid interference with store operations.[10] In this case, the company had denied nonemployee organizers access to the store's nonpublic area. Upholding the reasonableness of the company's rule, the Board noted that here, unlike the *Marshall Field* case,[11] the exclusion of nonemployee organizers did not make organization of store employees a practical impossibility. The Board pointed out (1) that the complaining union did not show that it could not contact the employees outside the store without undue difficulty, and (2) that, early in the union's organizing campaign, the company had agreed to permit undisturbed solicitation by nonemployee organizers on the selling floors, if the organizers would not enter the store's nonpublic areas.

b. Influencing Employee Elections

The Board continues to hold that an employer interferes with employees' rights under the act by promising or granting benefits, or by threatened or actual reprisals, to influence the voting of employees in a Board election.[12] It is likewise unlawful for an employer to promote the defeat of a union in an impending election by assisting and participating in a campaign of antiunion employee groups. A unanimous Board during the past year made it clear that while an employer may voice its *own* noncoercive views during an organizing period, he is not privileged to assist the cause of employees who oppose the union.[13] The Board said:

> Concerted activity either for or against a union is a protected right of employees. We regard the subsidization of such activity—even at the request of the employee participants—to be an unwarranted intrusion upon the right of employees freely to choose their own collective-bargaining representative.

During fiscal 1953, the Board was also confronted with the question whether a violation of section 8 (a) (1) may be found where an employer used company time and property to speak against unionization on the eve of a Board election without permitting the union to present its views under substantially similar conditions. The Board had to determine here whether such conduct on the part of an employer is an

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[9] *Grand Central Aircraft Co, Inc*, 103 NLRB No. 101.

[10] *Associated Dry Goods Corporation*, 103 NLRB No 28.

[11] 98 NLRB 88, enforced as modified, 200 F. 2d 375 (C. A. 7); Seventeenth Annual Report, pp. 116–118.

[12] For examples of violations of this type, see Seventennth Annual Report, pp. 121–122, Sixteenth Annual Report, p. 143; Fifteenth Annual Report, p. 93.

[13] *The Cleveland Trust Co.*, 102 NLRB No. 164.

unfair labor practice when it does not conflict with a valid plant rule against union solicitation.[14] The Board majority held that the reasons which had impelled the Board to set aside elections accompanied by employer campaigning of this type necessitated a finding that the same conduct also constitutes unlawful interference with employee rights in violation of section 8 (a) (1).[15] The majority pointed out that an employer who enters an organizing campaign and uses company time and property to present his views cannot in fairness refuse the union's request to use the same "privileged and effective forum." Such a refusal, the majority concluded, prevents employees whose support is solicited from hearing "both sides of the story" under reasonably equal conditions and, therefore, interferes with their freedom in selecting representatives, regardless of the existence of other means of communication between them and the campaigning union. For, the majority noted:

> [I]t is apparent that printed materials and individual solicitations neither reach the full audience that the employer can insure by his control over working time; nor do they approach the persuasive power of an employer's oral presentation. Soliciting employees on the employer's premises, even when not precluded by a no-solicitation rule, cannot substitute for the systematic arguments presented orally to an employee assembly. Soliciting employees off the premises can seldom be extensive, due to both time limitations and geographical diffusion of employees.

2. Employer Domination or Support of Employee Organization

Section 8 (a) (2) of the act forbids an employer "to dominate or interfere with the formation or administration of any labor organization."[16] This section also forbids an employer to "contribute financial or other support" to such an organization.

This section provides that an employer may permit employees to confer with him during working hours without loss of pay. But this proviso, the Board has pointed out, does not permit an employer to pay for time spent with the employer in meetings during which discussion is not limited to the negotiation of agreements or the adjustment of grievances, but is devoted to matters concerning the organization or management of the affairs of the employees' representative.[17]

The Board also has held that the enforcement of illegal union-security agreements in itself constitutes illegal assistance to the con-

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[14] Compare *Bonwit Teller, Inc.*, 96 NLRB 608, Seventeenth Annual Report, pp. 115–116, where there was such a valid rule

[15] *Metropolitan Auto Parts, Inc*, 102 NLRB No 171, Chairman Herzog dissenting. See also *Seamprufe, Inc.*, 103 NLRB No. 17. Unlike Chairman Herzog, the majority did not agree with the contrary views expressed by the Second Circuit Court of Appeals in modifying the Board's *Bonwit Teller* order. *Bonwit Teller, Inc.* v. *N. L. R. B.*, 197 F. 2d 640; Seventeenth Annual Report, pp. 225–226.

[16] For further discussion of violations of 8 (a) (2), see Seventeenth Annual Report, pp. 127–134; Sixteenth Annual Report, pp. 154–160.

[17] *Aerovox Corporation*, 102 NLRB No. 153.

tracting union.[18] However, the maintenance of illegal union-security provisions in a contract, absent any attempt by the parties to enforce them, is not considered unlawful assistance to the contracting union, although it may be held to constitute a violation of the act in other respects.[19]

a. Bargaining With One of Competing Unions

The Board has held that it is a violation of section 8 (a) (2) for an employer to negotiate a contract with a union at a time when he is faced with the conflicting claims of rival unions which seek to represent the same group of employees. It is the Board's position that in such a situation the employer must maintain strict neutrality and may not enter into a contract with one of the competing unions, because making a contract with a union is the most potent kind of support.

But an employer does not violate section 8 (a) (2) by dealing with a union at a time when he has not been presented with a sufficient and effective majority claim of another union. The mere fact that an employer was advised that another union intended to organize his employees and had begun its organizational efforts was held insufficient to bring the Board's neutrality rule into operation.[20]

b. Execution of Contract During Pendency of Representation Proceeding

The execution of a contract with one of several competing unions while a petition for representation is pending before the Board likewise constitutes illegal assistance.[21] However, an employer may continue to bargain with an *incumbent* union which has been the established majority representative, even in the face of a rival petition, if the petition raises no *valid* question of representation. But the employer does so at his peril and is subject to unfair labor practice charges if the Board later finds that the petition did raise a valid question of representation.[22]

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[18] See *John B Shriver Co*, 103 NLRB No 2, and cases noted at p 158 of the Sixteenth Annual Report, and p 132 of the Seventeenth Annual Report

[19] See *Jandel Furs*, 100 NLRB 1390

[20] *Anaconda Copper Mining Co*, 104 NLRB No 146 Compare *Spitzer Motor Sales, Inc*, 102 NLRB No 39, where the Board rejected an employer's contention that its refusal to bargain with the complaining union was necessary because of the concurrent claims of a rival union. Here, the Board found that under the circumstances the employer could not have had a bona fide belief that the rival union's claim was substantial or that the complaining union did not have majority status See also *Universal Food Service, Inc*, 104 NLRB No 6.

[21] This rule is known as the *Midwest Piping* doctrine from the name of the case in which it was first announced, *Midwest Piping and Supply Co*, 63 NLRB 1060 (1945) See Tenth Annual Report, pp 38–39

[22] *William Penn Broadcasting Co* 93 NLRB 1104 (1951) See Seventeenth Annual Report, pp 133–134 and Sixteenth Annual Report, p 160.

In applying these rules during the past year, the Board held that an employer violated section 8 (a) (2) by entering into a contract with the winning competitor in a consent election at a time when objections to the election were still pending before the Board.[23] The objections being substantial, the Board pointed out, a valid question of representation continued to exist until final action had been taken by the Board and the employer's action therefore violated the *Midwest Piping* rule.

But no violation of section 8 (a) (2) was found where the challenged contract between the employer and a union was entered into during the pendency of a decertification petition which was subsequently found to have been filed by a "front" for a union which was not in compliance with the filing requirements of the act and which, therefore, did not raise a valid representation question.[24]

3. Discrimination Against Employees

Section 8 (a) (3) forbids an employer to discriminate against employees "in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization." [25] However, a proviso to section 8 (a) (3) permits an employer to make an agreement with a labor organization requiring that employees, as a condition of employment, join and maintain membership in the union.

a. Employee Status of Discriminatee

The question whether an employer may be found to have violated section 8 (a) (3) with respect to employees other than his own presented itself during the past year in connection with a complaint against a construction firm which had contracted with another employer for guard services at a large construction project.[26] Discrimination charges were filed when the construction firm exercised its right under the contract to demand the removal of nonacceptable guards.[27] The Board held that the contractor's action here amounted to unlawful discrimination within the meaning of section 8 (a) (3) even though the contractor was not the immediate employer of the complaining guards. This conclusion, according to the Board, was warranted (1) because nothing in the act or its legislative history indicates that Congress intended to limit the prohibitions of section 8 (a) (3) to situations involving direct employer-employee relation-

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[23] *National Container Corp.*, 103 NLRB No. 138

[24] *Wood Parts, Inc.*, 101 NLRB 445

[25] For further discussion of the application of section 8 (a) (3), see Seventeenth Annual Report, pp. 134–159 and Sixteenth Annual Report, pp. 161–186

[26] *Austin Company*, 101 NLRB 1257

[27] The removal of the guards occurred after the union, which represented a large group of employees on the project, objected to their presence because of nonmembership.

ships,[28] and (2) because of the intimate business relationship between the contractor and the supplier of the guards under which the former had a veto power over the guard's right to work on a particular project. In view of the presence of this circumstance in the case, the Board refrained from expressing its views regarding the ultimate liability under section 8 (a) (3) where an employer who causes discrimination is not similarly associated with the immediate employer of the victims of the discrimination. The Board specifically declined to adopt the trial examiner's broad conclusion that conduct of any employer which results in coercion of employees of any employer necessarily constitutes an unfair labor practice.

The rule stated in the *Austin* case was later applied in another case involving similar circumstances.[29] This case was concerned with the termination of a mine employee after, in accordance with industry practice, he had become the employee of his union upon assuming the duties of union checkweighman. The complaining employee refused to weigh coal in the presence of a picket line, and was then "fired" by the mine operator and subsequently prevented from performing his weighing functions. Citing the *Austin* case, the Board held that, although the weigher was not directly employed by the mine, the mine operator violated section 8 (a) (3) by exploiting the intimate working relationship between the weigher and the mine's own employees, so as to cause the termination of the weigher's employment at the mine and of his relationship with his union.

b. Protected and Unprotected Strikes

The protection of the act is not limited to the union activities of employees but extends to all of their legitimate "concerted activities for the purpose of collective bargaining or other mutual aid or protection." [30] Therefore, in cases arising under section 8 (a) (3), the Board must frequently determine whether the activities which gave rise to discrimination were "concerted activities" which the act protects.

A strike for a lawful objective conducted in a lawful manner ordinarily is a protected concerted activity for which employees may not be penalized.[31] But a strike may lose the protection of the act because of (1) the manner in which it is conducted—such as slowdown or sitdown strike—or (2) its objective conflicts with Federal law or policies—such as a strike to force an employer to violate the act or a

[28] By contrast, the Board noted the qualifying language in section 8 (a) (3) and 8 (b) (4) (A) limiting their coverage to employees of a particular employer.

[29] *Bretz Fuel Company,* 104 NLRB No. 59.

[30] Section 7.

[31] Section 13 of the act provides that "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

strike in breach of a valid no-strike agreement.[32] Employees may lawfully be discharged for participating in an unprotected strike. Moreover, individual strikers may forfeit the protection of the act by engaging in strike misconduct such as violence or sabotage.

In the matter of no-strike agreements, the Board under its *Scullins-Dyson* doctrine has held that economic strikes in violation of such an agreement on the part of a union are not protected activity.[33] During fiscal 1953, the Board was urged to extend this rule by holding that a strike called to protest against unfair labor practices lost its protection because a no-strike contract was then in effect. The Board, however, held that under the circumstances of the case no breach of contract could be found, because (1) the strike had no relation to the terms of the contract and was not an attempt to circumvent the contractual provisions and guarantees, and (2) the no-strike clause of the contract did not contemplate a waiver of self-help under circumstances such as were present in the case.[34]

In several cases, where employers invoked no-strike agreements in defense of discrimination charges, it was necessary to determine whether the action taken by employees did in fact constitute strike action in violation of the union's agreement. In one case of this type, the Board held that employees who remained away from work to attend a union protest meeting against a new work schedule violated the no-strike agreement to which they were subject.[35] Declining to give controlling weight to the fact that the union apparently had not authorized the action, the Board expressed agreement with the trial examiner's view that there is "no valid distinction between a concerted decision to withhold services and the withholding of services for the purpose of concerted action aimed at a common objective." In another case, a majority of the Board held that employees were protected in transferring their affiliation to another local of the same parent organization and indicating that they desired to negotiate a new contract and did not wish to work under the old one.[36] The majority concluded that this action did not amount to a strike situa-

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[32] *Ohio Ferro Alloys Corp.*, 104 NLRB No. 73

[33] See *Scullins Steel Co.*, 65 NLRB 1294 (1944); *Dyson & Sons, Inc*, 72 NLRB 445 (1947).

[34] *Mastro Plastics Corp*, 103 NLRB No. 51. Member Murdock reserved opinion on the breach-of-contract issue because he believed that the strikers were deprived of their protected status because of the applicability of section 8 (d). The *Mastro Plastics* rule was again applied in *Wagner Iron Works*, 104 NLRB No. 62

[35] *Kaiser Aluminum and Chemical Corp.*, 104 NLRB No. 102. See also *Northern Crate & Lumber Co*, 105 NLRB No 22, where the Board agreed with the trial examiner's conclusion that the employees concerned were not protected in striking to compel compliance with the back-pay award of an arbitrator. Although the no-strike clause in this case was not to apply in case of the employer's refusal to abide by such awards, the examiner found that the award was not sufficiently definite and final to make immediate compliance possible.

[36] *Pepper & Potter, Inc.*, 104 NLRB No. 126, Member Murdock dissenting

tion or to an outright repudiation of an existing contract, such as was involved in the *Sands* case [37] on which the employer relied.

In cases involving a breach of no-strike pledges of organized employees, the Board has held that the employer could properly pay unorganized employees for time lost during the strike, while withholding like payments from employees represented by the striking union,[38] or from employees in a unit represented by another union which also was committed not to strike during the term of its contract.[39]

Section 8 (d) outlaws strikes, as well as lockouts, during the 60-day period after a party to a collective-bargaining agreement gives notice of its intention to modify or terminate the contract. The participants in such a strike forfeit their employee status. During fiscal 1953, a majority of the Board held that section 8 (d) prohibits only strikes to force contract action before the expiration of the 60-day period but does not forbid a strike in protest against unfair labor practices.[40] The legislative history of section 8 (d), the majority observed, clearly indicates that Congress was concerned with the use of economic pressures in connection with contract negotiations which might impede or disrupt collective bargaining during the critical period. The majority concluded that, in the absence of any expressed legislative purpose, Congress could not be presumed to have also intended to render employees and their representatives helpless for a set period against unfair labor practices.

Section 8 (d) was held not to apply either to a strike called by a union which was not a party to the outstanding contract,[41] or to a strike called after observance of a 60-day notice period but before the expiration of the contract.[42]

c. Discrimination Under Union-Security Agreements

Section 8 (a) (3) prohibits discrimination in employment against employees not only to discourage union membership or other protected activities, but also to compel membership in a union which does not have a valid union-security agreement. However, even under a valid union-security agreement, an employee may be discharged or otherwise discriminated against only for lack of membership in the

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[37] *N L R B v Sands Mfg Co*, 306 U S 332

[38] *Wagner Electric Corp*, 105 NLRB No 3

[39] *Cities Service Refining Corp*, 105 NLRB No 124

[40] *Mastro Plastics Corp*, 103 NLRB No 51 Chairman Herzog and Member Murdock, dissenting, expressed the opinion that the statement in the *Thayer* case to this effect (99 NLRB 1122, Seventeenth Annual Report, p 139) was not necessary to the decision there and, therefore, was not controlling in the present case

[41] *Wagner Iron Works*, 104 NLRB No. 62

[42] *Wagner Iron Works*, above; *Wilson & Co, Inc*, 105 NLRB No 128, reaffirming *United Packinghouse Workers (Wilson & Co, Inc)*, 89 NLRB 310

contracting union which is due to his failure to tender on time "the periodic dues and the initiation fees uniformly required."[43]

In cases involving alleged discrimination under union-security agreements, the Board must first determine whether the agreement is valid under the proviso to section 8 (a) (3). For such an agreement to be valid, *all* of the following requirements must be met:

1. The contracting union must be free from employer domination or assistance within the meaning of section 8 (a) (2)
2. The agreement must cover employees in an appropriate unit who have legally designated the contracting union as their representative
3. The contracting union must have complied with the filing and non-Communist affidavit requirements of the act
4. The union's authority to make the agreement must not have been revoked by the employees voting in a union-shop deauthorization poll within the preceding year.
5. The agreement must contain an appropriate 30-day grace period for all employees who are not members of the union when it takes effect.

(1) Terms of Union-Security Agreements

The maximum form of union security permitted by section 8 (a) (3) is a requirement that employees in the contract unit acquire membership in the contracting union on or after the thirtieth day following their employment or the effective date of the contract, whichever is later. The Board has therefore consistently held that union-security agreements which provide for a grace period of less than 30 days, or for no grace period at all, are invalid.[44] However, the Board has also held that old employees who are members of the contracting union on the effective date of the contract need not be granted a 30-day grace period.[45] New employees hired after the execution of the contract, who have union membership, also have been held not to be entitled to such a grace period.[46] On the other hand, old employees who are not union members on the critical date must

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[43] In the *Injection Molding Co*, case, 104 NLRB No 91, a majority of the Board (Member Murdock dissenting) pointed out again that the proviso to section 8 (a) (3), containing a limitation upon the employees' negative right under section 7 not to join or assist labor organizations, must be strictly construed Thus, in the majority's opinion, the provision that employees may under stated conditions be required to acquire membership in a union as a condition of employment, and to tender the necessary membership and initiation fees, may not be construed as also imposing upon employees subject to a valid union-security agreement the duty to participate in the union's activities The majority therefore held that an employer invaded the rights guaranteed by section 7, and violated section 8 (a) (1), when he deducted a fine from the wages of an employee for his failure to attend a union meeting, a deduction not provided for in the union-security contract and not authorized by the employee concerned.

[44] Seventeenth Annual Report, pp 147–149, Sixteenth Annual Report, p 183, and discussion at pp 65–66

[45] See *Krause Milling Co*, 97 NLRB 536, Seventeenth Annual Report, p 40

[46] *Wagner Iron Works*, 104 NLRB No. 62, affirming the trial examiner's conclusion to this effect

be accorded the full statutory 30-day grace period, and this cannot be achieved by making the union-security clause retroactive.[47] However, the mere fact that a union-security agreement contains a retroactive membership requirement does not invalidate it if, during the interim period between its effective date and the later execution date, there is in existence a valid union-security agreement requiring all employees to be union members.[48]

During the past fiscal year, the Board held that the union-security proviso of section 8 (a) (3) does not permit a contract clause by which an employer agrees not to promote to a supervisory position any employee while charges against him are pending in the contracting union.[49]

Union-security agreements which clearly fail to conform to the requirements of section 8 (a) (3) cannot be validated by the addition of "savings" provisions, such as recognition of the controlling effect of applicable laws or by provisions purporting to modify union-security clauses to conform to existing laws with which they may be in conflict.[50]

(2) Illegal Application of Union-Security Agreements

Under the second proviso to section 8 (a) (3), a valid union-security agreement cannot be used to justify discrimination against an employee because of nonmembership in the contracting union if the employer has reasonable grounds to believe (a) that membership was not available to the employee "on the same terms and conditions generally applicable to other members," or (b) that the employee was denied membership "for reasons other than the failure . . . to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership." In view of these limitations, violations of section 8 (a) (3) have been found where employees were discharged because of the nonpayment of charges other than "periodic dues" or "initiation fees," such as fines or dues accruing before the effective date of the applicable union-security agreement. However, the Board has held that unequal treatment by a union of different groups of members is proper if based on a reasonable classification.[51] But a union may not seek the discharge of an employee who was denied membership because he refused to surrender his membership card in a sister union.[52]

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[47] Compare *Sylvania Electric Products, Inc.*, 100 NLRB 357, citing *Kress Dairy, Inc*, 98 NLRB 369, Seventeenth Annual Report, pp. 40–41

[48] *North American Refractories Co*, 100 NLRB 1151, and earlier cases cited there

[49] *Bell Aircraft Corp.*, 104 NLRB No. 130, Member Murdock dissenting; *Bell Aircraft Corp.*, 101 NLRB 132.

[50] See *Heating, Piping & Air Conditioning Contractors*, 102 NLRB No. 167; *Gottfried Baking Co*, 103 NLRB No. 3; see also Seventeenth Annual Report, p. 149.

[51] Seventeenth Annual Report, pp 151–152; Sixteenth Annual Report, p. 185.

[52] *Pape Broadcasting Co*, 104 NLRB No. 2.

In order to be protected against discharge under a union-security agreement, employees subject to its terms must tender their legal dues within the time uniformly required.[53]

d. Encouraging Union Membership

Discrimination which encourages membership in a union which has no valid union-security agreement also violates section 8 (a) (3). Such discrimination most frequently involves a tacit hiring hall or other preferential hiring arrangement and the refusal to hire individuals who have not joined the favored union or are members of a rival organization.

Limitation to union members of preferred employment conditions, or of benefits such as participation in a welfare fund,[54] may likewise constitute a violation of section 8 (a) (3).

Unlawful discrimination was also found during the past year where an employer refused to promote an employee to a supervisory position under the terms of an agreement requiring suspension of such promotions during the pendency of charges against the employee concerned in the contracting union.[55] In another case involving the same employer, the demotion of an employee who was denied readmittance to the union after his withdrawal from a strike and from membership was again held to constitute unlawful discrimination.[56] However, in two cases decided during fiscal 1953, the allocation of seniority credits based on union membership,[57] or upon the payment of a specified fee to the incumbent union,[58] was held not to have violated section 8 (a) (3) under the circumstances of each case.

e. Lockout

The Board has adhered to the rule announced in the *Morand*, *Davis Furniture*, and *Betts Cadillac* cases,[59] that a strike against a member of an employers' association, following an impasse in joint bargaining negotiations with the common employee representative, entitles the nonstruck members to shut down their plants if they cannot prudently operate without a contract or without assurance that they will not also be struck. However, such a lockout of employees by nonstruck members of an association violates section 8 (a) (3) if it is not motivated by legitimate business considerations but is for the purpose of retaliating against the striking union.

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[53] Seventeenth Annual Report, p. 152; see also *Al Massera, Inc.*, 101 NLRB 837, *Air Reduction Co.*, 103 NLRB No. 8; *North American Refractories Co.*, 100 NLRB 1151

[54] *Jandel Furs*, 100 NLRB 1390

[55] *Bell Aircraft Corp.*, 101 NLRB 132.

[56] *Bell Aircraft Corp*, 105 NLRB No. 130, Member Murdock dissenting in other respects.

[57] *Haffenreffer & Co., Inc*, 101 NLRB 905

[58] *Namm's Inc*, 102 NLRB No 45

[59] *Morand Brothers Beverage Co.*, 91 NLRB 409, 99 NLRB 1448; *Davis Furniture Co*, 94 NLRB 279, 100 NLRB 1016; *Betts Cadillac Olds, Inc.*, 96 NLRB 268, Seventeenth Annual Report, pp. 154–157; Sixteenth Annual Report, pp. 176–178.

While reaffirming these principles in a recent case involving a group of bakery concerns, a majority of the Board held that the lockout here was unlawful for reasons other than those present in the earlier cases.[60] According to the majority, the lockout here was not a measure taken by associated employers in response to a uniform demand directed against them, but was an affirmative attack to support an industry member faced with a strike to remedy a local condition. The Board also held that the lockout here was not within the exception of the *Betts Cadillac* case because the employers who shut down their plants were not motivated by a fear of strike action against all members of the group or by a desire to avoid spoilage losses.

In another case, the Board likewise declined to find that a lockout of employees by a group of lumber firms was justified in that it was defensive and was caused solely by economic considerations.[61] In this case, the lockout occurred following an impasse in association bargaining which resulted in an agreement between the association and the union to abandon group bargaining. Subsequently, the union implemented its request for an agreement with an individual industry member by a strike. Notice of the strike was given in accordance with the union's assurance that each association member would receive 48 hours' notice of any contemplated strike action. The Board held that the voluntary abandonment of multiemployer bargaining and the union's adherence to its undertaking not to strike without notice left the employer group without collective or individual economic interests to be protected by concerted group action. The Board concluded that under the circumstances the lockout could be viewed only as an illegal reprisal against the union's strike action against an individual industry member.

However, in another case, the Board found economic justification for the action of a general contractors' group in suspending work on certain projects in response to a plumbers' strike which affected some of the projects.[62] The unions had struck in support of contract demands which both the struck and nonstruck members of the general contractors' group believed to be unlawful and unacceptable. Being dependent on the union for the supply of plumbers on their construction projects, all members of the group realized that failure to accede to the union's demand inevitably would cut off the supply of plumbers and that, without the key plumber craft, operations could not be carried on properly, and ultimately would come to a complete standstill. Taking into consideration the close interdependence and the necessary operational sequence of the different craft functions in construction

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[60] *Continental Baking Co*, 104 NLRB No 9. Chairman Herzog signed the order in this case because he believed that it was governed by the *Davis* case by which he was bound although he had there recorded his dissenting views

[61] *Spalding Avery Lumber Co*, 103 NLRB No 128

[62] *Central California Chapter, The Associated General Contractors of America, Inc*, 105 NLRB No 129

work, the Board held that the general contractors in the group were justified in closing down all their projects once work on the struck projects had come to a halt.

