

TWENTIETH
ANNUAL REPORT
OF THE
NATIONAL LABOR
RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED JUNE 30

1955

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NATIONAL LABOR RELATIONS BOARD

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¹ Mr. Farmer's term expired August 26, 1955.

² Mr. Rodgers was appointed Acting Chairman August 27, 1955.

³ Mr. Leedom took office April 4, 1955.

⁴ Mr. Kammholz took office March 29, 1955.

⁵ Mr. McGuinness was appointed August 4, 1955.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., January 9, 1956.

SIR: As provided in section 3 (c) of the Labor Management Relations Act, 1947, I submit herewith the Twentieth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1955, 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.

Respectfully submitted.

PHILIP RAY RODGERS, *Acting 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 1955¹

The National Labor Relations Board received a total of 13,391 cases of all types during the fiscal year 1955 and closed a total of 13,671, reducing its backlog of pending cases to 4,114. This compares with 4,394 cases pending at the close of fiscal 1954—a reduction of 6 percent.

Fiscal 1955—the Board's eighth year of administration of the amended act—was marked by a record filing of unfair labor practice cases, resulting mainly from a substantial increase in the filing of unfair practice cases by individual employees.

The ratio of unfair labor practice cases filed—as against representation cases filed—has increased markedly since 1953 as a result of two trends: (1) a decrease in the filing of representation cases, from the peak reached in 1952, and (2) a steady increase in the filing of unfair labor practice cases. (See chart I, p. 2.) In fiscal 1955, unfair practice cases constituted 46 percent of these 2 principal types of cases, compared with 37 percent in fiscal 1953. The 1955 figure represented the highest proportion of unfair practice cases since 1941.²

1. Unfair Labor Practice Cases

Filing of unfair practice charges by unions decreased nearly 15 percent, while the filings by employers rose about 10 percent,³ and filings by individual employees increased nearly 25 percent, thus continuing an upward trend in cases brought by individual employees which began with a 30-percent increase in fiscal 1954. (See chart II, p. 4.)

Unfair labor practice charges filed in fiscal 1955 numbered 6,171 cases—the largest number since the 6,807 cases filed in fiscal 1938, the year that the constitutionality of the original act was upheld. The 1955 filings represent an increase of about 3 percent over the 5,965 unfair practice cases filed in fiscal 1954.

¹ Detailed statistics of NLRB activities are set forth in the tables of appendix A listed in the table of contents.

² In the period 1935–41, unfair practice cases substantially outnumbered representation cases. Thereafter, cases involving questions of representation have always substantially exceeded the number of unfair practice cases filed.

³ This figure does not include 102 cases filed by an employers' association in Kansas City against employers there.