4. Refusal To Bargain in Good Faith

Section 8 (a) (5) makes it an unfair labor practice for an employer to refuse to bargain in good faith with the representative selected by a majority of employees in an appropriate bargaining unit.[63] To prove a violation of this section, it must therefore be shown that the organization or person whose bargaining request the employer denied had majority status in an employee unit which was appropriate for bargaining purposes.

a. Majority Status of Representative

The majority status of the complaining representative may be proved by a Board certification which was outstanding at the time of the refusal to bargain or by other evidence, such as authorization cards, showing that the employees in the unit had designated the representative as their bargaining agent.[64]

The majority status of a certified representative ordinarily is presumed to continue for 1 year in the absence of special or unusual circumstances. This rule is intended to give effect to the policy of the act to stabilize industrial relations and it is based on the Board's experience that a period of at least a year is needed to assure employees, through their newly certified representative, an opportunity to establish a functioning collective-bargaining relationship. Ordinarily the loss of the certified union's majority or its repudiation during the certification year will not be considered as "special circumstances" justifying the employer's refusal to bargain.[65] However, a majority of the Board recently held that an employer who in fact recognized the certified representative for the entire certification year did not violate section 8 (a) (5) when, during the twelfth month of the year, he refused to negotiate a new agreement extending beyond the end of the year. The majority noted that the employer had a good-faith doubt as to the union's majority status and that the requested contract extension would have deprived the employees of their right to change representatives at the proper time.[66]

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[63] For further discussion of the Board's administration of section 8 (a) (5) see Seventeenth Annual Report, pp. 159–178, and Sixteenth Annual Report, pp 188–205

[64] See *Sawyer Industrial Sheet Metal Fabricators*, 103 NLRB No 88, where the Board determined the complaining union's status on the basis of the existence of a valid union-security agreement, pursuant to which all employees in the unit had to become or remain members of the union, and the absence of any showing that any of the employees had terminated their membership

[65] See, for instance, *National Shirt Shops of Florida, Inc.*, 103 NLRB No. 70, 105 NLRB No 24

[66] *Hinde & Daugh Paper Co*, 104 NLRB No. 111; compare *Dixie Corporation*, 105 NLRB No 49.

While the Board has at times stated that a bargaining order may have the same effect as a Board certification,[67] a majority recently stated its position that there was no intention to attribute to a Board order the same force as a certificate without qualification, so as to make application of the 1-year presumption of majority imperative.[68]

b. The Request to Bargain

The employer's obligation to bargain with the majority representative of an appropriate employees' unit normally does not become operative until a request to bargain is made by the representative at a time when it has majority status in the unit.[69] Such a request is required even where the employer has engaged in hostile conduct, as long as the employer has not clearly expressed its intention to refuse recognition to the majority representative should demand for recognition be made.[70]

The request to bargain need not be made in any particular manner. But it must be "clear and unequivocal" and must inform the employer of the employees' desire to enter into bargaining negotiations through their designated bargaining agent.

During fiscal 1953, the Board in several cases made clear its position that an ambiguous bargaining request, which may reasonably be taken to refer either to a larger or a smaller appropriate unit, does not support refusal-to-bargain charges unless the union had majority status in either unit.[71] The Board has also pointed out that, in the face of a bargaining request which is not clear as to the scope of the unit, it is not incumbent on the employer to resolve the ambiguity in the request and that it is therefore immaterial that the employer did not seek a clarification of the union's intention prior to the refusal to bargain.[72]

c. Suspension of Duty To Bargain

While the duty to bargain is a continuing duty, it may be suspended because of the intervention of certain events.

In a case of first impression, the Board announced during the past year that the duty of an employer to honor a well-founded bargaining request may be suspended during the continuance of conduct which

[67] See *Marshall and Bruce Co*, 75 NLRB 90, 96, *Clifton Lumber Co., Inc*, 82 NLRB 296, 299–300; *Atlanta Metallic Casket Co*, 91 NLRB 1225, 1237; see also Seventeenth Annual Report, p 161.

[68] *Squirrel Brand Co, Inc.*, 104 NLRB No. 41

[69] See, for instance, *Home Dairies Co.*, 105 NLRB No. 40, compare *Burton-Dixie Corp*, 103 NLRB No. 94.

[70] See *Kellow-Brown Printing Co.*, 105 NLRB No. 11, distinguishing *Old Town Shoe Co*, 91 NLRB 240.

[71] *Smith Transfer Co., Inc*, 100 NLRB 834; *Parker Brothers and Co, Inc.*, 101 NLRB 872; *Cary Lumber Co.*, 102 NLRB No. 49; see also *C. L. Bailey Grocery Co*, 100 NLRB 576, Members Houston and Styles dissenting.

[72] See the *Cary Lumber* and *Bailey Grocery* cases, cited in the preceding footnote.

indicates a lack of fair dealing on the part of the employees' representative.[73] A slowdown to compel the employer to accede to bargaining demands constitutes such conduct, the Board held. Noting that a slowdown is not a form of concerted activity which is protected by the act,[74] the Board said:

> [B]y engaging in the slowdown, the Union subjected the Respondent to a partial strike designed to bring pressure for acceptance of its terms. The Union was unwilling to choose between working under the existing terms of employment and engaging in a total strike with the loss of wages and the risk of lawful replacement incident thereto. Instead it engaged in a harassing tactic irreconcilable with the Act's requirement of reasoned discussion in a background of balanced bargaining relations upon which good faith bargaining must rest. Accordingly, whether or not the Respondent exercised its right to discharge the participants, we believe the authorized slowdown negated the existence of honest and sincere dealing in the Union's contemporaneous request to negotiate. In these circumstances, the Respondent was not required to indulge in the futile gesture of honoring the Union's request. For the foregoing reasons, we find that the Respondent's normal obligation to bargain was suspended, and that it did not violate Section 8 (a) (5) of the Act by refusing to bargain during the period of slowdown.[74a]

The employer's continuing duty to bargain with an incumbent representative is also suspended during the pendency of the representation petition of a rival union which seeks to dislodge the incumbent. The Board pointed out during the past year that, since continued recognition of the incumbent under such circumstances would involve the risk of unfair labor practice charges should the rival petition be found to have raised a "real question concerning representation," [75] it would be unfair to require the employer to bargain at his peril during the pendency of a timely petition.[76] However, naked rival representation claims unsupported by subsequent petitions do not relieve an employer of his obligation to bargain with the incumbent representative.[77]

d. Imposing Improper Conditions

The employer's statutory duty to bargain is violated if, as a condition of bargaining, he insists that the union forego rights guaranteed by the act. Thus, the Board in a recent case pointed out that an employer may not condition an agreement upon the union's acceptance of a clause requiring non-Communist affidavits broader than those

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[73] *Phelps Dodge Copper Products Corp*, 101 NLRB 360; noted in Seventeenth Annual Report, p 178.

[74] *Elk Lumber Co*, 91 NLRB 333, and cases cited there; *International Union, U. A. W. v. Wisconsin Employment Relations Board,* 336 U S. 245

[74a] *Phelps Dodge Copper Products Corp., supra.*

[75] *Midwest Piping and Supply Co., Inc*, 63 NLRB 1060; *William Penn Broadcasting Co*, 93 NLRB 1104

[76] *National Carbon Division, Union Carbide and Carbon Corp.,* 104 NLRB No. 80, amending 100 NLRB 689.

[77] *Square D Company,* 105 NLRB No. 25.

provided for in section 9 (h) of the act, where the employer's insistence upon the affidavit clause was prompted by a desire never to reach an agreement with the union "rather than what we agree would be a commendable desire to combat subversive influences." [78] The Board made it clear that it may not be unreasonable for an employer, who was otherwise bargaining in good faith, to insist on a similar affidavit clause "in a situation where the statute could not help much against suspect unions." The Board added that careful consideration and great weight would also be given to an employer's assertion that his refusal, after good-faith negotiations, to execute an agreement with a union stemmed from a Defense Department directive based on security factors.

B. Unfair Labor Practices of Unions

The types of conduct by labor organizations which the amended act forbids as unfair labor practices are listed in subsection (b) of section 8. This section also prohibits agents of labor organizations from engaging in such practices. It does not place any prohibitions upon individual employees except when they act as agents of a labor organization. However, an individual loses his status as an employee if he engaged in a strike before the expiration of the 60-day waiting period required by section 8 (d).

1. Restraint or Coercion of Employees

Section 8 (b) (1) (A) makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce employees in the exercise of the rights guaranteed in section 7." Section 7 guarantees employees the right to engage in concerted activities directed toward self-organization or collective bargaining and also the right to refrain from such activities except under a lawful union shop.[79]

The Board has held that the mere execution and retention of an illegal union-security agreement carries an immediate threat of loss of employment and subjects the contracting union to liability under section 8 (b) (1) (A). In one case during fiscal 1953, a majority of the Board also took the view that it was a violation of section 8 (b) (1) (A) for a union to require, as a condition to membership in good standing under a union-security agreement, that all employees pay up back dues which accrued before the effective date of the agreement.[80]

[78] *Square D Company*, 105 NLRB No 25.

[79] For prior Board holdings as to the general applicability and scope of section 8 (b) (1) (A), see Seventeenth Annual Report, pp 180–185; Sixteenth Annual Report, pp 206–211

[80] *Namm's Inc*, 102 NLRB No 45, Member Murdock dissenting.

This requirement, according to the majority, necessarily conveyed the implied threat to the employees that they risked discharge if they failed to comply.

However, the Board held during the past year that a union could lawfully contract that an employer deal only with such other employers as employ members of the contracting union.[81] In the Board's opinion, "for an employer to refrain, or agree to refrain, at a union's request, from doing business with another employer with whom he has no current contractual relations or business dealings involves no unlawful interference, restraint, or coercion as to the employees of the nonunion firm within the contemplation of Section 8 (a) (1) or 8 (b) (1) (A)."

2. Illegal Secondary Strikes and Boycotts

The act's prohibitions of secondary strikes and boycotts are contained in subsections A and B of section 8 (b) (4). Subsection A contains the general prohibitions against such strikes and boycotts. Subsection B forbids a strike or boycott action against one employer for the purpose of forcing another employer to recognize or bargain with a union which has not been certified by the Board. Both subsections specifically forbid a union or its agent to engage in such strikes or boycotts, or "to induce or encourage employees" to engage in them.[82]

a. Scope of Prohibition

In applying the secondary boycott provisions of the act, the Board must determine whether the parties involved were "labor organizations," "employers," "persons," or "employees" as defined in the act. Following these definitions, the Board dismissed a complaint alleging that a union violated section 8 (b) (4) (A) by inducing a strike which had for its purpose to force the U. S. Army Corps of Engineers to cease doing business with another employer.[83] Reaffirming the principles announced in the *Schneider* case[84] the Board held that the Army Corps, as a Federal Government instrumentality, was not an "employer" or "person" within the meaning of section 8 (b) (4) (A) and was therefore excluded from the section's operation.

Secondary action to be in conflict with the statutory prohibition must have for its purpose one of the objects specified in section 8 (b) (4) (A) or (B). However, as the Board has repeatedly pointed out,

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[81] *Heating, Piping & Air Conditioning Contractors*, 102 NLRB No. 167

[82] For further discussion of such illegal secondary strikes and boycotts, see Seventeenth Annual Report, pp 189–193, and Sixteenth Annual Report, pp. 223–228 See also chapter VI, Injunction Litigation, beginning at p 84 of this Report

[83] *IBEW, Local 5 A F L (Sprys Electric Co)*, 104 NLRB No. 147

[84] 87 NLRB 79, 89 NLRB 221.

liability attaches even though the union's action may have been motivated by both a lawful and an unlawful objective.[85]

b. Situs of Dispute Test

The presence of a violation of section 8 (b) (4) (A) often requires a determination whether the conduct charged was "secondary," in that it was directed against a "neutral" or "wholly unconcerned" employer, or whether it was protected primary action in furtherance of a direct dispute with an employer. The question whether union action is prohibited secondary action depends at times on the place where it occurs in relation to the primary dispute which it is intended to further. Ordinarily, a union's conduct is held to be secondary and prohibited if it occurs at the premises of a secondary employer and calls for action of employees of the secondary employer away from the primary dispute's actual site. On the other hand, picketing confined to the primary employer's premises is lawful even though it has the traditional objective to induce third persons from entering the premise for business reasons.[86]

Picketing of a neutral employer's place of business for the sole purpose of inducing consumers not to buy the primary employer's product has been held not to be unlawful under 8 (b) (4) (A). Thus, the Board held that a union did not violate the secondary boycott provisions of the act by the use of picket signs informing the public that the picketed store sold the products of an employer with whom the union had a dispute and whose employees were on strike, and urging the public not to buy the particular product.[87] However, where the picketing union extends its appeal to the employees of the neutral employer, or employees of his suppliers, section 8 (b) (4) (A) is violated.[88]

c. Product Boycotts

The Board early rejected the view that section 8 (b) (4) (A) did not prohibit the so-called "product boycott." This type of secondary boycott is aimed at forcing neutral employers to cease buying or using the product of a nonunion manufacturer with whom the boycotting union has a dispute.[89]

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[85] See *Los Angeles Building and Construction Trades Council (Calumet & Hecla, Inc.)*, 105 NLRB No 136, and earlier cases cited there.

[86] See Sixteenth Annual Report, pp 192–193; see also Fifteenth Annual Report, pp. 130–142.

[87] *Crowley's Milk Co.*, 102 NLRB No 102.

[88] See *Bakery Drivers Local Union No. 276 (Capital Service, Inc.)*, 100 NLRB 1092. See also order issued July 13, 1953, denying motion to modify above decision and order

[89] See Fourteenth Annual Report, p 93 The Board has also held that it is no defense to secondary boycott charges that the union intended to bring about only a temporary cessation of existing business relations. See Sixteenth Annual Report, p 223 Compare the trial examiner's ruling in *Teamsters Local No. 135 (Cooper)*, 101 NLRB 1284, that section 8 (b) (4) (A) is violated even where a union does not cause complete cessation of business relations between the employers involved and offers an alternative method of operations.

During fiscal 1953, a majority of the Board also held that a product boycott violates section 8 (b) (4) (A) even though there is no immediate dispute between the boycotting union and the producer of the product involved.[90] The legislative history of section 8 (b) (4) (A), in the view of the majority, indicates that its prohibition is to apply in all cases where "a union causes employees to refuse to work on the products of any producer *other than their employer* because that product is . . . nonunion, and it does so with the object of causing their employer to cease using the product of, or doing business with, the other producer." The fact that the boycotted shingles in this case were produced in Canada was held immaterial because the Board has jurisdiction over all unfair labor practices that occur within the United States and affect interstate commerce.

d. "Hot Cargo" Contracts

Section 8 (b) (4) (A) has been held not to apply to the refusal to handle "unfair" goods or freight where the refusal accords with an existing collective agreement in which the employees' bargaining agent reserved to itself the right to refuse to handle struck or "unfair" goods. Reconsidering the principle announced, and judicially approved, in *Conway's Express*,[91] the Board during the past year reiterated its conclusion that the consent of a neutral employer in such situations precludes the employees' exercise of their contractual privilege from constituting a "strike" or "refusal" to work within the meaning of section 8 (a) (4) (A).[92] Moreover, the Board held in this case that a union is protected against unfair labor practice charges whether its contract reserves to it the right to refuse to handle "hot" goods, as in the *Conway* case, or merely provides that refusal to handle such goods shall not be deemed a breach of contract or cause for discharge, as in the *Pittsburgh* case. The Board made it clear, on the other hand, that neither of the two cases decided the question of whether a union may legally strike to compel an employer to agree to a "hot cargo" clause.

In the absence of a specific previous agreement contemplating nonhandling of "hot" goods, however, the *Conway* doctrine does not apply. Thus, the Board during fiscal 1953 affirmed a trial examiner's conclusion that a breach of contract by one employer could not justify an affiliate of the contracting union in preventing the employer's goods from being handled by the employees of another employer who had not contractually agreed to such a refusal.[93] In another case, the

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[90] *Washington-Oregon Shingle Weavers' District Council (Sound Shingle Co.)*, 101 NLRB 1159, Member Murdock dissenting

[91] 87 NLRB 972, enforced 195 F. 2d 906 (C. A. 2); Fifteenth Annual Report, pp. 143–144; Seventeenth Annual Report, pp. 244–245.

[92] *Teamsters Local Union No. 135 (Pittsburgh Plate Glass Co.)*, 105 NLRB No. 120.

[93] *General Warehousemen & Employees Union, Local 636 (Roy Stone Transfer)*, 100 NLRB 856.

Board adopted the trial examiner's ruling that mere acquiescence by an employer in the union's nonhandling practice is not the equivalent of contractual consent and does not therefore preclude an 8 (b) (4) (A) finding in such situation.[94]

e. Inducement or Encouragement of Employees

Another question which arises from time to time is whether a union charged with violating section 8 (b) (4) (A) addressed its action to "employees" or directly to the secondary employer. If it is found that secondary support was obtained through communication with supervisory, rather than rank-and-file, employees, or with other employer representatives, the Board dismisses the charges since the act does not prohibit a union from inducing employers to cease doing business with one another.[95]

3. Jurisdictional Disputes Under 8 (b) (4) (D)

Section 8 (b) (4) (D) forbids a labor organization to engage in a so-called "jurisdictional strike" over the assignment of work tasks "to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class."

An unfair labor practice charge under this section must be handled differently from a charge alleging any other type of unfair labor practice. Section 10 (k) requires that the parties to a "jurisdictional dispute" be given a period of 10 days, after notice of the filing of charges with the Board, to adjust their dispute. 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 the 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." A complaint alleging violation of section 8 (b) (4) (D) may issue only when there is a failure to comply with the Board's determination of the underlying dispute.

a. Determination of Disputes

The Board has construed section 8 (b) (4) (D) as requiring it to determine not only disputes between competing labor organizations but also disputes involving groups of unorganized employees.[96]

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[94] *Teamsters Local No. 135 (Cooper)*, 101 NLRB 1284

[95] See Sixteenth Annual Report, pp. 224–225; Fifteenth Annual Report, p 147. See also *Sheet Metal Workers, Local 28 (Ferro-Co Corp)*, 102 NLRB No 166, compare *General Warehousemen & Employees Union, Local 636 (Roy Stone Transfer)*, 100 NLRB 856

[96] Sixteenth Annual Report, pp 230–231

On the other hand, when section 8 (b) (4) (D) charges are filed the Board is empowered to determine the underlying dispute only if it concerns the assignment of work. During the past year, a disagreement over contract provisions requiring the struck employer to select only subcontractors having collective-bargaining agreements with the striking union was also held not to involve a work-assignment dispute.[97] The Board observed that the disagreement under the circumstances here could not be equated with a *present* demand for the assignment of work such as is contemplated by section 8 (b) (4) (D).

In a recent case, the Board held that an uncertified union is entitled to work covered by a collective-bargaining contract notwithstanding a subsequent reallocation of the work by the employer under a contract with a rival union.[98] The Board said:

> To fail to hold as controlling the contractual presumption of the work in dispute would be to encourage disregard for observance of binding obligations under collective-bargaining agreements and invite the very jurisdictional disputes Section 8 (b) (4) (D) is intended to prevent

4. Union Responsibility for Unfair Labor Practices

In determining the responsibility of labor organizations for unfair labor practices under section 8 (b), the Board continues to apply the rules of agency first outlined in 1949 in the *Sunset Line and Twine* case.[99] Thus, a union will be held liable not only for acts expressly authorized but also for acts in which it acquiesced, and for all acts of its agents while acting within the general scope of their employment.

In assessing liability for unfair labor practices, the Board frequently must also determine whether affiliated unions are jointly responsible for acts which are prohibited by section 8 (b). In this type of case, the Board's determination usually depends on the actual working relationship between the organizations involved.[1]

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[97] *District No 9, International Association of Machinists (Anheuser-Busch)*, 101 NLRB 346

[98] *National Association of Broadcast Engineers*, 105 NLRB No 59 See also the following cases in which the Board determined disputes during the past year *Meat Cutters Local 556 (Safeway Stores)*, 101 NLRB 181; *United Mine Workers, Local Union 12050, District 50 (Equitable Gas Co)*, 101 NLRB 425, *Broadcast Engineers and Technicians, CIO (NBC)*, 103 NLRB No 55, *Broadcast Engineers Local 1212, IBEW (CBS)*, 103 NLRB No 139, *International Longshoremen's Association*, 101 NLRB 77; *Pile Drivers Local Union No. 34, AFL*, 105 NLRB No 64

[99] 79 NLRB 1487, see Fourteenth Annual Report, pp 104–106

[1] For recent cases involving liability questions see *Seafarers' Union, AFL (Hammermill Paper Co)*, 100 NLRB 1176, *United Mine Workers Local 6281 (Consolidation Coal Co)*, 100 NLRB 392 (Member Murdock dissenting in part) *Gimbel Brothers, Inc*, 100 NLRB 870, *Carpenters Local 55 (Grauman Co)*, 100 NLRB 753; *General Warehousemen & Employees Union, Local 636 (Roy Stone Transfer Corp)*, 100 NLRB 856; *Los Angeles Building Trades Council, AFL (Standard Oil Co)*, 105 NLRB No 135, footnote 21, *Cement Masons Local No 555 (Anderson-Westfall Co)*, 102 NLRB No. 148 (Member Murdock dissenting on this point) *Longshoremen's Local 10 (Pacific Maritime Association)*, 102 NLRB No 87

IV

Supreme Court Rulings

Supreme Court decisions were handed down in seven cases involving questions of immediate importance in the administration of various provisions of the act. Two cases concerned the Board's construction of the section prohibiting certain "featherbedding" practices of unions. Another case dealt with the legality of the discharge of an employee for refusing to cross a picket line in the course of his work. In three cases, the issue was whether a union, in order to have access to the Board's remedial processes, must have the non-Communist affidavits required by section 9 (h) on file at the same time that it files unfair labor practice charges. The other two cases related to back pay in discrimination cases—one dealing with the propriety of the Board's present method of computing back pay on a quarterly basis and the other with the status of back-pay claims against a bankrupt employer.

In two cases, not arising under the National Labor Relations Act, the Board participated as *amicus curiae* because it believed that important questions were presented as to the Board's exclusive power to remedy and prevent unfair labor practices under the act.

1. Featherbedding

The Supreme Court sustained the Board's conclusion that the featherbedding ban in section 8 (b) (6), which prohibits exactions by a union "for services which are not performed or not to be performed," did not prohibit either the "bogus" typesetting practice common in the printing industry [1] or a union's demand for employment of a local orchestra by a theater which did not want the orchestra.[2]

In the printing case, majority of the Court said:

> The Act . . . limits its condemnation to instances where labor organizations or its agents exact pay from the employer in return for services not performed or not to be performed. Thus where work is done by an employee, with the

[1] *American Newspaper Publishers Association*, 345 U. S. 100, Chief Justice Vinson and Justices Douglas and Clark dissenting

The "bogus" practice involves the resetting in type of matter which was originally reproduced for actual publication by stereotype matrices. This "bogus" type ordinarily is thrown away without being used

[2] *Gamble Enterprises, Inc.* v. *N. L. R. B.*, 345 U S 117, Chief Justice Vinson and Justices Jackson and Clark dissenting.

employer's consent, a labor organization's demand that the employee be compensated for time spent in doing the disputed work does not become an unfair labor practice. The transaction simply does not fall within the kind of featherbedding defined in the statute. . . . Section 8 (b) (6) leaves to collective bargaining the determination of what, if any, work including bona fide "made work" shall be included as compensable services.

The Supreme Court thus agreed with the Seventh Circuit[3] and the Board that section 8 (b) (6) did not prohibit the International Typographical Union from requiring that regular composing-room employees be paid for setting "bogus" type which was not ordinarily intended to be used.[4] Such "bogus" setting was held to be a service actually performed.

The same test was applied in the *Gamble* case. There, a Court majority upheld the Board's view that section 8 (b) (6) was not violated by the Musicians Union's insistence that a theater operator promise to employ a local orchestra on certain occasions in return for the union's consent to local appearances of traveling orchestras, even though the theater did not want the local orchestra. The majority of the Court thereby rejected the Sixth Circuit's view[5] that section 8 (b) (6) was applicable even though the union requested actual employment and not merely "standby" pay for its members.[6] The Supreme Court said:

We are not dealing here with offers of mere "token" or nominal services. The proposals before us were appropriately treated by the Board as offers in good faith of substantial performances by competent musicians. There is no reason to think that sham can be substituted for substance under § 8 (b) (6) any more than under any other statute. Payments for "standing-by," or for the substantial equivalent of "standing-by", are not payments for services performed, but when an employer receives a bona fide offer of competent performance of relevant services, it remains for the employer, through free and fair negotiation, to determine whether such offer shall be accepted and what compensation shall be paid for the work done.

2. Effect of No-Strike Agreement on Refusal To Cross Picket Line

One case before the Supreme Court involved the question whether or not an employer violated section 8 (a) (3) of the act by discharging an employee because he refused to perform his regular duties to the extent that performance would have compelled him to enter the

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[3] 193 F. 2d 782, Seventeenth Annual Report, pp. 245–246

[4] The Court's decision discusses in detail the origin and purpose of "setting bogus" in the newspaper industry

[5] 196 F. 2d 61, Seventeenth Annual Report, p. 246.

[6] The majority of the Court in the *American Newspaper* case noted that the actual performance test had likewise been applied by the Second Circuit in determining the applicability of section 8 (b) (6) in *Rabouin* v. *N. L. R. B.*, 195 F. 2d 906, 912–913; see Seventeenth Annual Report, p. 246.

premises of a customer of his employer through a picket line of a union other than his own.[7] Without reaching the basic question of "the respective rights of employer and employee regarding picket lines," a majority of the Supreme Court[8] upheld the reversal by the Second Circuit[9] of the Board's finding of a violation. The Supreme Court held that the discharge was justified under the no-strike and dispute adjustment provisions of the collective-bargaining agreement between the employer and the discharged employee's union.

The Board had found that this contract was not available to the employer as a valid defense because it contained illegal union-security provisions. However, the majority of the Court held that, even if the Board could prohibit continued adherence to the contract in the future, it should not, on the facts involved, have disregarded it entirely in determining the legality of the employee's discharge. The Court noted that the invalid provisions of the contract were severable and had been severed through appropriate saving and separability clauses.[10]

The dissenting members of the Court, however, believed that the Board's judgment regarding the validity of the contract should not be disturbed and that, in any event, the contract could not be read to justify the complaining employee's discharge. In view of what it considered a failure of the employer's contractual defense, the minority agreed with the Board's conclusion that the employee's discharge was an unfair labor practice. The minority noted that Congress, rather than curtailing the traditional practice of union men to respect picket lines, had actually sanctioned the practice in the proviso to section 8 (b) (4) of the amended act.

3. Non-Communist Affidavit Requirement

In *Dant & Russell* and two companion cases,[11] the Supreme Court unanimously upheld the Board's view that section 9 (h) does not require that a complaining union have non-Communist affidavits on file at the time it files unfair practice charges, but rather that an order remedying such practices may issue if the union has filed the affidavits before the Board's complaint issues. Rejecting the lower court's conclusions, the Supreme Court observed that there were no definitive

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[7] *N L R B v Rockaway News Supply Company, Inc*, 345 U S 71

[8] Justices Black, Douglas, and Minton dissenting

[9] 197 F 2d 111 Seventeenth Annual Report p 220

[10] As to the Board's policy on saving and separability clauses which fail to suspend the operation of illegal union-security provisions, see Seventeenth Annual Report, pp 43–44 Sixteenth Annual Report pp 68–69 Fifteenth Annual Report, p 62 Compare *Red Star Express Lines v N L R B*, 196 F 2d 78 (C A 2), and *Katz v N L R B*, 196 F 2d 411 (C A 9), Seventeenth Annual Report pp 228–229.

[11] *N L. R. B v Dant, d/b/ Dant & Russell, Ltd*, 344 U S 375, *N L R B v American Thread Co*, 344 U S 924, *N L R B v Nina Dye Works Co, Inc*, 344 U. S 924.

legislative comments indicating that, contrary to the specific language of section 9 (h), Congress intended affidavits to be filed before the filing of charges. The Supreme Court also noted that its *Highland Park* decision [12] did not, as held by the lower court, construe section 9 (h) that way. The only issue decided in the *Highland Park* decision, the Supreme Court stated, was that parent federations, such as the C. I. O., are organizations which must comply with section 9 (h) as a prerequisite to full compliance by their affiliates. As to the Board's rules [13] requiring execution of affidavits "contemporaneously with the charge," subject to a 10-day or longer grace period, the Court noted that these rules represented a direction rather than an interpretation of section 9 (h) by the Board. The Court found also that the lower court's construction would present practical difficulties, in view of the fact that any construction of section 9 (h) would seem to apply also to section 9 (f) and (g), which require filing of annual financial reports. The Court said:

> As a practical matter, election of new officers, changes in organizational structure, difficulties and delays in auditing financial statements or in obtaining information with respect to the numerous details which § 9 (f) and (g) requires, makes compliance at a given moment, or continuous compliance, a matter of happenstance. . . . Such normal noncompliance at the time of filing a charge should not work to frustrate the Act's purpose of remedying unfair labor practices committed against unions which do have leadership willing to comply.[14]

4. Computation of Back Pay

In the *Seven-Up Bottling* case, a majority of the Court held that the Board's discretionary power to devise remedies for unlawful discrimination is sufficiently broad to permit the Board to change its method of computing back pay to a basis of calendar quarters.[15] The Board formerly had computed back pay on the basis of the entire period between the discrimination and the offer of reinstatement.

In the view of the Court majority, the Board had properly exercised its statutory discretion in abandoning the old method because experience had shown that victims of discrimination were not adequately protected by it. The Court took note of the adverse effect of the old back-pay formula on the companion remedy of reinstatement, as the Board had done in announcing the new formula in the *Woolworth* case. For example, where a discharged employee had obtained a job that paid more than his old one, the employer could reduce the back-

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[12] *N. L. R. B.* v. *Highland Park Mfg. Co.*, 341 U. S. 322, Sixteenth Annual Report, p. 251

[13] Rules and Regulations, Series 6, as amended, sec. 102.13; Statements of Procedure, sec. 101 3

[14] *N. L. R. B.* v. *Highland Park Mfg. Co., supra.*

[15] *N L. R B* v. *Seven-Up Bottling Co.*, 344 U. S 344, Chief Justice Vinson and Justices Douglas and Minton dissenting.

The Board announced the new quarterly formula in *F. W. Woolworth Co.*, 90 NLRB 289.

pay liability simply by delaying the offer of reinstatement as long as possible.

The only recourse of an employee so situated was to waive his reinstatement rights, and thus terminate the running of back pay, in order to prevent its continuing reduction. Approving the Board's action, the Court said:

> It is not for us to weigh these or countervailing considerations. Nor should we require the Board to make a quantitative appraisal of the relevant factors, assuming the unlikely, that such an appraisal is feasible. As is true of many comparable judgments by those who are steeped in the actual workings of these specialized matters, the Board's conclusion may "express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions . . ."; and it is none the worse for it. *Chicago, Burlington & Quincy R. Co.* v. *Babcock*, 204 U. S. 585, 598. It is as true of the Labor Board as it was of the agency in the Babcock case that "(t)he board was created for the purpose of using its judgment and its knowledge." Ibid.
>
> It will not be denied that the Board may be mindful of the practical interplay of two remedies, back pay and reinstatement, both within the scope of its authority. Surely it may so fashion one remedy that it complements, rather than conflicts with, another. It is the business of the Board to give coordinated effect to the policies of the Act.

Further, in the majority's opinion, the quarterly formula is not invalid merely because its underlying considerations might not apply in each case, since, like the prior system, it can be adapted by the Board to varying circumstances prior to the isssuance of an order in a particular case.[16]

The majority of the Court rejected the view that the reenactment in the Taft-Hartley Act of the Wagner Act's back-pay provisions, at a time when the Board adhered to its pre-*Woolworth* back-pay formula, precluded a later change in the method of computing back pay.

According to the majority, Congress by its reenactment could be held to have done no more than to approve the Board's then current back-pay calculation practice, assuming that Congress had notice thereof. Had Congress intended to assure the continuance of the Board's practice, Congress, according to the majority of the Court, would have had to change the act's language so as to take from the Board the discretionary power to mold remedies suited to practical needs.

In another case,[17] the Supreme Court agreed with the conclusion of the First Circuit Court of Appeals[18] that in case of a back-pay

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[16] Insofar as Seven-Up objected to the order because of the seasonal nature of its business, the Court held that this defense, not having been urged before the Board, was now barred in view of the express provisions of section 10 (e) of the act. The company's exception that the trial examiner's recommendations as to the remedy "were contrary to, and unsupported by, the evidence and contrary to law" was not sufficiently specific under *Marshall Field & Co* v *N. L. R B.*, 318 U. S. 253, the Court pointed out

[17] *Nathanson* v. *N. L. R. B*, 344 U. S. 25.

[18] 194 F. 2d 248.

award against a bankrupt employer the Board occupies the position of a creditor and may prove the back-pay claim as a debt founded upon an "implied" contract under the terms of the Bankruptcy Act.[19] The Court also agreed that, since the "fixing of back pay is one of the functions confided solely to the Board," the liquidation of a back-pay award in a bankruptcy proceeding must be referred to the Board and cannot be effected by the trustee or the bankruptcy court. The Court pointed out that the rule whereby the bankruptcy court normally supervises the liquidation of claims is not inflexible and should be suspended pending the administrative determination of matters entrusted by Congress to an administrative agency.

However, a majority of the Supreme Court[20] disagreed with the court of appeals' conclusion that a back-pay claim is entitled to priority under the terms of the Bankruptcy Act as a debt owing to the United States.[21] The Supreme Court majority observed that the Bankruptcy Act specifically limits priority to certain wage claims on the basis of amount and time of accrual and that, in the absence of a clear congressional purpose, there was no statutory justification for extending priority to other wage claims such as back-pay awards.

5. Other Supreme Court Rulings

The Board participated in one case[22] as *amicus curiae* in order to advise the Court that, depending upon its views on the issues presented, the subject matter involved may be one for initial determination by the Board rather than the United States district court where the case originated. Here, a group of employees sought relief against their collective-bargaining representative which had secured a contractual agreement that the employer determine seniority by giving credit for both preemployment and post-employment military service. The complainants asserted, among other things, that this agreement resulted in discrimination against one class of veterans in favor of another class, and that the contracting union had thus failed to accord equal representation to all employees in the bargaining unit as it was bound to do under prior Supreme Court rulings.[23] The Board pointed out to the Court that if the union's action were held to violate its duties as exclusive representative, a further issue would arise as to whether the conduct also constituted an unfair labor practice in that it encroached on rights guaranteed by the National Labor Relations Act, an issue which the Board had exclusive jurisdiction to determine

[19] 11 U S. C. Sec. 103 (a) (4).
[20] Justices Jackson and Black dissenting.
[21] Section 63 (a) (4) ; 11 U. S. C. Sec. 103 (a) (4)
[22] *Ford Motor Co* v. *Huffman*, 345 U. S. 330
[23] *Tunstall* v. *Brotherhood of Locomotive Firemen*, 323 U. S. 210; *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192; and see *Wallace Corp.* v. *N. L. R. B.*, 323 U. S. 248; Tenth Annual Report, pp. 57–58

in the first instance. The Court found it unnecessary to resolve these questions because of its view that the union had not, as found by the Sixth Circuit, exceeded its authority as the certified representative of the bargaining unit concerned.[24] The Court observed that the statutory authority of an exclusive bargaining representative under sections 7 and 9 (a) of the National Labor Relations Act in matters of "mutual aid and protection" and "other conditions of employment" was broad enough to cover terms of seniority, especially where those terms reflected, and only slightly extended, an existing statutory policy to give credit for military service.[25]

The issue in a second case before the Supreme Court which prompted the Board to file an *amicus curiae* brief concerned the power of a State court to enjoin peaceful picketing activities for purposes prohibited by the provisions of section 8 (b) (4) (A) and (B) of the National Labor Relations Act.[26] The Board here submitted its position that the amended national act provides an exclusive remedy for the redress of conduct defined as unfair labor practices and precludes a concurrent State jurisdiction in suits by private parties. No decision on the merits was rendered in this case because a majority of the Court believed that the State court injunction was not a final order and that certiorari had been improvidently granted.

[24] See footnote 4 of the decision, 345 U. S., at 332: "Our decision interprets the statutory authority of a collective-bargaining representative to have such breadth that it removes all ground for a substantial charge that [respondent] International, by exceeding its authority committed an unfair labor practice."

[25] Selective Training and Service Act of 1940, 50 U. S. C. App. Sec. 308.

[26] *Montgomery Building & Construction Trades Council v. Ledbetter Erection Co.*, 344 U. S. 178.

V

Enforcement Litigation

In the course of the Board's enforcement litigation during fiscal 1953, the courts of appeals reviewed orders in 131 cases.[1]

The more important issues decided by the courts of appeals during the past year are discussed in the following chapter.

1. Jurisdiction

The validity of Board orders in a number of cases was again challenged during the past year on the ground that the enterprises involved were local in character and that the Board, therefore, was without jurisdiction, or should not have exercised its discretion to assert jurisdiction.

a. Automobile Dealers

Assertion of jurisdiction by the Board over local automobile sales and service agencies was approved during the past year by the Ninth Circuit,[2] as it had been previously approved by the First and Tenth Circuits.[3] The court in *Howell Chevrolet* held that the issue was controlled by its decision in the *Townsend* case [4] which also involved an automobile dealer. In the court's view, it was immaterial that in the present situation the Chevrolet dealer purchased all vehicles from a local assembly plant, while the Hudson dealer in the former case acquired all automobiles from a sales agency which had the completed cars shipped into the State from outside points. This, the court said, was but a difference of degree which did not affect the jurisdictional issue. The court also agreed with the Board's conclusion that the General Motors dealers' agreement—or franchise—under which the employer operated made the employer "an integral part of that corporation's national system of distribution," so that its operations affected commerce within the meaning of the act.[5] The court pointed

[1] For statistical breakdown of court actions on these cases, see table 19, appendix A.

[2] *N. L. R. B.* v. *Howell Chevrolet Co*, 204 F. 2d 79 (C. A. 9), followed in *N. L R. B.* v. *Ray Brooks*, 204 F. 2d 899 (C. A. 9).

[3] See Seventeenth Annual Report, p. 215.

[4] *N. L. R. B.* v. *Townsend*, 185 F. 2d 378.

[5] The court quoted the like conclusion of the First Circuit in *N. L. R. B.* v. *Ken Rose Motors*, 193 F. 2d 769; Seventeenth Annual Report, p. 215.

out that the Board's conclusion had "warrant in the record and a reasonable basis in law" [6] and should therefore not be disturbed.

The Ninth Circuit in the *Howell* case specifically rejected the view expressed by the Sixth Circuit during the past year [7] that sales agreements between manufacturers selling on a national scale and their local dealers do not establish the integration requisite to the Board's jurisdiction because they do not make the dealers the manufacturers' employees or agents. According to the Ninth Circuit, jurisdiction should not be made to depend upon the existence of such a contractual relationship but upon how the arrangement between manufacturer and dealer actually works. In the court's opinion, jurisdiction must be found if any widespread application of unfair labor practices charged might well result in substantially affecting the interstate flow of materials.[8]

In view of the prevailing conflict of opinion, the Board has petitioned the Supreme Court to issue a writ of certiorari and to resolve the conflict.

b. Construction Industry

The Ninth Circuit during fiscal 1953 also approved the Board's method of determining jurisdiction in the construction field. Thus, in one case,[9] the court held that the Board's present jurisdictional standards [10] furnished a proper basis for the exercise of jurisdiction over a contractor, both because of the amount of services furnished to public utilities and an interstate oil company, and because of the amount of work performed under a subcontract with an interstate contractor.[11] The court further pointed out that the employer could not successfully claim that his operations under the subcontract be classed as a separate, local job, when those operations were inseparably integrated with the interstate contractor's enterprise and thus had, in themselves, a substantial effect on interstate commerce. The court concluded that, unless the Board's jurisdiction were recognized in such a situation, it would be possible, through resort to subcontracting, to remove from the act's operation part of an enterprise while the whole of it would be clearly subject to the act.

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[6] The court quoted the Supreme Court's ruling in *N. L. R. B* v. *Hearst Publications*, 322 U S. 111, 131.

[7] *N. L R. B.* v *Bill Daniels, Inc*, 202 F. 2d 579, rehearing denied, March 17, 1953.

[8] Citing *N L. R. B.* v. *Denver Building Council*, 341 U S 675, 684

[9] *N. L. R B* v. *George W Reed and Int'l Hod Carriers, Bldg. & Common Laborers Local 36, AFL*, 206 F. 2d 184 (C A. 9), as amended. See also *N. L. R. B.* v. *J. R Cantrall Co*, 201 F. 2d 853 (C. A. 9), cert denied 345 U S. 996

[10] See Seventeenth Annual Report, pp. 15–39.

[11] The court noted that the Board's jurisdictional standards for the construction industry could properly be considered even though the unfair labor practices in the case occurred before their announcement. As pointed out by the court, this did not amount to a retroactive application of the standards, since the Board had begun to exercise its jurisdiction over the industry before the commission of the acts with which the employer was charged.

In another case involving a construction firm, the Ninth Circuit also reaffirmed the principle that it is within the exclusive discretion of the Board to determine whether assertion of jurisdiction over a particular industry will effectuate the policies of the act.[12] In the court's opinion, the exercise of jurisdiction in the construction industry is not an abuse of that discretion. Whatever special difficulties may arise from the act's application to the industry, according to the court, are matters to be dealt with by Congress.

c. Other Industries

The Board's jurisdiction was affirmed in the case of a local corporation whose operations in furnishing protective services to interstate concerns were closely integrated with similar operations of sister companies in other States.[13] All of these local service companies were subsidiaries of a common holding company to which they made annual payments for certain management services furnished by one of the several subsidiaries. The court agreed with the Board's conclusion that the company was subject to the Board's jurisdiction because of (1) the receipt of materials from out-of-State sources, (2) the effect of its services on subscribers engaged in interstate commerce, and (3) the multistate operations of the group with which the company was affiliated. In another case,[14] the Board was held to have properly taken cognizance of the unfair labor practices of a company engaged in the production and sale of animal and poultry feed. Jurisdiction in this case was based on the company's out-of-State purchases of materials and its sale of feed products to a poultry firm which shipped hatching eggs across State lines.

2. Tests of Supervisory Status

Enforcement of the Board's order depended in several cases upon whether or not certain employees were supervisors, who are not entitled to the benefits of the act.

In two of these cases, the First Circuit considered (1) the effect of the spasmodic exercise of supervisory functions on the status of rank-and-file employees,[15] and (2) the effect of the nonexercise of authority by employees in supervisory positions.[16] In the *Quincy* case, the court upheld the Board's finding that the employee involved did not have supervisory status even though it was part of his job to take over as acting superintendent during the superintendent's annual vacation and other absences averaging about 8 hours a month. The court

[12] *N. L. R. B.* v *Swinerton,* 202 F. 2d 511 (C. A. 9).
[13] *N. L. R. B* v. *American District Telegraph Co.,* 205 F. 2d 86 (C. A. 3).
[14] *N L. R. B* v *Sam Zall Milling Co.,* 202 F. 2d 499 (C A. 9).
[15] *N. L. R B.* v *Quincy Steel Casting,* 200 F. 2d 293 (C. A. 1).
[16] *N L. R B.* v. *Leland-Gifford,* 200 F 2d 620 (C A 1).

agreed that "such spasmodic and infrequent assumption of a position of command and responsibility does not transform an otherwise rank-and-file worker into a 'supervisor.'" Nor was it material, the court said, that during the time in question the employee's job may have been reclassified as a supervisory position. "The important thing is the actual duties and authority, not his formal title," the court observed.[17]

On the other hand, the court pointed out that the frequency-of-exercise test of supervisory powers, on which the status of the rank-and-file employee in the *Quincy* case depended, is not controlling in determining the status of a full-time supervisor who does not exercise his supervisory functions at all times.[18] Thus, the court later held in the *Leland-Gifford* case[19] that, in determining the present status of an employee who occupies a position clothed with genuine supervisory functions, the primary statutory test is the existence rather than the exercise of those powers. The Board in the *Leland* case had found that because of curtailed operations certain department heads had ceased to be supervisors, either because they no longer had any employees under them or because they were assigned to positions in which no exercise of supervisory functions was contemplated. The Board concluded that employees with no opportunity to exercise their normal supervisory powers are not supervisors under the act. The court, however, felt that the Board had stated the rule too broadly. The court observed that under section 2 (11) of the act the test is the existence of one or more of the powers enumerated there, so that "once an individual has actually been clothed with genuine power to perform a supervisory function, he thereupon becomes a 'supervisor', even before an opportunity arises to exercise his power, and even though he may not often find it necessary to exert the power conferred." In the court's opinion, supervisory status is not lost during a mere temporary hiatus in opportunity to exercise it. On the other hand, the court agreed that actual demotion as well as "reversion to routine production work for such an extended and wholly indefinite period of time that the erstwhile supervisor could reasonably be said to have become a rank-and-file production worker for all practical purposes, would work a loss of supervisory status." In such a situation, according to the court, it would be immaterial that "title and theoretical power remained and might perhaps with an expansion in force be resumed at some vague time far in the future."

[17] See also *Whitin Machine Works*, 204 F. 2d 883 (C. A. 1).

[18] The court cited *Ohio Power Co.* v. *N. L. R. B.*, 176 F. 2d 385 (C. A. 6), Fifteenth Annual Report, p. 186.

[19] Note *N. L. R. B.* v. *Leland-Gifford*, 200 F. 2d 620 (C. A. 1).

In two cases, the courts sustained the Board's conclusion that the statutory exception was not intended to extend to leadmen and straw bosses.[20]

3. Protected Employee Activities

In one group of cases, the validity of the Board's order depended upon whether activities for which employees had been disciplined were protected under section 7 of the act.

In one case,[21] the Fifth Circuit affirmed the statutory right of employees to attend a formal Board hearing for the purpose of assisting their union to establish its representation claim. The court therefore sustained the Board's conclusion that the employer, whose antiunion motives were established, unlawfully interfered with that right by suspending employees who attended a representation hearing after they had been denied permission to do so. Previously, the Sixth Circuit had likewise acknowledged that it would be a violation of the act for an employer to refuse to permit employee attendance at a formal hearing at which the employees' presence was requested by the Board.[22] However, in that case the court held that, under the circumstances, the employer was justified in disciplining employees for attending an informal conference with a Board representative at which attendance was not required. In the court's view, the meeting was neither necessary nor advisable.

One case before the Second Circuit turned on the question whether an employee is protected against discharge if, in the context of concerted activities, he makes derogatory remarks about working conditions, even though the employer is not aware of the concerted activity.[23] A majority of the court[24] ruled that the discharge of an employee for such remarks becomes unlawful only if the employer knows at the time of the discharge that the employee's remarks were part of contemporaneous concerted activities. The dissenting member of the court,[25] on the other hand, agreed with the Board's view that the initial exercise by employees of their right to organize might be greatly impaired if employees remained unprotected until the employer is informed as to the protected nature of their activities.

The District of Columbia Circuit remanded to the Board an order dismissing charges based on the discharge of employees for allegedly

[20] *N. L. R. B.* v. *Quincy Steel Casting Co.*, 200 F. 2d 293 (C. A. 1); *Precision Fabricators* v. *N. L. R. B.* (C. A. 2), June 22, 1953.

[21] *N. L. R. B.* v. *Stratford Furniture Corp.*, 202 F. 2d 884 (C. A. 5).

[22] *N. L. R. B.* v. *Superior Co.*, 199 F. 2d 39 (C. A. 6).

[23] *N. L. R. B.* v. *The Office Towel Supply Co.*, 201 F. 2d 838.

[24] Judges Augustus Hand and Frank.

[25] Judge Clark.

protected activities.[26] Here, certain broadcasting technicians during contract negotiations of their union distributed handbills disparaging the employer's broadcasts. The Board concluded that the use of the handbills, which did not disclose union sponsorship or a purpose connected with the current labor dispute, was unprotected. The Board took the view that these handbills were hardly less "indefensible" than acts of physical sabotage. In remanding the case, the court took the view that concerted activities lose their protection only if they are "unlawful" in the sense that they violate the policies of the act or other Federal statutes, or local laws not inconsistent therewith. The court pointed out that it could not itself determine the unlawfulness of the conduct involved and that it was for the Board to find in the first place whether the complaining employees acted *unlawfully* so as to subject themselves to discharge.

4. Employer Unfair Labor Practices

In most cases in which enforcement of the Board's order depended on the validity of the underlying unfair labor practice findings, the principal issue was whether the findings were supported by substantial evidence. The more important cases which turned on the legal conclusions which could properly be drawn from the established facts are discussed below.

a. Employer Rules on Solicitation and Literature Distribution

In two cases, the validity and effect of no-solicitation rules were again litigated. In one case,[27] the Second Circuit, in reaffirming the rule announced during the preceding year in *Bonwit Teller*,[28] held that where an employer had an invalid rule prohibiting solicitation during nonworking hours, it was an unfair practice for the company to address the employees on the eve of a Board election, while such a rule was in force. Judge Frank expressed disagreement insofar as Judge Learned Hand, speaking for the court, indicated that it would not be an unfair labor practice for an employer to campaign on its property during working hours if the campaigning union was permitted to reply during nonworking hours. Judge Frank pointed out that this issue was not involved in the case, and that an opposite conclusion might well be reached under the court's *Bonwit Teller* doctrine.

The other case, in the Seventh Circuit, involved the question of the extent to which union solicitation may be prohibited in retail depart-

[26] *Local 1229, IBEW* v *N. L. R. B. (Jefferson Standard Broadcasting)*, 202 F. 2d 186. The Board's petition for certiorari in this case has been granted by the Supreme Court, 345 U. S. 947.