Comparison of Filings of Unfair Practice Cases and Representation Cases

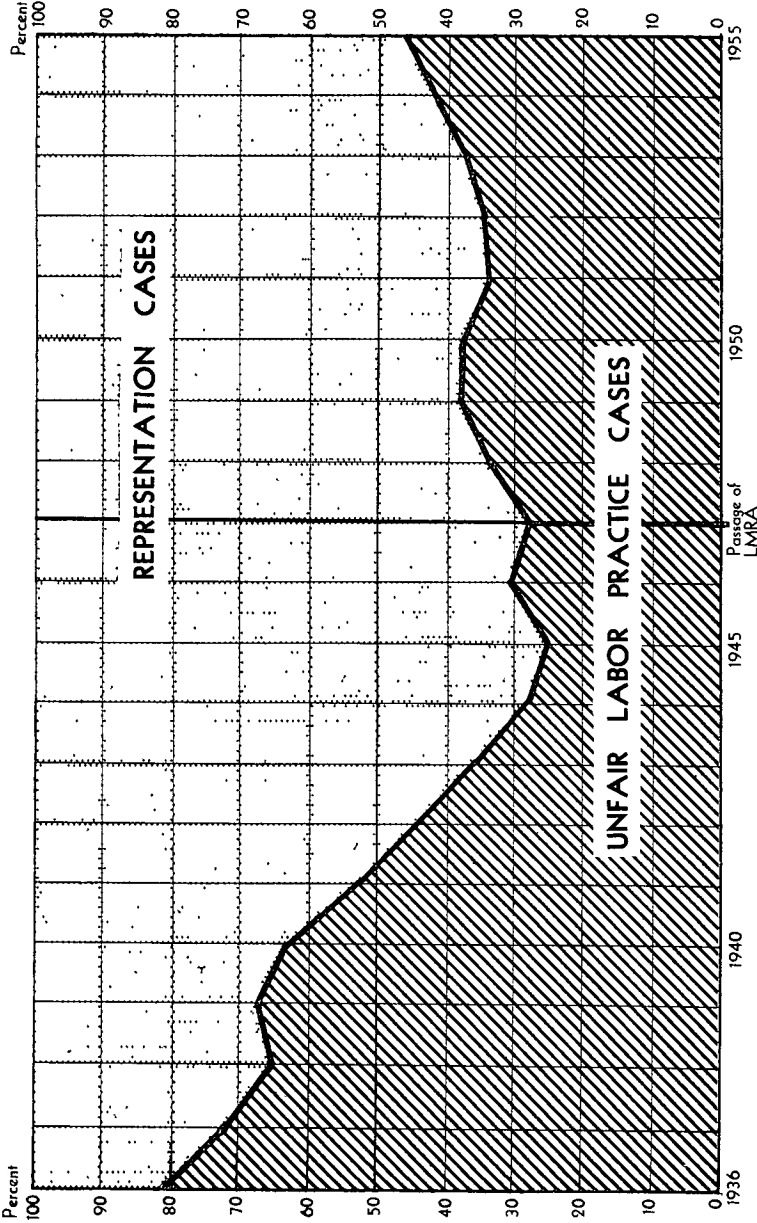


Chart I.—This graph shows the percentage division of the NLRB caseload between unfair labor practice cases and representation cases during the fiscal years 1936-1955.

During the past 2 years, the principal sources of unfair practice cases against employers have also shifted somewhat, with more cases coming from individual employees and fewer from unions. (See chart III, p. 6.) Individual employees during fiscal year 1955 filed charges against employers in 1,584 cases, which was 36 percent of such cases filed. This was the largest number of cases against employers filed by individual employees since passage of the amended act in 1947. During the 1950-54 period cases filed by individual employees against employers accounted for about 27 percent of the cases against employers. On the other hand, union filings in fiscal 1954 accounted for 71 percent of all unfair practice cases against employers. In fiscal 1955, union filings amounted to 61 percent of the total. Union cases against employers numbered 2,676 in fiscal 1955, which was the lowest number since passage of the amended act in 1947. This was a decrease of nearly 14 percent from the 3,098 such cases filed by unions in fiscal 1954.

Cases filed by individual employees against unions showed a more marked increase than those filed by individuals against employers. (See chart IV, p. 8.) In the 1950-53 period, such cases averaged 580 a year. In fiscal 1954, individual employees filed 872 unfair practice charges against unions—an increase of 50 percent over the 1950-53 average. This upturn continued in fiscal 1955 with 1,095 such cases filed by individual employees, an increase of 25 percent over fiscal 1954 and nearly 89 percent increase over the 1950-53 average. Cases filed by individual employees accounted for 60 percent of the cases against unions, while cases filed by employers against unions accounted for about 35 percent, and cases filed by unions against other unions amounted to approximately 5 percent. Employers filed 627 unfair practice cases against unions in fiscal 1955, compared with 575 cases in the preceding year. Unfair practice charges filed by unions against other unions during fiscal 1955 decreased to 87 cases, compared with 145 such cases in the preceding year.

Of the total unfair practice cases filed in fiscal 1955, the 2,679 such cases filed by individual employees constituted 43 percent. The 2,147 such cases filed by individuals in fiscal 1954 was 36 percent of all unfair practice cases filed that year.

Unions filed 2,763 unfair practice cases of all types during fiscal 1955, which was 45 percent of the unfair practice cases filed. The 3,243 filed by unions in fiscal 1954 was 54 percent of the unfair practice cases filed that year.