[27] *N. L. R B.* v *American Tube Bending Co.*, 205 F. 2d 45 (C. A. 2).

[28] *Bonwit Teller, Inc* v. *N. L. R. B.*, 197 F 2d 640 (C. A 2) ; see Seventeenth Annual Report, pp 225–226

ment stores.[29] The Board reaffirmed the department store operator's right to protect selling operations by prohibiting solicitation in selling areas, but pointed out that here the resulting limitation on the employees' organizational opportunities was so severe that it had to be compensated. To this end, the Board directed the employer to rescind its no-solicitation rule insofar as it denied outside organizers access to employee cafeterias, public restrooms and the waiting room, and an intersecting passageway used by the public. The Board [30] further directed the employer to liberalize its rule so as to permit off-duty solicitation by employees in the same public areas and in certain working areas. On the other hand, the Board found that all solicitation was properly prohibited on the selling floors and such traffic areas as aisles, elevators, and stairways, as well as in areas not open to all employees.

However, the court disagreed with the Board's conclusion that there was need for protecting the employees' organizational rights in the manner chosen by the Board. The court did not believe that the store employees were so handicapped in the matter of self-organization as to require special access to outside organizers. Nor, in the court's view, was there a sufficient factual basis for the Board majority's distinction between public selling areas and public nonselling areas for solicitation purposes. The court agreed with Chairman Herzog that all store areas used by the public were so closely interwoven that the employer could properly prohibit solicitation in all areas dedicated to the use and passage of the public.

The Fourth Circuit enforced an order in which the Board directed the employer to rescind its rule prohibiting the distribution of union literature outside the plant gate on the adjacent parking lot during nonworking time.[31] The Board here had found that union literature could not readily be distributed to employees away from the employer's premises and that there were no special circumstances which necessitated the rule in question. The court agreed that the rule was invalid under the Supreme Court's decision in the *LeTourneau* case.[32]

b. Discrimination

Review of orders based on violations of section 8 (a) (3) for the most part was confined to the sufficiency of the evidence supporting

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[29] *Marshall Field & Co.* v. *N. L. R. B.*, 200 F. 2d 375 (C. A. 7).

[30] Chairman Herzog dissenting.

[31] *N. L. R. B.* v. *Caldwell Furniture Co.*, 199 F. 2d 267 (C. A. 4), cert. denied 345 U S. 907.

[32] *N. L. R. B.* v *LeTourneau Company of Georgia*, 324 U. S. 793. See also *N. L R. B* v. *Glen Raven Silk Mills*, 203 F. 2d 946 (C. A. 4), where the Fourth Circuit enforced the part of the Board's order which was based on the employer's promulgation and enforcement of a rule requiring management approval of literature distribution on company property, including the area adjacent to the plant.

the Board's order.[33] In some cases, however, the question of discrimination depended on important issues regarding such matters as union security, the legality of economic lockouts, and the reinstatement rights of strikers. These cases are discussed below.

(1) Illegal Union-Security Agreements

In several cases in which enforcement was sought, the Board found that employees had suffered discrimination through the execution and enforcement of illegal union-security agreements.

Two cases involved preferential hiring agreements implemented by a system of union referral or clearance.[34] In each case the court agreed with the view the Board had expressed in another case,[35] that an employer does not violate section 8 (a) (3) by observing an agreement to secure its labor supply through the offices of a particular union, unless the union actually discriminates in favor of its own members in supplying personnel.

Such discrimination having been shown in the *Swinerton* case, the court there held that two subcontractors, subject to the same hiring agreement, violated section 8 (a) (3) by refusing to hire applicants who did not have union clearance. The court found discrimination not only in the case of applicants to whom union clearance was in fact discriminatorily denied, but also as to applicants who had failed to seek clearance. In the court's view, it could reasonably be inferred that clearance would have been denied to them also because they were not members of the union. The presumption of good faith is not applicable in such a situation, according to the court.

The court also upheld the Board's conclusion that the lack of available jobs at the time when the complaining employees applied for work was immaterial. The court agreed that applicants who are made aware of the existence of an illegal hiring policy are not required

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[33] The Board's finding of 8 (a) (3) violations was set aside by the Eighth Circuit in 2 cases, and by the Ninth Circuit in 1 case, on the ground that there was not sufficient evidentiary support for the conclusion that the discrimination involved encouraged or discouraged membership in a labor organization. *N. L. R. B.* v. *J. I. Case Co.*, 198 F. 2d 919 (C. A. 8); *Modern Motors, Inc.* v. *N. L. R. B.*, 198 F. 2d 925 (C. A. 8). *N. L. R. B.* v. *George W. Reed*, 206 F. 2d 184 (C. A. 9). In each case the court, however, sustained the Board's finding that the discriminatory action interfered with employee rights in violation of section 8 (a) (1) which furnished a sufficient basis for the Board's remedial back-pay and reinstatement orders. The question whether encouragement or discouragement of union membership must be affirmatively shown before a violation of section 8 (a) (3) can be found is now pending before the Supreme Court in *N. L. R. B* v. *International Brotherhood of Teamsters* (*Byers Transportation Co.*), 196 F. 2d 1 (C. A. 8); and *N. L. R. B.* v. *Radio Officers' Union* (*Bull Steamship Co*), 196 F. 2d 960 (C. A. 2).

In one case, the Fifth Circuit characterized as "shadow boxing" an employer's contention that his concededly discriminatory action could not have encouraged or discouraged membership in the trades council in whose behalf the discharged employees had acted, since it was the affiliate, rather than the council itself, which admitted employees to membership. *N. L. R. B.* v. *Metallic Building Co.*, 204 F. 2d 826 (C. A. 5).

[34] *N. L. R. B.* v. *Swinerton*, 202 F. 2d 511 (C. A. 9); *N. L. R. B.* v. *F. H. McGraw*, 206 F. 2d 635 (C. A. 6).

[35] *Hunkin-Conkey Construction Co.*, 95 NLRB 433, Seventeenth Annual Report, p. 149.

to go through the useless procedure of renewing their application for employment when jobs become available in order to establish that they were victims of the discriminatory policy. The court further noted that this conclusion was not inconsistent with the Board's decision in *Consolidated Builders, Inc.*,[36] where the failure of job applicants to reapply for work as jobs became available was held crucial because at the time of their original application no discriminatory hiring policy was shown to have existed.

The *McGraw* case involved the agreement of a construction firm to hire only union members in good standing on a project it had undertaken to construct. All hiring was to be done under a referral system. Although the employer adhered to the agreement and, although it was the contracting union's normal policy to give preference to its own members, no discrimination against nonmembers occurred because the labor requirements of the project were so large that all applicants obtained work. The court sustained the Board's finding that the employer nevertheless violated section 8 (a) (3), because agreements of this type contravene the union-security provisions of the act, and their execution, without more, tends to encourage membership in the contracting labor organization. The court concurred in the view of the Second Circuit in the *Red Star* and *National Maritime Union* cases, [37] and of the District of Columbia Circuit in the *United Mine Workers* case,[38] that agreements requiring the employer to give preference to union members among job applicants violate the act, without a showing that specific employees were discriminated against under the terms of the agreement.

Two cases involved the question of whether union-security agreements entered into before the effective date of the 1947 amendments to the act could validly be enforced after that date under the savings provision of section 102, or whether they had ceased to be valid because they were subsequently "renewed or extended" as provided by that section.[39]

In the *United Hoisting* case, the court upheld the Board's finding that an addendum to the preamendment contract pleaded by the employer had extended its union-security provisions within the meaning of section 102, so that the contract could not serve as a defense to discrimination charges. However, in the *Heat and Frost Insulators*

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[36] 99 NLRB 972 (1952).

[37] *N. L. R. B.* v. *National Maritime Union of America (Great Lakes Transport Corp., et al.)*, 175 F. 2d 686, and *Red Star Express Lines of Auburn, Inc.*, v. *N. L. R. B.*, 196 F. 2d 78.

[38] *International Union, United Mine Workers of America, and John L. Lewis* v. *N. L. R. B. (Jones & Laughlin Steel Corp.)*, 184 F. 2d 392.

[39] *N L. R B.* v *International Ass'n. of Heat and Frost Insulators and Asbestos Workers, Local No. 7*, 199 F. 2d 321 (C. A. 9) ; *N. L. R. B.* v. *United Hoisting Co.*, 198 F. 2d 465 (C. A. 3), certiorari denied 344 U. S. 914. The second case arose on charges that the contracting union caused the union-security agreement to be enforced in violation of section 8 (b) (2). No discrimination charges were filed against the employer.

case, the court disagreed with the Board's conclusion that the automatic renewal of a preamendment closed-shop contract removed it from the protection of section 102. In the court's view, that section contemplates only renewals or extensions by some affirmative act of the parties.

In one case, the Third Circuit declined to enforce an order based on the invalidity of a union-security agreement which did not specifically accord a full 30-day grace period to old employees who were not members of the union when the contract became effective.[40] The court believed that a union-security agreement which exhibits substantial compliance with the act should not be held invalid on the basis of its strict and technical construction.

(2) Lockouts

In the *Morand* case, the Seventh Circuit enforced the Board's order directing that certain members of an employer group make whole employees they had discharged in response to an economic strike by the common bargaining agent against another member of the group.[41] Enforcement was predicated on the Board's finding, following the remand of its original decision by the court,[42] that the complaining employees had been discharged rather than temporarily laid off. The court, however, indicated its adherence to the view that, had the termination of employment been in the nature of a lockout, it would have been "justified as the assertion of the employer's corollary to the union's right to strike, absent . . . affirmative proof of unlawful intent." This view coincides with that expressed by the Ninth Circuit in the *Davis Furniture* case.[43] In that case, the court had remanded the Board's original decision so that the Board might state its conclusion as to whether the lockout, on which the order was based, could be held to be an unfair labor practice if viewed as an economic countermove rather than as a retaliatory measure. Upon reviewing the Board's supplemental decision and order,[44] the court denied enforcement and rejected the position of a majority of the Board [45] that, where multiemployer negotiations have reached an impasse and the common employee representative strikes one of the employers in order ultimately to cause all the employers to accede to its terms, it is an unfair labor practice for the remaining employers to lock out their employees to counter the strike against one of them. According

[40] *N. L. R. B.* v. *United Electrical Workers, Local 622*, 203 F. 2d 673 (C. A. 3). The Board's order in this case was based on charges filed against the union which caused the discharge of a nonmember employee under the terms of this agreement. No discrimination charges against the employer were filed

[41] *Morand Brothers Beverage Co.* v *N. L R. B.*, 204 F. 2d 529 (C. A. 7).

[42] *Morand Brothers Beverage Co.* v *N. L. R B.*, 190 F. 2d 576 (C. A 7), Seventeenth Annual Report, pp 234–235

[43] *N. L. R. B.* v. *Davis Furniture Co.*, 197 F 2d 435 (C A. 9).

[44] 100 NLRB 1016.

[45] Chairman Herzog dissenting.

to the court, the legislative scheme of the act supports the conclusion that the right of employers to lock out their employees, when confronted with a situation such as was involved in this case, is but the corollary of the union's strike weapon. The court pointed out, however, that its decision did not sanction the use of the lockout in all situations. The court noted that the Second Circuit in *Somerset Classics*,[46] for instance, had held it unlawful for an employer to lock out its employees for the purpose of defeating their organizational efforts.

(3) Refusal To Reinstate Strikers

The Second Circuit enforced an order directing an employer to reinstate economic strikers whom it had permanently replaced notwithstanding its promise to rehire them as soon as their positions again become available following the termination of the strike.[47] The court agreed with the Board's conclusion that, while an employer is under no obligation to reemploy economic strikers whose jobs have been permanently filled, or abolished for economic reasons, the employer violated the act by refusing to honor its promise to recall the strikers because of their participation in the strike. The Board had urged before the court that the employer's promise was an acknowledgment of the strikers' continuing employment status and placed them in the same position as laid-off employees entitled to recall as work becomes available.

Several cases presented the question of whether strikers had forfeited their right to reinstatement because of conduct accompanying the strike or because of the nature of the strike itself. Enforcing the Board's order in one case,[48] the Third Circuit held that employees who participate in a strike which is not protected by the act do not forfeit their right to reinstatement unless the strike is unlawful. The court's holding was predicated on the principle that, while participation in unprotected activities subjects employees to discharge, it does not automatically deprive them of their employee status. In this case, as well as in another case decided during fiscal 1953,[49] the court reaffirmed the principle that strikers may not be denied reinstatement on account of strike violence with which they have not been positively identified.[50]

c. Refusal To Bargain

The cases in which the courts reviewed orders under section 8 (a) (5) during the past year presented questions as to the employer's duty to bargain with a particular union or regarding a particular subject

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[46] *N L R B* v. *Somerset Classics*, 193 F 2d 613, cert. denied 344 U S 816

[47] *N L R. B* v *Roure-Dupont Mfg Co.*, 199 F. 2d 631 (C. A 2).

[48] *N. L. R B* v. *Schwalm, et al* , 198 F 2d 477 (C A 3)

[49] *N L R. B* v *Deena Artware*, 198 F. 2d 645 (C. A. 6).

[50] Cf also *Rubin Brothers Footwear, Inc.* v *N. L. R. B* , 203 F. 2d 486, where enforcement of the Board's order was denied on evidentiary grounds.

matter, as well as the conventional question of the employer's good faith where bargaining actually took place.[51]

(1) Bargaining With Certified Representative

In several cases, employers subject to bargaining orders attacked the Board's rule that the certification of a bargaining representative is binding on both employer and employees for a reasonable time, ordinarily 1 year, at least in the absence of extraordinary circumstances[52] other than loss of employee support. In each case the employer insisted that defections from the union, following its certification, destroyed the effectiveness of the certificate and relieved the employer from its bargaining obligation.

In *Ray Brooks*, where a majority of the employees in the bargaining unit repudiated the union within a week after its certification, the Ninth Circuit held that fact was not sufficient to justify the employer's subsequent refusal to bargain. Under these circumstances, the court agreed, the continuation of the union's majority status had to be presumed. The court pointed out that the Board's so-called 1-year rule had been sanctioned by the courts many times under the Wagner Act because it was felt that the informal repudiation of a certified union should not be permitted to offset the recent expression of the employees' wishes for representation under the guarantees of a secret election. The court then noted that Congress, cognizant of the effect accorded certifications by the Board and the courts, not only failed to reject this construction of the act at the time of its amendment in 1947,[53] but prohibited the holding of more than one election in the same unit during the same year,[54] "in order to impress upon employees the solemnity of their choice."[55] Insofar as it was urged that the Board's rule interfered with the employees' freedom to bargain through representatives of their own choosing, the court observed, that right

> must be, and was intended to be, restricted to the extent necessary to make workable and effective the administrative scheme devised for the protection of that right and for the promotion of the other objectives of the Act. A primary objective of the Wagner Act, and to an even greater extent the Taft-Hartley Act, was stability in industrial relationships.

In *Globe Automatic*, the Third Circuit likewise acknowledged the validity of the rule that a Board certificate ordinarily must be given conclusive effect for a reasonable time, which is normally a year.

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[51] For cases indicating what may be regarded as a demonstration of bad faith in bargaining, see *N. L. R. B.* v. *Reed & Prince,* June 9, 1953 (C A. 1), No 4647; *Majure Transport Co.* v. *N. L. R. B.,* 198 F. 2d 735 (C. A. 5); see also *N. L. R B.* v. *Deena Artware,* 198 F. 2d 645 (C. A. 6).

[52] *N. L. R. B.* v. *Ray Brooks,* 204 F. 2d 899 (C. A. 9); *Mid-Continent Petroleum Co.* v *N. L. R. B.,* 204 F. 2d 613 (C. A. 6); *N. L. R. B.* v. *Globe Automatic Sprinkler Co.,* 199 F. 2d 64 (C. A. 3).

[53] The court here cited *N. L. R. B.* v. *Gullet Gin Co*, 340 U. S. 361, 365, 366

[54] Section 9 (e) (3).

[55] Senate Report No. 105, 80th Cong., 1st Sess., p 12.

However, the court here declined to enforce the Board's bargaining order because it believed that the circumstances of the case—a decertification petition signed by most of the employees over 11 months after the certification—did not justify the rigid application of the rule by the Board.

On the other hand, the Sixth Circuit in *Mid-Continent Petroleum* held that employees are free under the act to repudiate a certified bargaining agent at any time they chose to do so and that the Board's 1-year rule is therefore invalid.[56] Because of the importance of this issue in the administration of the act, the Board has petitioned the Supreme Court to issue certiorari in the *Mid-Continent* case for the purpose of resolving the conflict between the views of the Sixth Circuit and those of other courts of appeals.

In one case,[57] the Seventh Circuit sustained the Board's conclusion that the certification of a bargaining agent for an employee unit continues to be effective after the bona fide transfer of the employer's business to a purchaser. There is no reason to believe, the court held, that the employees will change their attitude regarding the choice of bargaining agents merely because the identity of their employer has changed. The court observed that the certification had been in effect only 10 months and that there had been no change in the nature of the industry and that, except for a reduction in number, there had been no change in personnel.

(2) Subjects of Bargaining

The principle that the bargaining requirement of the act includes matters covered by law which relate to terms and conditions of employment was reaffirmed by the Fifth Circuit during the past year.[58] Here the employer had consistently refused to discuss with the union the effect of the new minimum wage requirements under amendments to the Fair Labor Standards Act, and unilaterally revised wage rates after the amendments became effective.

In another case, the First Circuit upheld the Board's finding that the employer had unlawfully refused the complaining union's request to bargain regarding a reduction in Christmas bonuses which the employer considered necessary because of the cost of a recently established retirement plan. The court agreed that the employer could not remove the subject of bonuses from the area of compulsory bargaining by calling them "gifts," and that it was a question of fact for the Board to determine whether the so-called gifts were in fact a part of the employees' remuneration. The court agreed that the

[56] See also *N. L. R. B.* v. *Vulcan Forging Co.*, 188 F. 2d 927 (C. A. 6); Sixteenth Annual Report, p. 273.

[57] *N L. R. B.* v. *Armato,* 199 F. 2d 800.

[58] *N. L. R. B.* v. *Union Manufacturing Co.*, 200 F. 2d 656 (C. A. 5).

bonuses in this case were in reality wages, since they had been regularly made over a substantial period of time in amounts based on each employee's pay.[59]

5. Union Unfair Labor Practices

The cases in which the Board sought enforcement of orders against unions were concerned with restraint and coercion prohibited by section 8 (b) (1) (A), discrimination against employees prohibited by section 8 (b) (2), and secondary boycott activities outlawed by section 8 (b) (4) (A) and (B). In addition to evidentiary question, these cases presented issues regarding the proper construction and application of the statutory prohibitions.

a. Restraint and Coercion of Employees

In one case, the Board had found that a union violated section 8 (b) (1) (A) by forcing an employer to discharge one of its members who had accepted employment without first obtaining clearance by the union as, to his knowledge, he was required to do under existing union rules. Sustaining the Board's finding,[60] the court pointed out that, in disobeying the union rule, the discharged employee had exercised his statutory right to refrain from participating in union activities and that the union could not enforce compliance without violating the act. The fact that the union may not have succeeded in securing compliance was immaterial, the court said, because the use of coercive measures alone is sufficient to constitute an unfair labor practice under section 8 (b) (1) (A). The court also observed that the proviso to this section, which preserves the right of unions to prescribe their own membership rules, was not relevant here. This proviso, the court held, concerns only internal union relationships and does not empower unions to enforce their rules so as to affect the employment status of its members except to the limited extent permitted under valid union-security agreements.[61]

b. Causing or Attempting To Cause Discrimination

The Board's findings of section 8 (b) (2) violations in two cases were based on the fact that the unions involved enforced their union-

[59] The court also held that the existing collective-bargaining agreement did not suspend the employer's duty to bargain about bonuses, a subject which was not in any way covered by the contract The court cited *N. L. R. B.* v. *Jacobs Mfg. Co*, 196 F 2d 680 (C. A. 2) ; see Seventeenth Annual Report, pp. 235–236

[60] Although enforcing the order in full, the court set aside the Board's finding that the union also violated section 8 (b) (2) by bringing about a discriminatory discharge In the court's view, the discharge here could not have had the effect of encouraging union membership.

[61] For other cases in which the Board's 8 (b) (1) (A) findings were sustained, see *N. L. R. B.* v. *Teamsters Local 404*, 205 F 2d 99 (C A 1), *N. L. R B.* v. *United Construction Workers, UMW District 50*, 198 F 2d 391 (C A 4), cert. denied 344 U. S 876.

security agreements against employees who had failed to pay fines or back dues which had accrued before the effective date of the union-security agreement.[62] The court agreed with the Board's conclusion that neither fines nor back dues such as were involved constituted "periodic dues" or "initiation fees," for the nonpayment of which a union may request the discharge of delinquent members under section 8 (b) (2). The court, in agreement with the Board, also held that the failure of the complaining employees to tender their current union dues did not justify the union's request for their discharge. Such a tender, the court concluded, was not required before the Board could find that the union had violated section 8 (b) (2). For, it was apparent that the tender of current dues would have been a futile gesture and that the unions would not have accepted it without the concurrent tender of the fines or back dues.[63]

In one case, the First Circuit enforced an order directing a union to refund dues exacted from employees at a new plant who the union erroneously insisted were subject to its union-security agreement covering another plant of the same employer.[64] The Board had held that, in view of the rival claim of another union, the union which had the contract, regardless of its good faith, acted at its peril when it first extended the existing contract to the employees at the new plant over their protest, and when it later entered into a new union-security agreement with the employer expressly covering the new plant although the representation question was then pending before the Board. The court agreed that the contracting union thus caused the employer to require employees to become members of the union at a time when they could not legally be compelled to do so, and that it thereby violated section 8 (b) (2).

Liability under section 8 (b) (2) for discriminatory hiring practices was denied by a union in one case on the ground that its "peaceful persuasion" of an employer to give preferential consideration to its members was protected by the so-called free-speech guarantees of section 8 (c).[65] Rejecting the union's defense, the court held that a distinction must be drawn between the noncoercive expression of views which section 8 (c) is intended to protect and "the exhortation of another to action which is intended to cause or does cause unlawful discrimination." The Board's view that section 8 (c) is no bar to the application of section 8 (b) (2),[66] the court said, is fully supported by the Supreme Court's construction of section 8 (c) in the *Electrical*

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[62] *N. L. R. B.* v. *The Eclipse Lumber Co*, 199 F. 2d 684 (C. A. 9) ; *N. L. R. B.* v. *International Association of Machinists, Local 504*, 203 F. 2d 173 (C A. 9).

[63] The court here referred to its similar holding regarding applications for employment by employees without union clearance in the *Swinerton* case See p 66, above.

[64] *N. L. R. B.* v. *Local 404, Int'l. Bro of Teamsters, etc*, 205 F. 2d 99 (C A. 1)

[65] *N. L. R B.* v. *Jarka Corp*, 198 F. 2d 618 (C. A. 3).

[66] See *Sub Grade Engineering Co*, 93 NLRB 406.

Workers case.[67] The Third Circuit observed that while the Supreme Court had reference to secondary boycott action, its reasoning is worded broadly and applies with equal force to other prohibitions of the act. Thus the "general terms of section 8 (c) appropriately give way" not only to "the specific provisions of section 8 (b) (4)" but also to those of section 8 (b) (2).

The First Circuit during fiscal 1953 expressed agreement with the construction of section 8 (b) (2) by the Board and the Second Circuit[68] that, in order to find that a union caused an employer to violate section 8 (a) (3), it is not necessary that the employer be joined as a party.[69] The court pointed out that where no charge is filed against the employer the Board under section 10 (c) is without initiatory power to issue a complaint against him. The court went on to say

> Thus, under this statutory scheme, the choice of respondent or respondents lies with the person aggrieved and an employee, who is illegally discriminated against by joint action of the union and employer, may name as respondent either the union or the employer or both. It seems to us that the Board lacks statutory authority to add an employer as a respondent where a charge like this is made against the union and its officer.

c. Secondary Boycotts

In three cases involving secondary boycott situations the Board's order was enforced during the past year. One of these cases—*Joliet Contractors*[70]—presented several novel issues. Here, the union was charged with preventing the use of preglazed building materials in a manner alleged to be in conflict with section 8 (b) (4) (A). In order to accomplish the intended product boycott, the union (1) promulgated bylaws and working rules precluding members from accepting work on jobs or for contractors using preglazed sash, (2) refused to furnish glazers for jobs designated as "unfair," and (3) caused members to discontinue work on jobs on which preglazed sash was discovered. The Board held, and the court agreed, that neither the union's bylaws and working rules, nor the listing of certain contractors as unfair, was illegal *per se*. Whatever the object of these tactics may have been, the court pointed out, they did not come within the specific statutory ban against strikes, or concerted refusals to work or perform services, or the inducement or encouragement of such action for secondary boycott purposes.[71] The court likewise upheld

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[67] *IBEW* v. *N. L. R. B.*, 341 U. S. 694, 704–705 (1951).

[68] See Seventeenth Annual Report, p. 241.

[69] *N. L. R. B.* v. *Operating Engineers, Local 57*, 201 F. 2d 771 (C. A. 1).

[70] *Joliet Contractors Association* v. *N. L. R. B.*, 202 F. 2d 606 (C. A. 7).

[71] The court, however, disagreed with the Board's further conclusion that the union's bylaws could not be held to have induced or encouraged the spontaneous temporary suspension of glazing work by a group of employees without instructions from the union. But the court went on to say that notwithstanding the effect it attributed to the rules in question, their discontinuance by the union could not be required.

the Board's conclusion that the union's refusal to supply glazers for unfair jobs was not a violation of section 8 (b) (4) (A) because "employees cannot be on strike or engaged in a refusal *in the course of their employment* prior to the establishment of an employer-employee relationship." The court believed that Congress purposely refrained from prohibiting the refusal to accept employment in order to escape a serious constitutional challenge. Finally, the court sustained the Board's dismissal of the section 8 (b) (4) (A) charges in the case to the extent that they were based on the inducement of but a single employee to cease work on an "unfair" job. This conclusion, in the court's view, was inevitable because the act prohibits only "concerted" refusals to perform services.

In another case,[72] the Second Circuit approved the Board's finding that picketing of trucks at the premises of a secondary employer was unlawful under the standards laid down in the Board's *Moore Drydock* rule.[73] The court agreed that the picketing activities ceased to be primary because they continued for extended periods beyond time of arrival of the primary employer's trucks at the secondary employer's place of business.[74]

The third case where the Board's order under section 8 (b) (4) against certain unions and their agents was enforced involved secondary picketing activities.[75] These were intended to compel a coal company to cease doing business with certain timbermen, and to compel the timbermen as self-employed persons to join the union, both objects prohibited by section 8 (b) (4) (A). The picketing also had the ultimate purpose of bringing about recognition by the timbermen of the union as the representative of their employees, an object which clearly was within the express prohibition of section 8 (b) (4) (B).

6. Remedial Orders

The courts have continued to recognize that it is primarily for the Board to determine what remedial measures are best suited to neutralize unfair labor practices which have occurred. Thus, the Seventh Circuit held during the past year that it was within the Board's power to direct the disestablishment of an employer-dominated employee committee, even though many benefits may have resulted to the employees due to the functioning of the committee.[76] Similarly, the First Circuit held that it was within the Board's general remedial

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[72] *N. L. R. B.* v. *Service Trade Chauffeurs,* 199 F. 2d 709.

[73] *Sailors' Union of the Pacific* (*Moore Drydock*), 92 NLRB 547.

[74] The case had been remanded to the Board because the order was issued prior to the announcement of the *Moore Drydock* rule. For discussion of the court's original opinion (191 F. 2d 65), see Seventeenth Annual Report, pp 243–244.

[75] *N. L. R. B.* v. *United Construction Workers, UMW District 50,* 198 F. 2d 391 (C. A. 4), cert. denied 344 U. S. 876.

[76] *Indiana Metal Products* v. *N. L. R. B.,* 202 F. 2d 613.

powers to direct that a union refund initiation fees and dues which it exacted through the improper enforcement of a union-security agreement.[77] It was immaterial, the court held, that the employees concerned had received value for their payments in the form of services rendered by the union.

Enforcement was also decreed in a case where the Board for the first time had ordered the disestablishment of an affiliate of a national parent federation.[78] However, the court here modified the Board's order so as to limit disestablishment of the union to the plant where the acts of domination occurred.[79]

Regarding back-pay orders, the Sixth Circuit during fiscal 1953 reaffirmed the Board's power to assess liability jointly against an employer and a union which cooperated in bringing about the discriminatory treatment of employees.[80] And the Ninth Circuit overruled its earlier decision where, contrary to Supreme Court doctrine, it had denied the Board's discretion to order employees to be made whole for loss of pay irrespective of whether or not reinstatement was also directed.[81]

The propriety of broadly worded orders restraining employers not only from again committing unfair practices of the kind specified in the complaint, but also from violating any of the act's provisions, was again affirmed in cases where such future violations could be anticipated from the nature of past conduct.[82]

Similarly, the Fourth Circuit in two cases declined to limit the Board's order against a union geographically so as to prohibit repetition of the violations found only in the area where they had been committed, rather than to extend the prohibition throughout the union's geographical jurisdiction.[83] In each case the court agreed that the Board's order was justified by the background of the union's widespread program of violence and intimidation.

7. Determination of Bargaining Representatives

In a number of cases, bargaining orders were challenged on the ground that the Board had improperly certified the complaining

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[77] *N. L. R. B* v *Local 404, Teamsters*, 205 F 2d 99 (C A 1) See also p. 73, above

[78] *N. L. R. B* v *Jack Smith Beverages*, 200 F 2d 100 (C. A 6). See section 10 (e) of the amended act which, according to its legislative history, requires the Board to apply the same remedy in case of unlawful employer domination regardless of whether or not the organization involved is affiliated.

[79] See also *N. L R. B.* v. *McGraw*, 206 F 2d 635 (C. A 6), where the court eliminated from the Board's order the requirement that the contractor, who had engaged in unlawful hiring practices on a construction project, post compliance notices at its other projects

[80] *N. L. R. B.* v. *Pinkerton's National Detective Agency*, 202 F. 2d 230 (C. A. 9)

[81] *N. L. R. B.* v. *West Coast Casket Co*, June 30, 1953 (C A 9), overruling *N. L R B* v *Carlisle Lumber Co*, 99 F 2d 533 (1938) and *N. L R B* v *Hearst*, 102 F. 2d 658, 664 (1939).

[82] *N. L. R. B* v. *Krimm Lumber Co.*, 203 F 2d 194 (C A. 2)

[83] *N. L. R. B* v *United Construction Workers, UMW District 50*, 198 F 2d 391, *N L. R. B.* v. *UMW, District 31*, 198 F. 2d 389.

unions as the bargaining representative of specified employee units. The validity of the Board's certification in these cases turned either on the propriety of the election procedures applied, or the appropriateness of the unit determined by the Board.

a. Consent-Election Procedure

The Board's consent-election procedure was reviewed and approved by several courts of appeals during the past year. In each instance, exception was taken to the Board's construction of the usual consent-election agreement. The Board's view is that the parties waive their right to a formal hearing on objections which may be filed to an election, and agree to abide by the regional director's determination if he decides that his administrative investigation of objections affords the objecting party an adequate opportunity to present its case. Emphasizing the usefulness of consent elections, and the protection of the parties against arbitrary or capricious action on the part of the regional director, the First Circuit said:

> A narrow interpretation of the word "hearing" which respondent urges, would thwart the utility of the device of consent elections. These agreements are aimed at the expeditious settlement of election disputes. The parties are protected from any unruly action of the Regional Director by their right of review on an allegation of arbitrary or capricious conduct. The trial examiner "agreed to hear any and all evidence the Respondent might care to produce showing any arbitrary and capricious action by the Regional Director in reaching this decision." In the absence of such conduct, they have agreed to rely on the integrity and competence of the Director and we see no reason for disturbing the arrangement by narrow construction.[84]

The court also held that, since the agreement of the parties in this case expressly provided for the finality of the regional director's decision as to whether or not to hold a formal hearing, the case was clearly distinguishable from the *Sidran* case[85] where the Fifth Circuit declined to infer a waiver of hearing from a less explicit form of agreement. The First Circuit also rejected the employer's contention that the Board's construction of election agreements deprived it of its statutory right to review of the whole record before the Board. The court observed that that "right is proper to ordinary fact findings of the Board. It has no application to the issue before us in this consent election case."

The Sixth[86] and Ninth[87] Circuits likewise agreed that the employer's undertaking in an election agreement constitutes assent to the *ex parte* determination of election issues by the regional director. In each case the court noted that the employer had notice of the Board's construction of election agreements as a waiver of the right to formal hearing

[84] *N L R B.* v. *Saxe-Glassman Shoe Corp.*, 201 F. 2d 238.

[85] *N. L. R B.* v. *Sidran*, 181 F. 2d 671, Fifteenth Annual Report, p 189.

[86] *N. L R. B.* v. *Standard Transformer Co.*, 202 F. 2d 846

[87] *N. L. R. B* v. *Carlton Wood Products Co.*, 201 F. 2d 863.

and was therefore not deprived of due process in the absence of arbitrary or capricious action by the regional director. While holding that the *Sidran* case was distinguishable on the facts, both the Sixth and Ninth Circuits rejected the views of the Fifth Circuit to the extent that they indicated that court's disinclination to find an implied waiver of formal hearing in consent-election agreements.

In one case, the Fifth Circuit held that the rule of the *Sidran* case had no application and that the employer was not entitled to a hearing on objections to a consent election where it had refused to substantiate its objections filed with the regional director.[88] The court pointed out that it was for the employer to show that the election had not been conducted fairly and not for the Board to show the opposite. The employer's failure to furnish evidence supporting its claim, the court concluded, amounted to a waiver of its objection. The court also rejected the employer's contention that the Board violated the terms of the election agreement by the qualified reception of one contested vote, and that the election was invalid because interested union representatives were permitted to act as observers. The court noted that deviations from the election agreement which are not shown to have an unfair effect will not be held to invalidate the election. As to the election observers, the court pointed out the universal practice of selecting observers sufficiently interested to be alert, as well as the employer's failure to voice its objection in advance of the election.

b. Other Election Procedures

Two cases were concerned with the Board's practice not to process a representation petition unless the petitioner can show at least a 30-percent interest among the employees in the proposed bargaining unit.[89] Both courts recognized that the Board's preliminary determination of a union's interest serves solely the administrative purpose of enabling the Board to screen out petitions with little or no prospect of success. In each case the court agreed that the requirement of section 9 (c) (1) of the amended act that a representation petition must allege a substantial interest in collective bargaining among the employees concerned is not jurisdictional and that the Board need not receive evidence of such interest at the hearing before proceeding with its investigation.

The Board's administration of its "contract-bar" rule was challenged in one case during fiscal 1953.[90] Contrary to its general policy, the Board here proceeded to investigate the representative

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[88] *N. L. R. B.* v. *Huntsville Mfg. Co.*, 204 F. 2d 430.

[89] *N. L. R. B.* v. *J. I. Case Co.*, 201 F. 2d 597 (C. A. 9); *N. L. R. B.* v. *White Construction and Engineering Co*, 204 F. 2d 950 (C. A. 5).

[90] *N. L. R. B.* v. *Efco Mfg Co.*, 203 F. 2d 458 (C. A. 1).

status of a petitioning union although the employee unit involved was covered by a collective-bargaining agreement with another union which had over 7 months to run. In deviating from its rule, the Board had taken into account the employees' dissatisfaction with the incumbent bargaining representative and their unanimous vote at a meeting to affiliate with the petitioning union. The court held that the application of the contract-bar rule and the making of exceptions are matters for the Board's administrative discretion. This discretion, in the court's opinion, was not abused when the Board noticed the petition for hearing in order to determine whether the circumstances justified a new election. Nor could the Board's ultimate decision be challenged, in the court's view, because it failed to determine the issue thus presented. The court noted that at the time of the Board's decision the incumbent union's contract was within a few weeks of its expiration date and, under existing Board policy, it had ceased to be a bar to a new election on that account alone.

In one case, a bargaining order was set aside because the court believed that the Board had improperly certified the complaining union on the basis of a one-vote majority in an election which depended on the elimination of a ballot the Board considered "mutilated" and void.[91] The ballot was marked "X" in the no-box, but also showed a partially erased "X" in the yes-box. The court was of the opinion that the mere presence of an erasure should not have been given controlling weight in eliminating the ballot but that the voter's intent should have been considered. The court concluded that while the question of intent was primarily for the Board, the voter's intent here was so manifest that a remand of the case to the Board would only result in unnecessary delay.

c. Unit Determinations

The large measure of the Board's administrative discretion in determining bargaining units, and the limited room for judicial intervention in case of abuse, was reaffirmed by the Fifth Circuit.[92] Here the court held that the Board had properly excluded certain employees from the unit on the basis of differences in supervision and working conditions and insufficient community of interest with the shop employees to be included in the unit.

In one case, denial of enforcement was predicated on the court's disagreement with the Board's practice of excluding from bargaining units employees who have close family ties with the employer or his managerial representatives.[93]

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[91] *N. L. R. B.* v. *Whitinsville Spinning Ring Co.*, 199 F. 2d 585 (C. A. 1).
[92] *N. L. R B.* v. *White Construction and Engineering Co.*, 204 F. 2d 950 (C. A. 5).
[93] *N. L. R. B.* v. *Sexton Welding Co.*, 203 F. 2d 940 (C. A. 6).

8. Miscellaneous Problems

Several cases before the courts of appeals involved questions regarding the proper construction of the 6-month limitation on charges under section 10 (b).

The Eighth Circuit in one case rejected an employer's contention that section 10 (b) precluded the Board from determining the nature of a strike on the basis of unfair labor practices alleged to have occurred more than 6 months before the filing of the charges in the case.[94] This determination was necessary to determine the reinstatement rights of a group of strikers. The Board had held that here, unlike in the earlier *Greenville Cotton Oil* case,[95] the unfair labor practices causing the strike had been the subject of timely charges which resulted in an unfair labor practice order and its enforcement. The adjudicated unfair labor practices, in the Board's opinion, could therefore properly be made the basis of a finding that the strikers here were unfair labor practice strikers, while no such finding could be made in the *Greenville* case for lack of a like adjudication. The court, however, concluded that the Board's construction of section 10 (b) in *Greenville Cotton* was incorrect and that the distinction drawn by the Board was not necessary to sustain the determination of the nature of the strike in the *Brown* case.

In one case, the Third Circuit held that the Board had properly issued a complaint based in part on an amended charge alleging unfair labor practices related to those alleged in the original charge but occurring subsequent to the filing of that charge.[96] The court agreed that under the applicable "relation back" doctrine[97] it was immaterial that the additional violations charged occurred more than 6 months before the filing of the amended charge. The court pointed out that, even without the amended charge, the new matters could have been included in the complaint because they were of the same class and were merely a continuation of the practices originally charged. The court expressed disagreement with the contrary views of the Seventh Circuit in a similar case.[98]

In one case, the Third Circuit set aside a consent order which the Board had entered in accordance with a post-complaint settlement of the underlying charges between the General Counsel and the respondent named in the complaint.[99] The Board had rejected the

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[94] *N L R B* v *Brown & Root, Inc*, 194 F 2d 963.

[95] *Greenville Cotton Oil Co*, 92 NLRB 1033, enforced 197 F. 2d 451 (C. A. 5)

[96] *N. L. R. B.* v *Epstein, d/b/a Top Mode Mfg Co*, 203 F. 2d 482, cf. *N. L. R. B.* v. *Harris*, 200 F. 2d 656 (C A. 5)

[97] See the cases discussed at pp. 249–251 of the Seventeenth Annual Report

[98] *Indiana Metal Products Corp* v. *N L R B*, 202 F. 2d 613.

For cases reaffirming previously established rules regarding the application of the 6-month limitation of section 10 (b), see *N. L. R. B.* v. *White Construction Co*, 204 F 2d 950 (C. A 5); *N L. R B.* v. *Dinion Coil Co*, 201 F. 2d 484 (C A. 2)

[99] *Marine Engineers Beneficial Association* v. *N. L. R. B*, 202 F. 2d 546 (C A 3)

charging party's objections to the settlement which the Board believed effectuated the policies of the act. The court conceded the power of the Board to effectuate precomplaint settlements without the consent of the charging party, and to negotiate a compromise of a final order. However, the court took the view that during the interval between complaint and final order the Board may dispose of unfair labor practice charges only upon the charging party's consent or after formal hearing.

9. Contempt Proceedings

During fiscal 1953, 4 employers and 1 union were adjudicated in contempt for violations of outstanding enforcement decrees. In one case, the court exonerated an employer of contempt charges.

a. Improper Notice Posting and Refusal To Bargain

In *West Texas Utilities*,[1] the defaulting employer was shown to have violated the provisions of the court's decree directing the company to bargain with the representative of its employees, as well as the direction to insure that a notice to be posted shall not be altered. The notice provision, the court held, was violated when the company supplemented the required notice with a second notice erroneously implying that the first notice did not explain its "why-for," and that the court's decree was not final and only required the company to bargain with the union "for the time being."

The court also found that the bargaining decree itself was violated when the company negotiated with an individual, not connected with the union, regarding rates of pay for a large percentage of the employees in the bargaining unit. The court considered without merit the contention that the wage negotiations were protected by the provisions of section 9 (a) of the act which permit the presentation of grievances by individual employees, or groups of employees, although they are represented by a certified union. According to the court, the term "grievance" may not be held to encompass the setting of wage rates for a large group of employees.[2]

Regarding the contention that the acts charged were not related to those prohibited by the court's bargaining decree and were therefore not contemptuous, the court held that not only were the respective acts closely related but also, in the words of the Supreme Court,[3] it "does not lie in [the respondents'] mouths to say that they have an immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined." The court also observed

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[1] *West Texas Utilities Co., Inc.* v. *N. L. R. B.*, April 28, 1953 (C. A., D. C.), No. 10465.

[2] The court specifically rejected the suggestion of the Second Circuit in *Douds* v. *Local 1250* (173 F. 2d 764, 768–769, 772) that section 9 (a) may have "put an end to the distinction between 'grievances' and other disputes."

[3] *McComb* v. *Jacksonville Paper Co.*, 336 U. S. 187, 192–193.

that it was unimportant for the purpose of civil contempt whether or not the respondents' noncompliance with the decree was intentional.

The court directed the respondents to purge themselves of their contempt by (1) withdrawing from the contemptuous wage agreement and by refraining from making further payments pursuant thereto; (2) posting an appropriate notice; and (3) paying all court costs and all expenses incurred by the Board in prosecuting the contempt proceeding. The respondents were also directed to show compliance with the court's bargaining decree within 30 days by transcripts or minutes of bargaining meetings, or other documentary proof. The sanctions provided for failure to abide by these directions included the imposition of fines of $30,000 and $15,000 on the company and its president, respectively, and further fines of $1,000 and $500 for each day of continued noncompliance.

b. Inducing Repudiation of Union

Two corporations and a partnership, which had been individually directed to bargain with the representative of their employees, and their officers were likewise held to have violated the court's enforcement decree.[4] Each company and its officer were found to have cooperated in efforts to bring about the complaining union's repudiation by their employees, and to have refused to bargain with the union in good faith. The court found both civil and criminal contempt in the case of the 2 corporations and their officers as well as on the part of 1 of the 3 members of the partnership. The 2 other partners were held in civil contempt only. In view of their contempt, 1 corporation and its officer were fined $500 and $250, respectively; the second corporation and its president were each fined in the amount of $750; the member of the partnership held in both civil and criminal contempt was fined $500, while a fine of $250 was assessed against each of the other partners for his civil contempt.

c. Union Insistence on Bargaining for Supervisors

The contempt adjudication in the *Retail Clerks* case [5] was based on the union's continued, strike-supported insistence that the complaining employer bargain for supervisory employees [6] as a condition to the union's bargaining for the rank-and-file employees in the bargaining unit. The court pointed out that Congress expressly withdrew super-

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[4] *N. L. R. B.* v. *Conover Motor Co*, *N. L R. B.* v. *Phelps Brothers Service,* and *N. L. R. B.* v. *Strang Garage,* April 23, 1953 (C. A. 10).

[5] *N. L. R. B.* v. *Retail Clerks Local 648,* 203 F. 2d 165 (C. A 9).

[6] The court previously had suspended its consideration of this case pending the Board's determination, on remand (186 F. 2d 371 (C. A. 9)), of the supervisory status of the company's location managers. See Sixteenth Annual Report, p. 278.

visory employees from the act's protection so that the union could not legally require the employer to bargain regarding its supervisors even though such bargaining might have benefited the rank-and-file employees represented by the union. It was immaterial, according to the court, that the union when consenting to the entry of the court's decree may have been unaware that its effect was to prohibit insistence on such bargaining irrespective of motive. "A party may not voluntarily submit himself to a judgment of a court one day and flaunt it with impunity the next when its application proves more distasteful than he had anticipated," the court concluded.

In the *Piedmont Cotton* case,[7] after compliance with its order in the contempt case to resume bargaining with the union, the Fifth Circuit denied the Board's petition for contempt adjudication as to discriminatory discharge and unilateral changes in conditions of employment on the ground that it was not sufficiently supported.

[7] *N. L. R. B.* v. *Piedmont Cotton Mills*, June 30, 1953 (C. A. 5).

VI

Injunction Litigation

Section 10 (j) and (l) of the amended act provides for injunctive relief in the United States district courts on the petition of the Board or the General Counsel 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 an 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.

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." 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 may 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."

During fiscal 1953, injunctive relief under section 10 (j) was requested in one case against an employer. The petition in this case was still pending at the close of the year.[2]

Under the mandatory provisions of section 10 (l), injunctions were requested in 44 cases.[3] Thirty-eight of these cases involved secondary action believed to violate the provisions of subsection (A), and in

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[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 representatives.

[2] At the beginning of the fiscal year, a temporary injunction under section 10 (j) was granted on a petition filed during the preceeding year. See *Madden* v. *Cargill, Inc*, 30 LRRM 2459, (D C., No. Ill.), discussed in Seventeenth Annual Report, pp. 261–262.

[3] See table 18, appendix A, for a summary of the proceedings instituted and the action taken by the courts in cases under these sections

some instances also subsection (B), of 8 (b) (4). Two cases involved primary action allegedly initiated in disregard of a Board certification in violation of section 8 (b) (4) (C). In four cases, the request for an injunction was based entirely on alleged violations of section 8 (b) (4) (D).

1. Injunctions Under Section 10 (l)

The Board's mandatory applications for temporary relief were granted in 18 cases and denied in 2 cases involving allegations of secondary boycotts or other conduct prohibited by section 8 (b) (4). The court's ruling in each case was the result of its views regarding the presence of the statutory prerequisites; that is, a showing that there was reasonable cause to believe that the particular provisions of the act were violated and that the relief requested was appropriate under the circumstances.[4]

a. Secondary Strikes and Boycotts

Injunctive relief under section 10 (l) against secondary boycott action of far-reaching effect was obtained in connection with the New York Port tugboat strike of January–February 1953.[5] Here, the respondent local of the International Longshoremen's Association bolstered its dispute with the struck tugboat owners by picketing docks where shipping and stevedoring companies were located. When the local's parent international and district council ordered their members not to cross the picket line, all movement of cargo in and out of the New York Port area came to a standstill. The secondary picketing was enjoined by the Federal District Court for Southern New York in a temporary 5-day restraining order of February 7. A similar State court order had been vacated on February 6. The tugboat strike was settled on February 10.[6]

Other cases in which the applications for injunctions against secondary action were granted involved various forms of traditional boycott tactics.

In several cases, truckers' unions, in disputes over the employment of nonunion drivers, were enjoined from extending their picketing activities to the premises of secondary employers, and from inducing or instructing union members employed by the secondary employers

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[4] For a discussion of the general principles applied by the courts in granting injunctive relief, see Fourteenth Annual Report, pp. 138–142; Fifteenth Annual Report, pp. 201–204 See also *Penello* v. *Brewery Drivers Local 67* (*Washington Coca-Cola Bottling Works*), May 7, 1953 (D. C., D. C.).

[5] *Douds* v. *United Marine Division, Local 333, ILA* (*N. Y. Shipping Association*), February 7, 1953 (D. C, So. N. Y.), Civil No. 82–264.

[6] Similar interference with port operations at Charleston, South Carolina, through secondary action was enjoined by a consent order of the Federal District Court for Eastern South Carolina (Civil Action 3677, May 11, 1953) in *Johnston* v. *Local 1422, ILA* (*Doran Co.*).

not to load, unload, or otherwise handle goods sent by, or destined for, the primary employers involved.[7]

In one case, a longshoremen's union consented to the entry of a decree enjoining similar conduct.[8] Here, the union was charged with supporting its strike for wage demands against a lighterage company by secondary action. The conduct involved apparently was designed to cut off shipping facilities which the lighterage company's only customer had substituted because of the strike.

In two cases, injunctions were obtained on the basis of charges that certain construction workers' unions used secondary tactics to bar the use of nonunion contractors or subcontractors.[9] In another case, a construction trades union was enjoined from engaging in conduct intended to force the owner of a construction project to cease doing business with a maintenance firm which employed members of another union.[10]

Other secondary boycott situations in which injunctions were granted included: Picketing of the customers of a struck bottling company for the apparent purpose of inducing the employees of the customers and their suppliers to cease handling the struck company's product.[11] Enforcement of union rules to compel a contractor to cease installing a manufacturer's product which did not bear the union's label.[12] Work stoppages induced because of the union's belief that the struck company did work for another concern with which the union had a dispute over wages and other economic demands.[13]

b. Other Conduct Enjoined

The application for section 10 (l) relief was granted in one case where a union was charged with violating section 8 (b) (4) (C).[14] The employer in this case complained that the union engaged in strike

[7] *Sperry* v. *Local 554 Teamsters* (*McAllister Transfer*), April 15, 1953 (D. C., Nebr., Civil No. 20-53); *McMahon* v. *Local No. 600, Truck Drivers and Helpers* (*Osceola Foods*), June 8, 1953 (D C., E. Mo; Civil No. 9176 (3)); *Madden* v. *Chauffeurs, Teamsters and Helpers "General" Local 200* (*Reilly Cartage Co.*), June 10, 1953 (D. C., E Wis, Civ. A. No. 5948); see also *Madden* v. *Local 442 Teamsters* (*Wisco Hardware Co.*), June 8, 1953 (D. C., W. Wis., Civil No 247), and *LeBaron* v. *Food Processors Local 547* (*Spencer Foods*), May 27, 1953 (D. C., So. Calif.).