Employers filed 729 unfair practice cases in fiscal year 1955, which was 12 percent of such cases filed.⁴ The 575 such cases filed by em-

⁴These figures include 102 cases filed by an employers' association in one situation against employers. See footnote 3, above

Filings of Unfair Labor Practice Charges

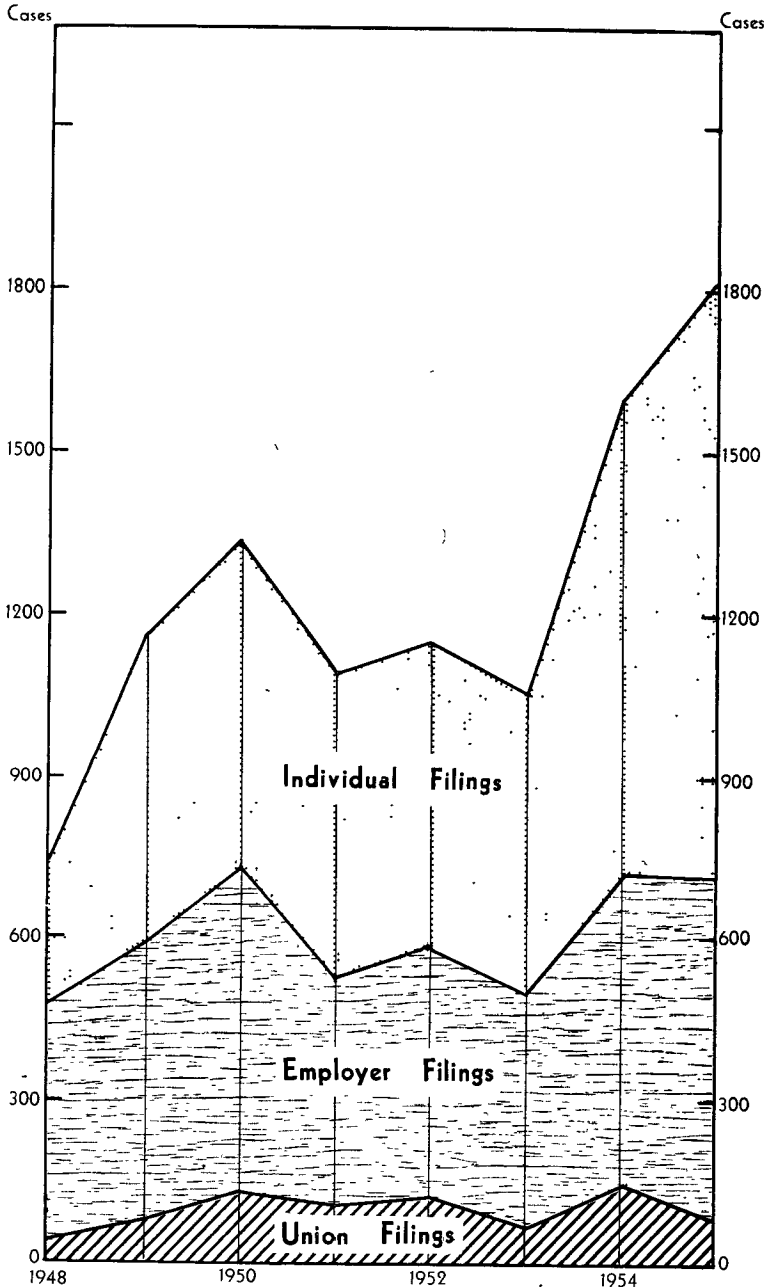


Chart II.—Filings of unfair labor practice charges by identification of charging party during fiscal years 1948-1955.

ployers in fiscal 1954 was approximately 10 percent of the unfair practice cases filed that year.

2. Representation Case Filings

Representation cases filed during fiscal 1955 numbered 7,165. This compares with 8,076 cases filed in 1954, a decrease of 11 percent.

Petitions for representation elections were filed by unions in 6,153 cases during fiscal 1955 compared with 7,019 such filings in 1954. Individual employees filed petitions for elections to decertify unions in 457 cases during 1955 compared with 478 such cases in the preceding year. Employers in 1955 filed 545 election requests compared with 568 in 1954.