[8] *Cosentino* v. *District Council of Ports of Puerto Rico* (*ILA Asociacion Azucarera Cooperative Lafayette*), March 24, 1953 (D. C., P R., Civ. No. 8175).

[9] *Keenan* v. *Building Trades Council* (*Dunn*), September 23, 1952 (D. C., E Tenn., Civil No. 767). *Vincent* v. *IBEW Local 1574* (*Shell*), April 28, 1953 (by consent) (D. C, No. N. Y., Civil No. 4738).

[10] *LeBaron* v. *Los Angeles Building Trades Council* (*Standard Oil Co.*), December 30, 1952 (D. C, So Calif., Civil No. 1472 T).

[11] *Penello* v. *Brewery Drivers Local 67* (*Washington Coca-Cola Bottling Co.*), May 7, 1953 (D. C., Dist. Col).

[12] *Dick* v *Carpenters Local 433* (*Markus Cabinet Mfg. Co.*), June 12, 1953 (60-day temporary restraining order by consent) (D. C., E. Ill., Civil No. 2630).

[13] *Knapp* v. *United Mine Workers, District 50* (*Minnesota Linseed Oil Co*), May 11, 1953 (D. C., Minn., No. 4554 Civil).

[14] *Johnston* v. *Tungsten Local Union, United Mine Workers of America* (*Tungsten Mining Corp*), February 3, 1953 (D. C, E. North Carolina, Civ No. 670).

action in order to obtain recognition and to disrupt the existing bargaining relationship between the employer and the certified representative of its employees. The court's injunction in this case included directions that the union notify all its members by mail of the terms of the decree, and that it prepare and deliver copies of a press release to newspapers, radio stations, and other news distributing agencies which the union itself had used for publicizing its strike objectives.

In three cases, strike activities believed to violate the jurisdictional dispute provisions of section 8 (b) (4) (D) were enjoined.[15]

2. Denials of Injunctions

Application for injunctive relief under section 10 (1) was denied during the past year in two cases involving conduct alleged to violate section 8 (b) (4) (A) and (B). In one of these cases, the respondent union was charged with having instructed its members not to deliver, accept, or handle freight of a struck company. The court was of the opinion that the members acted individually of their own accord rather than on instructions, and that there was no reasonable cause to believe that a violation of the act was involved.[16] In the other case, the denial of relief was the result of the court's conclusion that the picketing of a construction site had the object of organizing the carpenters employed by the owner and general contractor and was therefore part of a primary labor dispute.[17] In the court's view, any effect the picketing may have had on the subcontractors' employees who refused to cross the striking union's picket line was only incidental and did not bring the action within the secondary boycott provisions of the act.

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[15] *Brown* v. *Pile Drivers Local 34 (Klamath Cedar Co*), May 14, 1953 (D. C. No. Cal. Civil No. 32686) ; *Graham v. Longshoremen's Local 12 (Upper Columbia River Towing Co.)*, June 10, 1953 (D. C., Ore., Civil No. 7007) ; *Douds* v. *Building Trades Council of Schenectady (General Dynamics Corp.)*, January 5, 1953 (D. C., No. N. Y., Civil No. 4590) (by consent).

[16] *Evans* v. *Teamsters Local 135 (Pittsburgh Plate Glass Co.)*, December 15, 1952 (D. C., So. Ind., No. 3240 Civil).

[17] *Sperry* v. *Local 55, Carpenters (Professional and Business Men's Life Insurance Co.)*, June 26, 1953 (D. C., Colo., Civil No. 4370).

VII

Miscellaneous Litigation

As in previous years, the Board during fiscal 1953 had to engage in various types of litigation for the purpose of protecting its statutory processes.

1. Suits To Enjoin or Compel Board Action

In 5 cases, the Board successfully resisted attempts—4 by employers and 1 by a union—to enjoin representation proceedings. The court's dismissal of each suit reaffirmed the settled view that Board action in representation cases can ordinarily be reviewed only in the appropriate court of appeals pursuant to section 9 (d) of the act, and that the United States district courts are without jurisdiction over this subject matter, particularly where no invasion of substantial constitutional rights is shown.

In one case, where an employer had obtained a State court order enjoining the Board from holding an election, the State case was removed to a Federal district court, which thereupon proceeded to vacate the State restraint and to dismiss the suit.[1] In so doing, the court noted that the election sought to be enjoined was part of an uncompleted administrative proceeding and that the company was not entitled to relief without exhausting the administrative remedies provided by the act.[2]

Similarly, in another case, an employer sought to enjoin a Board election, but this time instituted a direct suit in the Federal district court.[3] He asserted (1) that the election scheduled by the Board was prohibited by section 9 (c) (3) which permits only 1 election in the same bargaining unit or subdivision thereof during a 12-month period; and (2) that the anticipated improper certification of the petitioning union would constitute an unconstitutional deprivation of the employer's right to recover damages under section 303 (b) of the act for secondary boycotts in which he alleged the union might engage. The court dismissed the suit, holding that, since the craft group which was to vote had not had an opportunity to participate in any prior election

[1] *Freuhauf Trailer Co* v. *Getreu* (D. C, No. Ga), 31 LRRM 2469.
[2] See also *Strauss Stores Corp*, February 27, 1953 (D C, So N. Y.), and *American Cable & Radio Corp.* v. *Douds*, 111 F Supp. 482 (D C, So N Y.).
[3] *Ideal Roller & Mfg. Co.* v. *Douds* (D. C, So. N. Y.), April 2, 1953.

among the company's employees, the limitation of section 9 (c) (3) did not apply. It further held that the secondary boycott argument was too speculative to sustain a finding of a violation of substantial constitutional rights.

A third case involved an analogous suit by the loomfixers' union.[4] This union sought to enjoin an election directed in an industrial unit on the ground that the Board had rejected the union's contention respecting the appropriateness of a craft unit without a hearing. The court dismissed the suit, finding that the Board's action was valid and that no substantial constitutional question had been presented. The court pointed out that the right to be an exclusive representative in an appropriate unit was created in the act, and thus existed only under such conditions as it provided. Accordingly, whether or not a separate unit of loomfixers was appropriate posed only a question of law, which the Board appeared to resolve reasonably here. Respecting the alleged denial of hearing, the court concluded that since the loomfixers had been accorded a full hearing in an earlier proceeding on the question of the appropriateness of a craft unit and no change in facts had occurred, the Board had properly dismissed the union's most recent petition without permitting this question to be relitigated. In this connection, the court added that the Board's reaffirmation of its prior finding did not violate section 9 (b) (2) of the act, which precludes the Board from holding a craft unit inappropriate solely because a different unit was established in a prior Board determination. This provision, according to the court, did not prevent the Board from reaching the same decision as before, as long as it was based on the facts and not merely upon the circumstances that a craft unit was originally rejected.

The two remaining cases, which sought to enjoin Board elections, involved suits by employers who claimed that their constitutional rights were invaded by the Board's refusal to permit them to litigate the question whether unions, which were to participate in the election, had in fact complied with the affidavit requirements of section 9 (h).[5] In each case, the complaint was dismissed because the Board had administratively determined that there was compliance with section 9 (h), and the further circumstance that private parties were denied the privilege of going behind such determination, raised no such constitutional issue as would justify a district court in circumventing the statutory review procedure provided in section 9 (d) of the act. As the court in *American Cable* explained, even if the Board were incorrect in its conclusion that section 9 (h) did not permit private parties to go behind the affidavits filed by a union, this would only involve

[4] *New Bedford Loomfixers Union* v. *Alpert*, 110 F. Supp 723 (D C., Mass).

[5] *Strauss Stores Corp*, February 27, 1953 (D. C , So N. Y) ; *American Cable & Radio Corp.* v. *Douds*, 111 F. Supp. 482 (D. C., So. N. Y.).

an error of law and not a violation of due process justifying injunctive relief.

Now pending before the Court of Appeals for the District of Columbia, in *United Electrical, Radio and Machine Workers* v. *Herzog*, is the question of whether the Board itself, if it has reason to believe that its processes may have been abused, may inquire into the union's good faith in filing 9 (h) affidavits. Here the Board, prompted by the refusal of certain union officials to acknowledge before a grand jury the authenticity of the affidavits filed pursuant to section 9 (h), issued an order directing these officials to reaffirm such affidavits. The unions thereupon brought suit in the district court, which concluded that the Board had exceeded its powers under the act and issued a permanent injunction.[6] The pending appeal is from this order.

In addition to this litigation, there were two cases reaffirming the principle that the decision of the Board's General Counsel not to issue an unfair labor practice complaint is not subject to judicial review.[7] Thus, the Tenth Circuit in the *Manhattan* case again pointed out that such action was not a "final order" within the meaning of section 10 (f) of the act, and therefore is not directly reviewable in a court of appeals. In the *Hourihan* case, it was held that the refusal to issue a complaint was likewise not reviewable in a district court.

2. Other Litigation

An appeal from a district court decree enforcing a Board *subpoena duces tecum* was dismissed by the Fifth Circuit.[8] The court here reaffirmed its prior approval [9] of the Board's practice of supplying its regional offices and trial examiners with blank subpoena forms bearing the seal of the Board and a stamped signature of one of its members. The court also rejected the company's assertion that the scope of the Board's subpoena was too broad or that the requested disclosures were immaterial or irrelevant.

Also of significance was the Ninth Circuit Court of Appeals' affirmance [10] of the preemption injunction previously issued by the district court in the *Capital Service* case.[11] The Ninth Circuit affirmed on the ground that all of the conduct encompassed by the State decree constituted unfair labor practices under section 8 (b) of the act, and hence, by virtue of section 10 (a), there could be no State regulation thereof

[6] 110 F. Supp. 220 (D. C., D. C.).

[7] *Manhattan Construction Co.* v. *N. L. R. B.*, 198 F. 2d 320 (C. A. 10); *Hourihan* v. *N. L. R. B.*, 201 F. 2d 187 (C. A., D. C.), certiorari denied 345 U. S. 930.

[8] *Jackson Packing Co.* v. *N. L. R. B.*, May 29, 1953.

[9] *Edwards* v. *N. L. R. B.*, 189 F. 2d 970; see *N. L. R. B.* v. *Anchor Rome Mills, Inc.*, 197 F. 2d 447.

[10] *Capital Service, Inc.* v. *N. L. R. B.*, 204 F. 2d 848 (C. A. 9).

[11] See *N. L. R. B.* v. *Capital Service Co.*, (D. C., So. Calif.), June 2, 1952, Seventeenth Annual Report, p. 273.

absent cession of jurisdiction by the Board (which, of course, had not occurred here).[12]

Finally, in the *Underwood* case,[13] the Board sought to insure final payment under a back-pay decree by requesting the First Circuit, which had entered the decree, to restrain a creditor of the employee-beneficiary from resorting to attachments which would delay indefinitely the final back-pay installment owed by the company. While recognizing the existence of the requisite ancillary jurisdiction to grant the relief, a majority of the court declined to interfere with the State court proceedings instituted by the creditor. The court's conclusion was based on the absence of any wrongdoing or collusion between the company and the creditor for the purpose of circumventing the court's decree, and the fact that there had not yet been an undue delay in the employer's full compliance with the decree. The court added that if such problems should arise later it could then deal with them. However, Chief Judge Magruder, dissented, stating that the relief requested by the Board was proper under the circumstances; he urged that the creditor should be specifically directed to make application to the proper court to have the attachment against the company dismissed.

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[12] In another preemption suit (*N. L. R. B.* v. *New York State Labor Relations Board*, 106 F. Supp. 749 (July 1, 1952)), brought by the Board for the purpose of restraining the New York board from exercising jurisdiction over certain taxicab companies subject to the national act, the District Court for the Southern District of New York, although ruling that the Board had authority to bring the action, denied the Board's motion for summary judgment on the ground that the jurisdictional question presented raised factual issues requiring a trial. The case is discussed at p. 274 of the Seventeenth Annual Report.

[13] *N. L. R B.* v. *Underwood Machinery Co.*, 198 F. 2d 93 (C. A. 1).

APPENDIX A

Statistical Tables for Fiscal Year 1953

Table 1.—Total Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1953

	Number of cases					
	Total	Identification of complainant or petitioner				
		A F L affiliates	C. I O affiliates	Unaffiliated unions	Individuals	Employers
	All cases [1]					
Pending July 1, 1952	5,351	2,317	1,355	350	1,056	273
Received July 1, 1952–June 30, 1953	14,756	7,471	3,183	973	2,180	949
On docket July 1, 1952–June 30, 1953	20,107	9,788	4,538	1,323	3,236	1,222
Closed July 1, 1952–June 30, 1953	15,818	7,923	3,495	1,081	2,346	973
Pending June 30, 1953	4,289	1,865	1,043	242	890	249
	Unfair labor practice cases					
Pending July 1, 1952	[2] 3,068	1,021	749	169	966	163
Received July 1, 1952–June 30, 1953	5,469	2,066	1,024	295	1,656	428
On docket July 1, 1952–June 30, 1953	8,537	3,087	1,773	464	2,622	591
Closed July 1, 1952–June 30, 1953	5,868	2,149	1,139	334	1,819	427
Pending June 30, 1953	2,669	938	634	130	803	164
	Representation cases					
Pending July 1, 1952	2,280	1,296	606	181	87	110
Received July 1, 1952–June 30, 1953	9,243	5,405	2,158	675	484	521
On docket July 1, 1952–June 30, 1953	11,523	6,701	2,764	856	571	631
Closed July 1, 1952–June 30, 1953	9,909	5,774	2,356	744	489	546
Pending June 30, 1953	1,614	927	408	112	82	85
	Union-shop deauthorization cases					
Pending July 1, 1952	3	0	0	0	3	----------
Received July 1, 1952–June 30, 1953	44	0	1	3	40	----------
On docket July 1, 1952–June 30, 1953	47	0	1	3	43	----------
Closed July 1, 1952–June 30, 1953	41	0	0	3	38	----------
Pending June 30, 1953	6	0	1	0	5	----------

[1] **Definitions of Types of Cases Used in Tables.** The following designations, used by the Board in numbering cases, are used in the tables in this appendix to designate the various types of cases

CA: A charge of unfair labor practices against an employer under section 8(a)

CB A charge of unfair labor practices against a union under section 8 (b) (1), (2), (3), (5), (6)

CC: A charge of unfair labor practices against a union under section 8 (b) (4) (A), (B), (C)

CD. A charge of unfair labor practices against a union under section 8 (b) (4) (D)

RC 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. A petition by employer for certification of a representative for purposes of collective bargaining under section 9 (c) (1) (B)

RD: 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

UD: A petition by employees under section 9 (e) (1) asking for a referendum to rescind a bargaining agent's authority to make a union-shop contract under section 8 (a) (3)

[2] Includes 51 cases filed under the National Labor Relations Act, prior to amendment Of this number, 21 were closed during the fiscal year leaving 30 pending on June 30, 1953

Table 1A.—Unfair Labor Practice and Representation Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1953

	Number of unfair labor practice cases						Number of representation cases					
	Total	Identification of complainant					Total	Identification of petitioner				
		A F L affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals	Employers		A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	Individuals	Employers
	CA cases [1]						RC cases [1]					
Pending July 1, 1952	2,444	966	697	153	627	1	2,083	1,294	606	181	2	
Received July 1, 1952–June 30, 1953	4,409	2,026	1,007	283	1,093	0	8,241	5,402	2,158	669	12	
On docket July 1, 1952–June 30, 1953	6,853	2,992	1,704	436	1,720	1	10,324	6,696	2,764	850	14	
Closed July 1, 1952–June 30, 1953	4,719	2,098	1,104	315	1,202	0	8,877	5,770	2,356	738	13	
Pending June 30, 1953	2,134	894	600	121	518	1	1,447	926	408	112	1	
	CB cases [1]						RM cases [1]					
Pending July 1, 1952	500	34	27	10	336	93	110					110
Received July 1, 1952–June 30, 1953	810	30	16	10	555	199	518					518
On docket July 1, 1952–June 30, 1953	1,310	64	43	20	891	292	628					628
Closed July 1, 1952–June 30, 1953	882	34	29	12	606	201	543					543
Pending June 30, 1953	428	30	14	8	285	91	85					85
	CC cases [1]						RD cases [1]					
Pending July 1, 1952	49	1	1	0	1	46	87	2	0	0	85	0
Received July 1, 1952–June 30, 1953	179	3	1	1	6	168	484	3	0	6	472	3
On docket July 1, 1952–June 30, 1953	228	4	2	1	7	214	571	5	0	6	557	3
Closed July 1, 1952–June 30, 1953	168	4	0	0	7	157	489	4	0	6	476	3
Pending June 30, 1953	60	0	2	1	0	57	82	1	0	0	81	0
	CD cases [1]											
Pending July 1, 1952	24	0	0	0	1	23						
Received July 1, 1952–June 30, 1953	71	7	0	1	2	61						
On docket July 1, 1952–June 30, 1953	95	7	0	1	3	84						
Closed July 1, 1952–June 30, 1953	78	5	0	1	3	69						
Pending June 30, 1953	17	2	0	0	0	15						

[1] See table 1, footnote 1, for definitions of types of cases.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1953

A. CHARGES FILED AGAINST EMPLOYERS UNDER SEC. 8 (a)

	Number of cases showing specific allegations	Percent of total cases		Number of cases showing specific allegations	Percent of total cases
Total cases	[1] 4,409	[1] 100.0	8 (a) (3)	3,023	68.6
			8 (a) (4)	110	2.5
8 (a) (1)	[2] 4,409	[2] 100.0	8 (a) (5)	1,347	30.6
8 (a) (2)	421	9.5			

B. CHARGES FILED AGAINST UNIONS UNDER SEC. 8 (b)

	Number of cases showing specific allegations	Percent of total cases		Number of cases showing specific allegations	Percent of total cases
Total cases	[1] 1,060	[1] 100.0	8 (b) (4)	250	23.6
			8 (b) (5)	15	1.4
8 (b) (1)	632	59.6	8 (b) (6)	26	2.5
8 (b) (2)	604	57.0			
8 (b) (3)	134	12.6			

C. ANALYSIS OF 8 (b) (1) AND 8 (b) (4)

	Number of cases showing specific allegations	Percent of total cases		Number of cases showing specific allegations	Percent of total cases
Total cases 8 (b) (1)	[1] 632	[1] 100.0	Total cases 8 (b) (4)	[1] 250	[1] 100.0
8 (b) (1) (A)	615	97.3	8 (b) (4) (A)	160	64.0
8 (b) (1) (B)	26	4.1	8 (b) (4) (B)	47	18.8
			8 (b) (4) (C)	15	6.0
			8 (b) (4) (D)	71	28.4

[1] A single case may include allegations of violations of more than one section o fthe act. Therefore, the total of the various allegations is more than the figure for total cases.
[2] An 8 (a) (1) is a general provision forbidding any type of employer interference with the rights of employees guaranteed by the act, and therefore is included in all charges of employer unfair labor practices.

Table 3.—Formal Actions Taken, by Number of Cases, Fiscal Year 1953

Formal action taken	All cases	Unfair labor practice cases			Representation cases
		All C cases	CA cases [1]	Other C cases [1]	
Complaints and notices of hearing issued	950	950	757	193	----------
Notices of hearing issued	5,284	22	----------	22	5,262
Cases heard	3,285	612	505	107	2,673
Intermediate reports issued	530	530	447	83	----------
Decisions issued, total	3,334	707	572	135	2,627
Decisions and orders	584	584	[2] 479	[3] 105	----------
Decisions and consent orders	123	123	93	30	----------
Elections directed	2,134	----------	----------	----------	2,134
Rulings on objections and/or challenges in stipulated election cases	100	----------	----------	----------	100
Dismissals on record	393	----------	----------	----------	393

[1] See table 1, footnote 1, for definitions of types of cases.
[2] Includes 47 cases decided by adoption of intermediate report in the absence of exceptions.
[3] Includes 11 cases decided by adoption of intermediate report in the absence of exceptions.

Table 4.—Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1953

A. BY EMPLOYERS [1]

	Total	By agreement of all parties	By Board or court order
	Cases		
Notices posted	1,028	764	264
Recognition or other assistance withheld from employer-assisted union	65	42	23
Employer-dominated union disestablished	44	33	11
Workers placed on preferential hiring list	61	47	14
Collective bargaining begun	247	185	62
	Workers		
Workers offered reinstatement to job	1,754	1,279	475
Workers receiving back pay	2,987	[3] 1,976	[4] 1,011
Back-pay awards	$1,307,230	$564,080	$743,150

B. BY UNIONS [2]

	Total	By agreement of all parties	By Board or court order
	Cases		
Notices posted	204	146	58
Union to cease requiring employer to give it assistance	28	17	11
Notice of no objection to reinstatement of discharged employees	44	33	11
Collective bargaining begun	16	15	1
	Workers		
Workers receiving back pay	199	[3] 87	[4] 112
Back-pay awards	$49,950	$25,270	$24,680

[1] In addition to the remedial action shown, other forms of remedy were taken in 27 cases.
[2] In addition to the remedial action shown, other forms of remedy were taken in 28 cases.
[3] Includes 49 workers who received back pay from both employer and union.
[4] Includes 109 workers who received back pay from both employer and union.

Table 5.—Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1953

Industrial group [1]	All cases	Unfair labor practice cases				Representation cases		
		CA [2]	CB [2]	CC [2]	CD [2]	RC [2]	RM [2]	RD [2]
Total	14,712	4,409	810	179	71	8,241	518	484
Manufacturing	9,353	2 772	398	63	20	5,455	320	325
Ordnance and accessories	104	19	2	0	2	80	1	0
Food and kindred products	1,251	333	59	16	2	763	36	42
Tobacco manufacturers	14	4	0	0	0	9	1	0
Textile mill products	440	182	13	4	0	213	16	12
Apparel and other finished products made from fabrics and similar materials	461	209	22	4	1	175	42	8
Lumber and wood products	503	165	28	4	3	263	26	14
Furniture and fixtures	377	133	20	2	0	196	18	8
Paper and allied products	286	55	6	0	0	210	10	5
Printing, publishing, and allied industries	396	104	31	3	2	233	10	13
Chemicals and allied products	534	120	14	4	0	354	20	22
Products of petroleum and coal	172	46	7	2	2	96	4	15
Rubber products	102	25	3	0	0	69	2	3
Leather and leather products	157	51	8	0	0	79	11	8
Stone, clay, and glass products	354	102	13	1	0	219	8	11
Primary metal industries	508	126	34	3	1	307	13	24
Fabricated metal products (except machinery and transportation equipment)	815	230	30	4	1	499	27	24
Machinery (except electrical)	994	291	37	5	3	585	29	44
Electrical machinery, equipment, and supplies	672	225	23	6	0	372	14	32
Transportation equipment	649	199	33	5	3	380	10	19
Aircraft and parts	290	95	17	4	1	164	1	8
Ship and boat building and repairing	97	37	11	1	1	45	1	1
Automotive and other transportation equipment	262	67	5	0	1	171	8	10
Professional, scientific, and controlling instruments	128	37	4	0	0	82	4	1
Miscellaneous manufacturing	436	116	11	0	0	271	18	20
Agriculture, forestry, and fisheries	11	5	1	0	0	5	0	0
Mining	238	88	7	2	0	126	7	8
Metal mining	70	18	1	1	0	49	0	1
Coal mining	38	31	3	0	0	4	0	0
Crude petroleum and natural gas production	54	16	1	0	0	34	1	2
Nonmetallic mining and quarrying	76	23	2	1	0	39	6	5
Construction	627	195	171	46	36	169	8	2
Wholesale trade	1,119	279	39	27	3	674	55	42
Retail trade	1,456	438	37	13	0	854	63	51
Finance, insurance, and real estate	66	24	7	0	0	29	4	2
Transportation, communication, and other public utilities	1,388	460	113	25	11	686	51	42
Highway passenger transportation	149	70	10	1	0	58	3	7
Highway freight transportation	427	155	39	13	1	192	16	11
Water transportation	140	40	32	5	4	53	4	2
Warehousing and storage	145	30	6	4	0	94	6	5
Other transportation	45	19	2	0	1	22	0	1
Communication	268	88	15	1	3	140	9	12
Heat, light, power, water, and sanitary services	214	58	9	1	2	127	13	4
Services	454	148	37	3	1	243	10	12

[1] Source: Standard Industrial Classification, Division of Statistical Standards, U. S Bureau of the Budget, Washington 1945

[2] See table 1, footnote 1, for definitions of types of cases.

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1953

Division and State [1]	All cases	Unfair labor practice cases				Representation cases		
		CA [2]	CB [2]	CC [2]	CD [2]	RC [2]	RM [2]	RD [2]
Total	14,712	4,409	810	179	71	8,241	518	484
New England	874	279	41	10	1	485	26	32
Maine	51	17	1	0	0	30	2	1
New Hampshire	35	10	1	0	0	21	2	1
Vermont	28	12	0	0	0	16	0	0
Massachusetts	477	150	27	5	0	258	14	23
Rhode Island	75	22	8	3	1	35	3	3
Connecticut	208	68	4	2	0	125	5	4
Middle Atlantic	3,382	998	268	47	27	1,797	150	95
New York	1,952	610	186	31	8	978	94	45
New Jersey	615	166	28	5	8	371	26	11
Pennsylvania	815	222	54	11	11	448	30	39
East North Central	3,112	879	157	35	16	1,790	103	132
Ohio	799	198	44	4	3	491	28	31
Indiana	469	158	27	7	1	246	11	19
Illinois	850	259	46	15	11	440	40	39
Michigan	637	169	32	2	1	393	16	24
Wisconsin	357	95	8	7	0	220	8	19
West North Central	1,352	367	45	18	6	839	37	40
Iowa	132	30	0	1	0	90	6	5
Minnesota	245	34	3	3	0	191	7	7
Missouri	690	227	35	13	5	376	16	18
North Dakota	45	8	0	0	0	34	2	1
South Dakota	18	5	0	0	0	10	1	2
Nebraska	75	22	4	1	0	44	1	3
Kansas	147	41	3	0	1	94	4	4
South Atlantic	1,224	478	36	13	1	636	26	34
Delaware	22	4	0	0	0	17	1	0
Maryland	155	57	5	4	0	86	1	2
District of Columbia	70	25	6	2	0	30	4	3
Virginia	138	54	4	2	0	65	4	9
West Virginia	113	54	6	2	1	46	2	2
North Carolina	232	121	4	1	0	99	3	4
South Carolina	65	24	1	1	0	37	1	1
Georgia	206	70	7	1	0	118	7	3
Florida	223	69	3	0	0	138	3	10
East South Central	731	213	27	12	2	436	28	13
Kentucky	192	52	18	2	0	116	3	1
Tennessee	300	90	5	9	2	174	17	3
Alabama	167	44	3	1	0	106	6	7
Mississippi	72	27	1	0	0	40	2	2
West South Central	1,008	294	36	6	4	595	30	43
Arkansas	158	38	1	2	0	102	6	9
Louisiana	230	78	12	3	0	125	5	7
Oklahoma	133	45	6	1	0	66	9	6
Texas	487	133	17	0	4	302	10	21
Mountain	605	202	25	9	2	307	34	26
Montana	46	17	7	0	0	14	7	1
Idaho	71	28	3	1	0	32	2	5
Wyoming	36	19	3	2	0	12	0	0
Colorado	191	68	5	1	0	105	6	6
New Mexico	94	35	3	1	1	41	6	7
Arizona	105	24	3	3	0	61	10	4
Utah	38	9	0	0	0	25	1	3
Nevada	24	2	1	1	1	17	2	0
Pacific	1,939	520	141	25	12	1,098	78	65
Washington	270	95	29	5	0	116	15	10
Oregon	260	78	15	5	7	122	21	12
California	1,409	347	97	15	5	860	42	43
Outlying areas	485	179	34	4	0	258	6	4
Alaska	49	16	3	0	0	29	1	0
Hawaii	83	26	3	1	0	51	2	0
Puerto Rico	353	137	28	3	0	178	3	4

[1] The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.
[2] See table 1, footnote 1, for definitions of types of cases.

Table 7.—Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1953

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	[4] 5,868	100.0	4,719	100.0	882	100.0	168	100.0	[3] 78	100.0
Before issuance of complaint	5,103	87.0	4,116	87.2	767	87.0	142	84.5	[3] 78	100 0
After issuance of complaint, before opening of hearing [1]	198	3.4	147	3.1	41	4.6	10	5.9		
After hearing opened, before issuance of intermediate report [1]	[5] 85	1.4	74	1.6	7	.8	2	1.2		
After intermediate report, before issuance of Board decision	48	.8	43	.9	5	.6	0	.0		
After Board order adopting intermediate report in absence of exceptions	44	.8	35	.8	7	.8	2	1.2		
After Board decision, before court decree	[6] 205	3.5	165	3.5	29	3.3	8	4.8		
After Board order adopting intermediate report followed by circuit court decree	6	.1	6	.1	0	.0	0	.0		
After circuit court decree, before Supreme Court action	[7] 155	2.6	117	2.5	21	2.3	4	2.4		
After Supreme Court action [2]	[6] 24	.4	16	.3	5	.6	0	.0		

[1] Includes cases in which the parties entered into a stipulation providing for Board order and consent decree in the circuit court.
[2] Includes either denial of writ of certiorari or granting of writ and issuance of opinion.
[3] Includes 24 cases in which a notice of hearing issued pursuant to sec. 10 (k) of the act. Of these 24 cases, 13 were closed after notice, 4 were closed after hearing, 6 were closed after Board decision, and 1 was closed after circuit court order.
[4] Includes 21 NLRA cases.
[5] Includes 2 NLRA cases.
[6] Includes 3 NLRA cases.
[7] Includes 13 NLRA cases.

Table 8.—Disposition of Representation Cases Closed, Fiscal Year 1953

Stage of disposition	All R cases		RC cases		RM cases		RD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	9,909	100 0	8,877	100 0	543	100.0	489	100 0
Before issuance of notice of hearing	4,370	44 1	3,818	43 0	294	54 1	258	52 8
After issuance of notice of hearing, before opening of hearing	2,616	26 4	2,357	26 6	151	27 8	108	22 1
After hearing opened, before issuance of Board decision	369	3 7	324	3 6	26	4 8	19	3 9
After issuance of Board decision	2,554	25.8	2,378	26.8	72	13 3	104	21.2

Table 9.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1953

Stage and method of disposition	All C cases		CA cases		CB cases		CC cases		CD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	[1] 5,868	100.0	4,719	100 0	882	100.0	168	100.0	78	100 0
Before issuance of complaint	5,103	87 0	4,116	87.2	767	86.9	142	84.5	78	100.0
Adjusted	913	15 6	748	15 8	120	13.6	23	13.7	[7] 22	28 2
Withdrawn	2,705	46 1	2,183	46.3	378	42 8	96	57 1	[8] 48	61.5
Dismissed	1,474	25 1	1,174	24.9	269	30 5	23	13.7	[9] 8	10.3
Otherwise	11	2	11	.2	0	.0	0	.0	0	0
After issuance of complaint, before opening of hearing	198	3 4	147	3.2	41	4 7	10	6 0		
Adjusted	76	1.3	61	1 3	13	1 5	2	1.2		
Compliance with stipulated decision	8	.1	3	1	0	.0	5	3 0		
Compliance with consent decree	63	1.1	51	1.1	12	1 4	0	0		
Withdrawn	40	7	26	.6	11	1.2	3	1 8		
Dismissed	10	2	5	.1	5	.6	0	.0		
Otherwise	1	(10)	1	(10)	0	.0	0	0		
After hearing opened, before issuance of intermediate report	[2] 85	1.5	74	1.6	7	.7	2	1 2		
Adjusted	15	.3	13	.3	2	.2	0	.0		
Compliance with consent decree	[3] 45	8	42	9	2	.2	0	0		
Withdrawn	7	.1	5	.1	1	.1	1	.6		
Dismissed	16	.3	13	3	2	.2	1	.6		
Otherwise	[3] 2	(10)	1	(10)	0	0	0	0		
After intermediate report, before issuance of Board decision	48	.8	43	9	5	.6	0	.0		
Compliance	44	.8	39	.8	5	6	0	.0		
Withdrawn	3	(10)	3	.1	0	.0	0	.0		
Otherwise	1	(10)	1	(10)	0	.0	0	.0		

After Board order adopting intermediate report in absence of exceptions	44	.8	35	.8	7	8	2	1 2		
Compliance	17	.3	13	3	2	.2	2	1.2		
Dismissed	27	.5	22	.5	5	6	0	0		
After Board decision, before court decree	[4] 205	3 4	165	3 5	29	3 3	8	4 8		
Compliance	[4] 126	2 1	97	2 1	21	2 4	5	3 0		
Withdrawn	1	(10)	1	(10)	0	0	0	0		
Dismissed	76	1.3	65	1 4	8	.9	3	1 8		
Otherwise	2	(10)	2	(10)	0	0	0	0		
After Board order adopting intermediate report followed by circuit court decree. Compliance	6	.1	6	.1	0	.0	0	0		
After circuit court decree, before Supreme Court action	[5] 155	2.7	117	2 5	21	2 4	4	2 3		
Compliance	[6] 115	2 0	88	1 9	14	1 6	4	2 3		
Withdrawn	1	(10)	1	(10)	0	0	0	0		
Dismissed	[4] 38	.7	28	6	7	8	0	0		
Otherwise	[3] 1	(10)	0	.0	0	.0	0	0		
After Supreme Court denied writ of certiorari	[4] 16	.2	8	.1	5	.6	0	.0		
Compliance	[2] 14	.2	7	1	5	.6	0	0		
Dismissed	[3] 2	(10)	1	(10)	0	0	0	0		
After Supreme Court opinion	8	.1	8	1	0	.0	0	0		
Compliance	7	.1	7	.1	0	.0	0	.0		
Dismissed	1	(10)	1	(10)	0	0	0	.0		

[1] Includes 21 NLRA cases.
[2] Includes 2 NLRA cases.
[3] Includes 1 NLRA case.
[4] Includes 3 NLRA cases
[5] Includes 13 NLRA cases.
[6] Includes 9 NLRA cases
[7] Includes 3 cases adjusted after issuance of notice of hearing pursuant to section 10 (k) of the act, and 5 cases closed by compliance with Board decision.
[8] Includes 10 cases withdrawn after 10 (k) notice of hearing and 4 cases withdrawn after hearing
[9] Includes 2 cases dismissed by Board decision in one of which a petition for review was denied by the circuit court.
[10] Less than one-tenth of 1 percent.

Table 10.—Analysis of Methods of Disposition of Representation Cases Closed, Fiscal Year 1953

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	9,909	100.0	8,877	100.0	543	100.0	489	100.0
Consent election	3,381	34.1	3,193	36.0	125	23.1	63	12.9
Before notice of hearing	2,088	21.1	1,972	22.2	84	15.5	32	6.6
After notice of hearing, before hearing opened	1,160	11.7	1,097	12.4	34	6.3	29	5.9
After hearing opened, before Board decision	133	1.3	124	1.4	7	1.3	2	.4
Stipulated election	940	9.5	902	10.2	26	4.8	12	2.4
Before notice of hearing	456	4.6	438	4.9	12	2.2	6	1.2
After notice of hearing, before hearing opened	404	4.1	388	4.4	11	2.0	5	1.0
After hearing opened, before Board decision	72	.7	69	.8	2	.4	1	.2
After post-election hearing and decision	8	.1	7	.1	1	.2	0	.0
Recognition	125	1.3	100	1.0	25	4.6		
Before notice of hearing	40	.4	31	.3	9	1.6		
After notice of hearing, before hearing opened	80	.8	66	.7	14	2.6		
After hearing opened, before Board decision	5	.1	3	(1)	2	.4		
Withdrawn	2,365	23.9	1,982	22.3	199	36.6	184	37.7
Before notice of hearing	1,253	12.6	1,033	11.6	111	20.4	109	22.3
After notice of hearing, before hearing opened	811	8.2	683	7.7	71	13.1	57	11.7
After hearing opened, before Board decision	135	1.4	112	1.3	12	2.2	11	2.3
After Board decision and direction of election	166	1.7	154	1.7	5	.9	7	1.4
Dismissed	1,134	11.3	844	9.5	127	23.4	163	33.3
Before notice of hearing	529	5.3	340	3.8	78	14.4	111	22.7
After notice of hearing, before hearing opened	160	1.6	122	1.4	21	3.9	17	3.5
After hearing opened, before Board decision	24	.2	16	.2	3	.5	5	1.0
By Board decision	[2] 421	4.2	366	4.1	25	4.6	30	6.1
Board-ordered election	1,959	19.8	1,851	20.9	41	7.5	67	13.7
Otherwise	5	.1	5	.1	0	.0	0	.0

[1] Less than one-tenth of 1 percent.
[2] Includes 4 RC, 13 RM, and 7 RD cases dismissed by Board order after a direction of election issued but before an election was held.

Table 11.—Types of Elections Conducted, Fiscal Year 1953

Type of case	Total elections	Type of election			
		Consent [1]	Stipulated [2]	Board ordered [3]	Regional director directed [4]
All elections, total	[5] 6,208	3,284	921	1,990	13
Eligible voters, total	751,337	242,496	175,212	330,634	2,995
Valid votes, total	650,796	209,404	150,932	288,703	1,757
RC cases,[6] total	5,886	3,112	883	1,891	----------
Eligible voters	726,620	232,697	171,266	322,657	----------
Valid votes	629,806	200,613	147,539	281,654	----------
RM cases,[6] total	164	108	24	32	----------
Eligible voters	11,378	4,978	2,962	3,438	----------
Valid votes	9,933	4,396	2,480	3,057	----------
RD cases,[6] total	141	61	14	66	----------
Eligible voters	9,945	4,628	984	4,333	----------
Valid votes	8,947	4,219	913	3,815	----------
UD cases,[6] total	17	3	0	1	13
Eligible voters	3,394	193	0	206	2,995
Valid votes	2,110	176	0	177	1,757

[1] Consent elections are held by an agreement of all parties concerned. Post-election rulings and certifications are made by the regional director.
[2] Stipulated elections are held by an agreement of all parties concerned, but the agreement provides for the Board to determine any objections and/or challenges
[3] Board-ordered elections are held pursuant to a decision and direction of election by the Board. Post-election rulings on objections and/or challenges are made by the Board.
[4] These elections are held pursuant to direction by the regional director. Post-election rulings on objections and/or challenges are made by the Board.
[5] Excludes 39 elections conducted during the year for which the results were still inconclusive at the end of the year.
[6] See table 1, footnote 1, for definitions of types of cases.

Table 12.—Results of Union-Shop Deauthorization Polls, Fiscal Year 1953

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	Resulting in deauthorization		Resulting in continued authorization		Total	Percent of total eligible	Cast for deauthorization	
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible [1]
Total elections	17	8	47.1	9	52.9	3,394	213	6.3	3,181	93.7	2,110	62.2	1,343	39.6
A. F. L.	13	6	46.2	7	53.8	3,100	129	4.2	2,971	95.8	1,838	59.3	1,222	39.4
C. I. O.	4	2	50.0	2	50.0	294	84	28.6	210	71.4	272	92.5	121	41.2

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

Table 13.—Collective-Bargaining Elections[1] by Affiliation of Participating Unions, Fiscal Year 1953

Union affiliation	Elections participated in			Employees involved (Number eligible to vote)			Valid votes cast			
	Total	Won	Percent won	Total eligible	Employees in units selecting bargaining agent		Total	Percent of total eligible	Cast for the union	
					Number	Percent of total eligible			Number	Percent of total cast
Total	[2] 6,050	4,350	71.9	[2] 737,998	584,450	79.2	[2] 639,739	86.7	497,286	77.7
A. F. L.	4,292	2,750	64.1	502,382	267,925	53.3	431,392	85.9	228,801	53.0
C. I. O.	2,141	1,114	52.0	464,451	217,165	46.8	404,440	87.1	192,060	47.5
Unaffiliated	802	486	60.6	173,403	99,360	57.3	150,529	86.8	76,425	50.8

[1] The term "collective-bargaining election" is used to cover representation elections requested by a union or other candidate for employee representative or by the employer. This term is used to distinguish this type of election from a decertification election, which is one requested by employees seeking to revoke the representation rights of a union which is already certified or which is recognized by the employer without a Board certification.

[2] Elections involving 2 or more unions of different affiliations are counted under each affiliation, but only once in the total. Therefore, the total is less than the sum of the figures or the 3 groupings by affiliation.

Table 13A.—Outcome of Collective-Bargaining Elections[1] by Affiliation of Participating Unions, and Number of Employees in Units, Fiscal Year 1953

Affiliation of participating unions	Number of elections					Number of employees involved (number eligible to vote)				
	Total	in which representation rights were won by—			in which no representative was chosen	Total	in units in which representation rights were won by—			in units where no representative was chosen
		A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions			A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	
Total	6,050	2,750	1,114	486	1,700	737,998	267,925	217,165	99,360	153,548
1-union elections										
A. F. L.	3,031	2,011			1,020	167,888	99,765			68,123
C. I. O.	1,226		763		463	134,790		73,649		61,141
Unaffiliated	359			279	80	23,409			19,584	3,825
2-union elections										
A. F. L.-C. I. O.	650	324	266		60	215,050	107,773	94,075		13,202
A. F. L.-unaffiliated	214	106		89	19	38,796	18,095		19,371	1,330
A. F. L.-A. F. L.	274	242			32	39,848	37,691			2,157
C. I. O.-unaffiliated	152		60	86	6	72,413		33,438	38,108	867
C. I. O.-C. I. O.	3		2		1	34		21		13
Unaffiliated-unaffiliated	16			15	1	2,196			2,192	4
3-union elections:										
A. F. L.-C. I. O.-unaffiliated	54	21	14	15	4	33,426	1,578	14,228	17,331	289
A. F. L.-A. F. L.-A. F. L.	9	6			3	1,001	677			324
A. F. L.-A. F. L.-C. I. O.	48	30	7		11	5,217	1,339	1,605		2,273
A. F. L.-A. F. L.-unaffiliated	5	5		0	0	389	389		0	0
A. F. L.-C. I. O.-C. I. O.	3	2	1		0	700	584	116		0
C. I. O.-unaffiliated-unaffiliated	2		0	2	0	2,774		0	2,774	0
4-union elections:										
A. F. L.-A. F. L.-A. F. L.-A. F. L.	1	1			0	20	20			0
A. F. L.-A. F. L.-A. F. L.-C. I. O.	3	2	1		0	47	14	33		0

[1] For definition of this term, see footnote 1, table 13.

Table 13B.—Voting in Collective-Bargaining Elections [1] in Which a Representative Was Chosen, Fiscal Year 1953

Affiliation of participating unions	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Valid votes cast for winning union			Valid votes cast for losing union			Valid votes cast for no union
				A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	
Total	584,450	500,118	85.6	162,821	128,556	56,825	42,261	40,146	18,078	51,431
1-union elections:										
A. F. L.	99,765	83,357	83.6	64,426						18,931
C. I. O.	73,649	64,810	88.0		46,788					18,022
Unaffiliated	19,584	16,425	83.9			12,567				3,858
2-union elections										
A. F. L.-C. I. O.	201,848	172,016	85.2	62,920	52,840		25,083	25,358		5,815
A. F. L.-unaffiliated	37,466	32,928	87.9	10,152		11,020	5,301		4,630	1,825
A. F. L.-A. F. L.	37,691	31,177	82.7	22,444			7,651			1,082
C. I. O.-unaffiliated	71,546	62,674	87.6		19,238	20,823		11,187	10,193	1,233
C. I. O.-C. I. O.	21	21	100.0		19			2		0
Unaffiliated-unaffiliated	2,192	1,874	85.5			1,160			694	20
3-union elections:										
A. F. L.-C. I. O.-unaffiliated	33,137	28,227	85.2	970	8,570	9,734	3,322	3,217	1,906	508
A. F. L.-A. F. L.-A. F. L.	677	606	89.5	378			228			0
A. F. L.-A. F. L.-C. I. O.	2,944	2,676	90.9	913	990		588	77		108
A. F. L.-A. F. L.-unaffiliated	389	359	92.3	227		0	57		74	1
A. F. L.-C. I. O.-C. I. O.	700	513	73.3	370	87		10	36		10
C. I. O.-unaffiliated-unaffiliated	2,774	2,389	86.1			1,521		269	581	18
4-union elections:										
A. F. L.-A. F. L.-A. F. L.-A. F. L.	20	20	100.0	12			8			0
A. F. L.-A. F. L.-A. F. L.-C. I. O.	47	46	97.9	9	24		13	0		0

[1] For definition of this term, see footnote 1, table 13.

Table 13C.—Voting in Collective-Bargaining Elections[1] in Which a Representative Was Not Chosen, Fiscal Year 1953

Affiliation of participating unions	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Valid votes cast for losing unions			Valid votes cast for no union
				A. F. L. affiliates	C. I. O. affiliates	Unaffiliated unions	
Total	153,548	139,621	90.9	23,719	23,358	1,522	91,022
1-union elections:							
A. F. L.	68,123	61,833	90.8	19,549	--------	--------	42,284
C. I. O.	61,141	55,924	91.5	--------	20,227	--------	35,697
Unaffiliated	3,825	3,433	89.8	--------	--------	1,140	2,293
2-union elections:							
A. F. L.-C. I. O.	13,202	12,230	92.6	2,592	2,260	--------	7,378
A. F. L.-unaffiliated	1,330	1,163	87.4	234	--------	271	658
A. F. L.-A. F. L.	2,157	1,826	84.7	520	--------	--------	1,306
C. I. O.-unaffiliated	867	783	90.3	--------	262	90	431
C. I. O.-C. I. O.	13	12	92.3	--------	4	--------	8
Unaffiliated-unaffiliated	4	2	50.0	--------	--------	2	0
3-union elections:							
A. F. L.-C. I. O.-unaffiliated	289	272	94.1	31	57	19	165
A. F. L.-A. F. L.-A. F. L.	324	296	91.4	110	--------	--------	186
A. F. L.-A. F. L.-C. I. O.	2,273	1,847	81.3	683	548	--------	616

[1] For definition of this term, see footnote 1, table 13.

Table 14.—Decertification Elections by Affiliation of Participating Unions, Fiscal Year 1953

Union affiliation	Elections participated in					Employees involved in elections (number eligible to vote)					Valid votes cast			
	Total	Resulting in certification		Resulting in decertification		Total eligible	Resulting in certification		Resulting in decertification		Total	Percent of total eligible	Cast for the union	
		Number	Percent of total	Number	Percent of total		Number	Percent of total eligible	Number	Percent of total eligible			Number	Percent of total cast
Total elections	141	44	31.2	97	68.8	9,945	4,869	49.0	5,076	51.0	8,947	90.0	4,558	50.9
A. F. L.	83	23	27.7	60	72.3	5,141	1,973	38.4	3,168	61.6	4,523	88.0	2,109	46.6
C. I. O.	45	18	40.0	27	60.0	3,528	2,185	61.9	1,343	38.1	3,248	92.1	1,847	56.9
Unaffiliated	13	3	23.1	10	76.9	1,276	711	55.7	565	44.3	1,176	92.2	602	51.2

Table 14A.—Voting in Decertification Elections, Fiscal Year 1953

Union affiliation	Elections in which a representative was redesignated					Elections resulting in decertification				
	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for winning union	Votes cast for no union	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for losing union	Votes cast for no union
Total	4,869	4,507	92.6	2,981	1,526	5,076	4,440	87.5	1,577	2,863
A. F. L.	1,973	1,788	90.6	1,143	645	3,168	2,735	86.3	966	1,769
C. I. O.	2,185	2,057	94.1	1,399	658	1,343	1,191	88.7	448	743
Unaffiliated	711	662	93.1	439	223	565	514	91.0	163	351

Table 15.—Size of Units in Collective-Bargaining and Decertification Elections, Fiscal Year 1953

A. COLLECTIVE-BARGAINING ELECTIONS

Size of unit (number of employees)	Number of elections	Percent of total	Elections in which representation rights were won by—						Elections in which no representative was chosen	
			A. F. L. affiliates		C. I. O affiliates		Unaffiliated unions			
			Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	6,050	100.0	2,750	100.0	1,114	100.0	486	100.0	1,700	100.0
1–9	1,368	22.6	842	30.6	135	12.1	72	14.8	319	18.8
10–19	1,104	18.2	538	19.6	169	15.2	85	17.5	312	18.4
20–29	648	10.7	305	11.1	118	10.6	52	10.7	173	10.2
30–39	438	7.2	161	5.9	97	8.7	34	7.0	146	8.6
40–49	326	5.4	133	4.8	74	6.7	17	3.5	102	6.0
50–59	261	4.3	92	3.4	55	4.9	24	4.9	90	5.3
60–69	189	3.1	71	2.6	45	4.0	11	2.3	62	3.6
70–79	162	2.7	59	2.2	42	3.8	10	2.1	51	3.0
80–89	122	2.0	45	1.6	20	1.8	12	2.5	45	2.6
90–99	102	1.7	37	1.4	21	1.9	12	2.5	32	1.9
100–149	388	6.4	139	5.1	85	7.6	39	8.0	125	7.4
150–199	215	3.6	77	2.8	46	4.1	24	4.9	68	4.0
200–299	251	4.2	81	2.9	78	7.0	25	5.1	67	3.9
300–399	139	2.3	58	2.1	30	2.7	12	2.5	39	2.3
400–499	82	1.4	25	.9	27	2.4	9	1.9	21	1.2
500–599	49	.8	15	.5	14	1.3	9	1.9	11	.6
600–799	48	.8	13	.5	14	1.3	6	1.2	15	.9
800–999	31	.5	14	.5	8	.7	6	1.2	3	.2
1,000–1,999	80	1.3	26	.9	18	1.6	20	4.1	16	.9
2,000–2,999	19	.3	8	.3	5	.4	4	.8	2	.1
3,000–3,999	13	.2	6	.2	6	.5	1	2	0	.0
4,000–4,999	7	.1	3	.1	2	.2	2	.4	0	.0
5,000–9,999	5	.1	1	[1]	3	.3	0	.0	1	.1
10,000–15,000	3	.1	1	[1]	2	.2	0	.0	0	.0

B. DECERTIFICATION ELECTIONS

Size of unit (number of employees)	Number of elections	Percent of total	A. F. L. affiliates Number	A. F. L. affiliates Percent	C. I. O affiliates Number	C. I. O affiliates Percent	Unaffiliated unions Number	Unaffiliated unions Percent	No representative Number	No representative Percent
Total	141	100.0	23	100.0	18	100.0	3	100.0	97	100.0
1–9	26	18.4	4	17.4	1	5.5	0	.0	21	21.6
10–19	25	17.7	1	4.4	2	11.1	0	0	22	22.7
20–29	19	13.5	2	8.7	2	11.1	0	.0	15	15.5
30–39	16	11.3	4	17.4	3	16.6	0	.0	9	9.3
40–49	7	5.0	3	13.0	0	.0	0	.0	4	4.1
50–59	5	3.6	1	4.4	0	.0	0	.0	4	4.1
60–69	5	3.6	0	.0	2	11.1	1	33.4	2	2.1
70–79	2	1.4	0	.0	0	.0	1	33.3	1	1.0
80–89	2	1.4	0	.0	0	.0	0	.0	2	2.1
90–99	3	2.1	0	.0	0	0	0	.0	3	3.1
100–149	12	8.5	3	13.0	4	22.2	0	.0	5	5.2
150–199	7	5.0	2	8.7	1	5.6	0	.0	4	4.1
200–299	5	3.6	1	4.3	1	5.6	0	.0	3	3.1
300–399	4	2.8	2	8.7	1	5.6	0	.0	1	1.0
400 and over	3	2.1	0	.0	1	5.6	1	33.3	1	1.0

[1] Less than one-tenth of 1 percent.

Table 16.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1953

Division and State [1]	Number of elections—					Employees eligible to vote	Total valid votes cast	Valid votes cast for—				Employees in units choosing representation
	Total	In which representation rights were won by—			In which no representative was chosen			A F L affiliates	C I O affiliates	Unaffiliated unions	No union	
		A F L. affiliates	C I O affiliates	Unaffiliated unions								
Total	6,050	2,750	1,114	486	1,700	737,998	639,739	228,801	192,060	76,425	142,453	584,450
New England	351	136	83	29	103	66,894	59,847	16,131	23,971	5,274	14,471	49,300
Maine	21	10	4	0	7	8,480	7,882	2,764	2,301	227	2,590	4,948
New Hampshire	13	7	2	0	4	742	676	195	186	0	295	482
Vermont	15	5	1	2	7	2,223	2,025	251	701	678	395	1,610
Massachusetts	184	69	43	20	52	33,484	29,505	7,201	12,317	2,248	7,739	23,315
Rhode Island	30	14	5	3	8	2,515	2,256	704	450	248	854	1,313
Connecticut	88	31	28	4	25	19,450	17,503	5,016	8,016	1,873	2,598	17,632
Middle Atlantic	1,242	519	260	127	336	173,297	150,951	44,302	50,262	29,296	27,091	144,180
New York	599	270	107	56	166	53,662	44 859	16,176	11,211	8,136	9,336	44,072
New Jersey	269	114	66	28	61	48,310	43,058	13,710	17,746	4,785	6,817	42,377
Pennsylvania	374	135	87	43	109	71,325	63,034	14,416	21,305	16,375	10,938	57,731
East North Central	1,439	619	293	133	394	182,747	158,263	58,986	51,675	17,616	29,986	152,743
Ohio	405	168	86	40	111	55,058	48,008	16,462	17,665	5,555	8,326	45,562
Indiana	198	78	34	16	70	27,924	24,932	9,966	7,368	1,791	5,807	21,480
Illinois	347	179	46	32	90	61,982	51,894	21,288	14,680	7,293	8,633	54,344
Michigan	299	73	110	29	87	24,320	21,258	5,503	9,098	1,740	4,917	19,609
Wisconsin	190	121	17	16	36	13,463	12,171	5,767	2,864	1,237	2,303	11,748
West North Central	682	416	83	33	150	59,719	51,737	19,270	14,538	8,896	9,033	49,833
Iowa	76	37	15	10	14	9,632	8,433	3,668	1,571	1,784	1,410	8,081
Minnesota	159	98	22	5	34	7,850	6,932	3,763	1,538	198	1,433	6,355
Missouri	297	195	35	12	55	30,678	26,214	9,100	9,189	4,264	3,661	26,673
North Dakota	35	26	1	0	8	676	633	397	67	0	169	533
South Dakota	9	5	1	0	3	1,920	1,733	299	610	0	824	459
Nebraska	34	21	3	0	10	1,477	1,263	716	148	0	399	1,088
Kansas	72	34	6	6	26	7,486	6,529	1,327	1,415	2,650	1,137	6,644

South Atlantic	460	192	94	18	156	84,435	73,637	35,040	15,322	2,104	21,171	62,736
Delaware	13	5	4	0	4	1,080	800	436	247	11	106	971
Maryland	61	24	6	3	28	4,471	3,760	1,091	653	388	1,628	2,590
District of Columbia	15	8	4	0	3	612	519	232	100	0	187	451
Virginia	54	23	10	2	19	15,831	13,878	9,629	1,461	43	2,745	14,576
West Virginia	39	22	10	1	6	4,699	3,984	1,724	810	105	1,345	2,924
North Carolina	79	24	21	3	31	26,826	23,254	9,986	5,581	85	7,602	19,296
South Carolina	29	12	4	3	10	6,867	6,363	2,398	691	802	2,472	3,764
Georgia	85	38	18	2	27	15,709	13,867	7,093	3,829	107	2,838	12,659
Florida	85	36	17	4	28	8,340	7,212	2,451	1,950	563	2,248	5,505
East South Central	312	135	52	10	115	44,650	39,185	13,802	10,014	1,714	13,655	27,588
Kentucky	109	61	8	2	38	10,365	9,125	4,546	1,799	764	2,016	8,132
Tennessee	121	44	28	8	41	25,513	22,038	7,365	5,589	939	8,145	14,477
Alabama	52	19	11	0	22	4,631	4,250	689	1,459	0	2,102	2,483
Mississippi	30	11	5	0	14	4,141	3,772	1,202	1,167	11	1,392	2,496
West South Central	453	208	77	19	149	44,037	36,945	16,247	8,775	1,932	9,991	34,404
Arkansas	71	36	17	0	18	5,164	4,508	1,356	1,731	65	1,356	4,068
Louisiana	95	44	11	4	36	10,948	9,321	5,197	1,711	460	1,953	9,142
Oklahoma	55	20	9	3	23	4,502	4,115	1,370	1,187	93	1,465	2,914
Texas	232	108	40	12	72	23,423	19,001	8,324	4,146	1,314	5,217	18,280
Mountain	236	125	28	15	68	18,065	14,917	4,801	3,182	3,438	3,496	14,191
Montana	15	10	2	1	2	664	575	261	80	174	60	652
Idaho	41	17	7	5	12	7,320	5,763	1,232	1,712	2,087	732	6,527
Wyoming	13	6	1	0	6	370	316	153	92	0	71	295
Colorado	72	50	4	2	16	4,202	3,417	1,838	491	121	967	3,061
New Mexico	36	17	1	7	11	2,561	2,257	378	50	1,038	791	1,877
Arizona	30	12	8	0	10	1,277	1,142	264	406	12	460	741
Utah	19	6	3	0	10	837	722	316	157	0	249	384
Nevada	10	7	2	0	1	834	725	359	194	6	166	654
Pacific	679	318	134	40	187	53,530	46,010	17,731	13,040	3,463	11,776	40,468
Washington	79	51	12	3	13	5,656	4,706	3,045	641	489	531	5,115
Oregon	89	42	18	4	25	5,284	4,352	2,271	1,249	140	692	4,440
California	511	225	104	33	149	42,590	36,952	12,415	11,150	2,834	10,553	30,913
Outlying areas	196	82	10	62	42	10,624	8,247	2,491	1,281	2,692	1,783	9,007
Alaska	9	6	1	0	2	127	103	62	15	0	26	98
Hawaii	42	22	0	12	8	2,083	1,821	881	0	462	478	1,761
Puerto Rico	145	54	9	50	32	8,414	6,323	1,548	1,266	2,230	1,279	7,148

[1] The States are grouped according to the method used by the Bureau of the Census, U. S. Department of Commerce.

Table 17.—Industrial Distribution of Collective-Bargaining Elections, Fiscal Year 1953

Industrial group[1]	Number of elections					Eligible voters	Valid votes cast
	Total	In which representation rights were won by—			In which no representative was chosen		
		A. F. L affiliates	C. I. O. affiliates	Unaffiliated unions			
Total	6,050	2,750	1,114	486	1,700	737,998	639,739
Manufacturing	4,129	1,765	876	366	1,122	612,252	537,487
Ordnance and accessories	62	44	7	8	3	11,856	9,360
Food and kindred products	613	300	101	41	171	56,459	48,715
Tobacco manufactures	9	1	5	1	2	3,557	3,199
Textile mill products	165	65	32	17	51	78,604	67,554
Apparel and other finished products made from fabrics and similar material	106	35	31	5	35	15,006	13,587
Lumber and wood products	210	88	59	6	57	22,545	18,850
Furniture and fixtures	144	52	36	11	45	11,826	10,583
Paper and allied products	158	84	20	9	45	19,428	16,482
Printing, publishing, and allied industries	164	87	28	16	33	6,387	5,791
Chemicals and allied products	293	132	57	19	85	39,023	35,317
Products of petroleum and coal	81	27	21	8	25	3,872	3,375
Rubber products	40	17	8	3	12	4,648	4,286
Leather and leather products	60	14	12	11	23	10,190	9,131
Stone, clay, and glass products	151	69	35	12	35	12,078	10,783
Primary metal industries	239	88	65	32	54	31,615	28,206
Fabricated metal products (except machinery and transportation equipment)	377	160	80	25	112	40,510	35,699
Machinery (except electrical)	462	191	89	55	127	60,641	54,573
Electrical machinery, equipment, and supplies	269	112	58	32	67	96,670	84,927
Transportation equipment	289	96	82	35	76	65,783	57,698
Aircraft and parts	126	30	36	17	43	36,532	32,577
Ship and boat building and repairing	40	26	5	5	4	7,991	6,538
Automotive and other transportation equipment	123	40	41	13	29	21,260	18,583
Professional, scientific, and controlling instruments	53	21	14	7	11	5,737	5,301
Miscellaneous manufacturing	184	82	36	13	53	15,817	14,070
Fisheries	1	1	0	0	0	1,350	956
Mining	99	40	23	9	27	11,309	9,832
Metal mining	34	10	14	6	4	6,463	5,688
Coal mining	1	1	0	0	0	257	131
Crude petroleum and natural gas production	25	9	3	0	13	1,497	1,221
Nonmetallic mining and quarrying	39	20	6	3	10	3,092	2,792
Construction	108	74	6	6	22	9,494	6,036
Wholesale trade	446	228	68	27	123	20,230	15,395
Retail trade	583	295	57	17	214	32,014	26,145
Finance, insurance, and real estate	16	10	1	0	5	1,392	1,274
Transportation, communication, and other public utilities	507	251	67	41	148	43,048	36,928
Highway passenger transportation	36	15	2	7	12	2,550	2,281
Highway freight transportation	133	66	6	14	47	3,810	3,368
Water transportation	32	10	8	5	9	1,688	1,509
Warehousing and storage	71	36	9	6	20	3,078	2,625
Other transportation	14	7	3	0	4	838	787
Communication	113	58	21	6	28	19,404	15,728
Heat, light, power, water, and sanitary services	108	59	18	3	28	11,680	10,630
Services	161	86	16	20	39	6,909	5,686

[1] Source Standard Industrial Classification, Division of Statistical Standards, U. S Bureau of the Budget, Washington, 1945

Table 18.—Injunction Litigation Under Sec. 10 (j) and (l), Fiscal Year 1953

Proceedings	Number of cases instituted	Number of applications granted	Number of applications denied	Cases settled, inactive, pending, etc.
Under sec. 10 (j):				
(a) Against unions	0	0	0	
(b) Against employers	1	0	0	1 pending
Under sec 10 (l)	44	18	2	15 settled, 3 withdrawn,[1] 4 inactive,[2] 2 pending [3]
Total	45	18	2	25

[1] 1 of these cases was retained on the court's docket without hearing until the charge was withdrawn.
[2] Retained on the court's docket without hearing, the alleged unfair labor practices having been discontinued.
[3] In 1 of these cases, injunctive relief was denied on July 27, 1953.

Table 19.—Litigation for Enforcement or Review of Board Orders, Fiscal Year 1953 and July 5, 1935, to June 30, 1953

Results	July 1, 1952, to June 30, 1953		July 5, 1935, to June 30, 1953	
	Number	Percent	Number	Percent
Cases decided by United States courts of appeals	131	100 0	1,227	100 0
Board orders enforced in full	[1] 83	63.4	737	60 1
Board orders enforced with modification	18	13.7	264	21 5
Remanded to Board	1	8	24	1 9
Board orders partially enforced and partially remanded	2	1 5	5	4
Board orders set aside	[2] 27	20.6	[3] 197	16 1
Cases considered by the United States Supreme Court	7	100 0	82	100 0
Board orders enforced in full	3	42.9	56	68 3
Board orders enforced with modification			11	13 4
Board orders set aside	1	14 2	7	8 6
Remanded to Board			1	1 2
Remanded to court of appeals	[4] 3	42.9	6	7 3
Board's request for remand or modification of enforcement order denied			1	1 2

[1] In 3 of these cases, enforcement was first denied earlier in the fiscal year, but was subsequently granted on authority of the Supreme Court's decision in *N L. R. B.* v *Dant and Russell*, 344 U. S. 375.
[2] Two of these cases were remanded to the Board for further proceedings
[3] Including 13 reversals based on noncompliance with filing requirements by the complaining union's parent federation
[4] In these cases, lower court denials of enforcement based on noncompliance with sec. 9(h) were reversed The orders in 2 of these cases were subsequently enforced; 1 case remained pending at the end of the fiscal year.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1953

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 Board decision and/or order
				Date issued	Date lifted				
2-CD-40	National Ass'n of Broadcast Engineers & Technicians (Teleprompter Service Corp.).	Apr. 24, 1951	10 (l)			[1]		Dec. 31, 1952	Aug. 31, 1951
20-CA-523, 524, 567, 609, 610.	American President Lines, Ltd. and Matson Navigation Co. (Individual).	Aug. 28, 1951	10 (j)			Jan. 23, 1952			[2] Dec. 29, 1952
20-CB-171, 172, 184, 206, 207.	National Union of Marine Cooks & Stewards (Individual).								
6-CC-60 6-CD-14	AFL-Teamsters, Locals 249 and 236 (Roy Stone Transfer Corp.).	Sept. 14, 1951	10 (l)				Dec. 17, 1951		[3] Aug. 28, 1952 [4] June 11, 1952
6-CC-61	AFL-Seafarers (Hammermill Paper Co.)	Oct. 4, 1951	10 (l)					Dec. 4, 1952	Sept. 19, 1952
24-CC-11, 12	AFL-Longshoremen (Puerto Rico Steamship Ass'n et al.)	Nov. 8, 1951	10 (l)	Nov. 14, 1951	Nov. 23, 1951	Nov. 23, 1951		Mar. 10, 1953	Oct. 7, 1952
10-CC-49	Mine Workers, District 50 (National Cylinder Gas Co.) (AFL-Engineer, Operating, Local 910).	Mar. 12, 1952	10 (l)			Apr. 11, 1952		July 17, 1952	July 8, 1952
19-CC-42	AFL-Carpenters (Sound Shingle Co.)	Apr. 7, 1952	10 (l)				Apr. 28, 1952		Dec. 19, 1952
21-CC-130	AFL-Teamsters, Local 276 (Capital Service, Inc.).	May 14, 1952	10 (l)			May 29, 1952			Sept. 8, 1952
35-CC-14	AFL-Teamsters, Local 135 (Motor Freight Carriers of Ind.).	May 15, 1952	10 (l)					Jan. 12, 1953	Dec. 22, 1952
2-CC-220	Mine Workers, District 50 (Nordan Plastics Corp.).	May 19, 1952	10 (l)					Aug. 28, 1952	
13-CA-1063	Cargill, Inc. (CIO Packinghouse Workers)	May 29, 1952	10 (j)			July 3, 1952		Jan. 30, 1953	Dec. 3, 1952
24-CC-14, 15, 16. 24-CD-2, 3, 4	AFL-Longshoremen (Puerto Rico Steamship Ass'n et al.).	June 26, 1952	10 (l)	July 2, 1952	Sept. 26, 1952	Sept. 26, 1952			[5] Jan. 16, 1953 (stip)
32-CC-6	AFL-Painters, Local 49 (V. M. Ashworth, Sr.).	Aug. 6, 1952	10 (l)					Jan. 16, 1953	Oct. 31, 1952
32-CC-7	AFL-Carpenters, Local 259 (Geo. A. Dunn)	do	10 (l)			Sept. 23, 1952		Feb. 3, 1953	Jan. 13, 1953
2-CC-230	AFL-Teamsters, Local 294 (Bonded Freightways, Inc.).	Sept. 19, 1952	10 (l)			[1]			
6-CC-75	AFL-Carpenters, Local 2264 (Crain Bros. Inc.).	Oct. 16, 1952	10 (l)			[1]		Jan. 5, 1953	Dec. 17, 1952
35-CC-19, 20	AFL-Teamsters, Local 135 (Pittsburgh Plate Glass Co.).	Oct. 28, 1952	10 (l)				Dec. 15, 1952		June 25, 1953
9-CC-49 9-CD-17	AFL-Teamsters, Local 505 (Riverside Paper Co.).	Oct. 29, 1952	10 (l)			[1]		Jan. 29, 1953	Jan. 27, 1953

2-CC-235	AFL-Federal Labor Union 24368. AFL-Electrical Workers, Local 1614 (Metropolitan Wire Goods).	Nov. 18, 1952	10 (l)			(1)		Jan 22, 1953	Jan. 21, 1953
21-CC-146	AFL-Los Angeles Building & Constr. Trades Council, Local 250, et al. (Standard Oil Co. of California).	Nov. 10, 1952	10 (l)			Dec. 30, 1952		May 1, 1953 (expired)	June 30, 1953
35-CC-21	AFL-Teamsters, Local 193 (Samson Paper Co.).	Nov. 21, 1952	10 (l)					Feb. 27, 1953	
37-CC-2	AFL-Teamsters, Local 996 (Service Cold Storage Co.).	Dec. 1, 1952	10 (l)			(1)		Mar. 20, 1953	Feb. 19, 1953
2-CD-70	AFL-Bridge, Structural Iron Workers, Locals 11 and 483 (Mason-Moore-Tracy, Inc.).	Dec. 8, 1952	10 (l)					Jan. 2, 1953	
2-CC-233	AFL-Auto Workers, Local 365 (Wagner Machinery Corp.).	Dec. 11, 1952	10 (l)					May 13, 1953	
13-CC-62	AFL-Teamsters, Local 200 (Culligan Cartage Co.).	Dec. 16, 1952	10 (l)					Apr. 13, 1953	
2-CC-242, 2-CD-72.	AFL-Schenectady Bldg. Trades Council (General Dynamics Corp., Electric Boat Division).	Dec. 29, 1952	10 (l)			Jan. 5, 1953 (consent)			
6-CC-78	AFL-Electrical Workers, Local 5 (Sprys Electric Co.).	Jan. 12, 1953	10 (l)			(1)			May 27, 1953
4-CC-37	AFL-Teamsters, Local 830 (Scott & Grauer).	Jan. 16, 1953	10 (l)						
11-CC-3	Mine Workers, District 50 (Tungsten Mining Corp.).	Jan. 24, 1953	10 (l)			Feb. 3, 1953			
35-CC-22	AFL-Teamsters, Local 135 (Hoosier Petroleum Co.).	Feb. 4, 1953	10 (l)			(1)			
2-CC-246	AFL-Longshoremen, Local 333 (New York Shipping Ass'n).	Feb. 7, 1953	10 (l)	Feb. 7, 1953	Feb. 13, 1953	(1)			
5-CC-27	AFL-Longshoremen, United Marine Division, Local 333B (Hampton Roads Maritime Ass'n).	Feb. 12, 1953	10 (l)			(1)		June 15, 1953	Apr. 9, 1953
2-CA-2554, 2907.	Henry Heide, Inc. (CIO Retail and Wholesale, Local 50).	Mar. 12, 1953	10 (j)						
24-CC-19	AFL-Longshoremen, Ports of P. R., et al. (Ass'n Azucarera Corp., Lafayette).	Mar. 17, 1953	10 (l)			Mar. 25, 1953 (consent)			
20-CD-33	AFL-Pile Drivers Bridge, Wharf and Dock Builders, Local 34 of California (Samuel A. Agnew, d/b/a Klamath Cedar Co.).	Apr. 7, 1953	10 (l)			May 14, 1953			June 18, 1953
17-CC-18	AFL-International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Locals 554, 608 and 784 (McAllister Transfer Inc.).	Apr. 13, 1953	10 (l)			Apr. 22, 1953			
3-CC-27	AFL-Electrical Workers, Local 1574 (B. E. Shell Co.).	Apr. 21, 1953	10 (l)			Apr. 28, 1953 (consent)			
4-CC-43	AFL-Garment Workers, Ladies (Josette Mfg. Co.).	Apr. 22, 1953	10 (l)			(1)			

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1953—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings withdrawn or dismissed	Date Board decision and/or order
				Date issued	Date lifted				
5-CC-29	AFL-Baltimore Building & Construction Trades Council & Local 16, et al. (John A. Piezonki d/b/a Stover Steel Service).	Apr. 23, 1953	10 (l)			[1]			
3-CC-26, 28, 29	AFL-Electrical Workers, Locals 79, 181, 35, and 1261 (Utica Builders Exchange).	Apr. 24, 1953	10 (l)			[1]			
5-CC-28, 30	AFL-Teamsters, Local 67 (Washington Coca Bottling Works, Inc., and Buckingham Supermarkets, Inc)	do	10 (l)			May 7, 1953			
1-CC-88	AFL-Teamsters, Local 379 (Norfolk Waste Paper Co.).	Apr. 24, 1953	10 (l)					[1] [6]	
4-CC-39	Distributive, Processing & Office Workers of America, Local 95 (Poultrymen's Service Corp)	Apr. 25, 1953	10 (l)			[1]			
14-CC-44, 45	AFL-Teamsters, Local 600, Locals 632 and 688 (Osceola Foods, Inc. & Atkings Pickle Co.).	Apr. 28, 1953	10 (l)			June 24, 1953			
11-CC-4	AFL-Longshoremen, Local 1422 (James Doran Co. et al).	May 7, 1953	10 (l)			May 11, 1953			
21-CC-157, 158	Food Processors, Packers, Warehousemen & Clerical Employees, Local 547, et al. (Spencer Food Co).	do	10 (l)			May 27, 1953			
18-CC-19	United Mine Workers of America, District 50 and Local 12106 (Minnesota Linseed Oil Co.).	May 8, 1953	10 (l)			May 18, 1953			
13-CC-67	AFL-Teamsters, Local 200 (Reilly Cartage Co.).	do	10 (l)			June 10, 1953			
6-CC-82	AFL-Building and Construction Trades Council of Pittsburgh and Vicinity et al. (Perry Electric Co).	May 22, 1953	10 (l)			[1]			
13-CC-75	AFL-Teamsters, Local 442 (Wisco Hardware Co).	May 28, 1953	10 (l)	June 8, 1953					
36-CD-11	International Longshoremen's & Warehousemen's Union, Local 12 (Upper Columbia River Towing Co , et al).	June 1, 1953	10 (l)			June 11, 1953			
3-CC-31, 32	AFL-Teamsters, Local 182 and Carpenters Local 125 (Jay-K Independent Lumber Corp.).	June 2, 1953	10 (l)			[1]			

14-CC-47	AFL-Carpenters, Local 433 et al. (Markus Cabinet Manufacturing Co).	do	10 (l)	June 12, 1953 (consent)					
30-CC-19	AFL-Carpenters, Local 55 (Professional & Business Men's Life Insurance Co)	June 17, 1953	10 (l)				June 26, 1953		
7-CC-20	AFL-Teamsters, Locals 406 and 415 (S E. Overton Co).	June 18, 1953	10 (l)						
1-CC-91	AFL-Teamsters, Local 379 (Blanchard Lumber Co.).	June 19, 1953	10 (l)			([1])			
13-CC-77	AFL-Teamsters, Local 200 (Lincoln Warehouse Co.).	June 22, 1953	10 (l)						

[1] Because of suspension of unfair labor practice, case retained on court docket for further proceedings, if appropriate.
[2] Concerning 20-CA-523, 567. 20-CB-171, 184.
[3] Concerning 6-CC-60
[4] Concerning 6-CD-14.
[5] Decision and determination of dispute issued in 24-CD-2, 3, 4 on Oct. 23, 1952.
[6] Dismiss at end of 60 days.

NOTE.—Discretionary injunction indicated by 10 (j), mandatory injunction indicated by 10 (l).

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