3. Decisional Activities of the Board

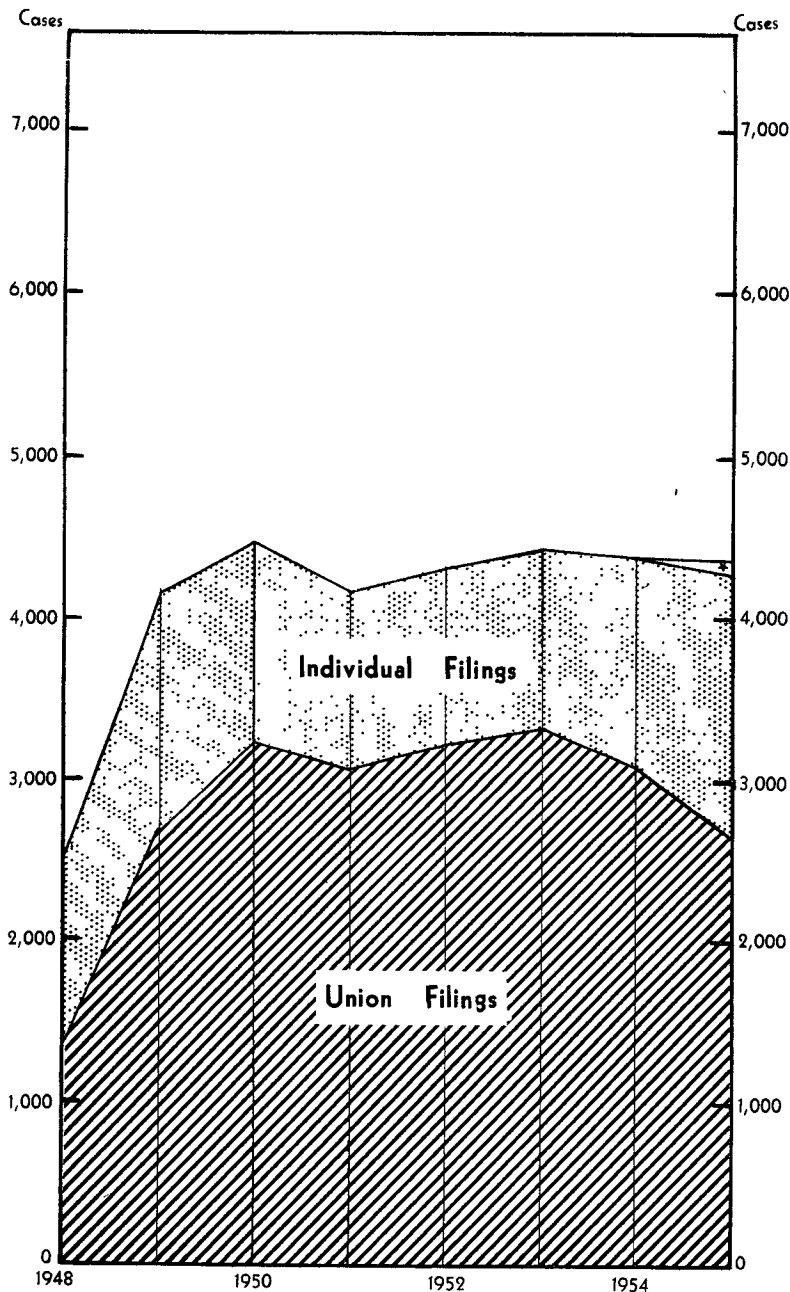
The Board Members issued decisions in a total of 2,571 cases of all types. This was an 8.4-percent increase over the 2,372 decisions issued during fiscal 1954. Of the 1955 decisions, 2,363 were in cases brought to the Board on contest over either the facts or the application of the law. Of these, 415 were unfair labor practice cases and 1,948 were representation cases. Of the unfair labor practice cases, 304, or 73.3 percent, involved charges against employers and 111, or 26.7 percent, involved charges against unions. In the representation cases, the Board directed 1,547 elections. The remaining 401 contested petitions for elections were dismissed.

In the unfair practice cases, the Board found violations in 292, or 70 percent, of the 415 cases coming to the Board Members for decision during the year.

Violations were found in 204, or 67 percent, of the 304 cases against employers. In these cases, the Board ordered the employers to reinstate a total of 1,018 employees in their jobs and to pay back pay to a total of 1,096 employees. Illegal assistance or domination of labor organizations was found in 42 cases and ordered stopped. In 65 cases, the employer was ordered to begin collective bargaining.

Violations of the act by unions were found by the Board in 88, or 79 percent, of the 111 decisions involving cases against unions. Of these cases, 33 involved the illegal discharge of employees, and back pay was ordered paid to 69 employees. In 30 of these back-pay cases the employer who made the illegal discharge and the union which caused it were held jointly liable. In 22 cases, the Board ordered a union to cease requiring an employer to extend illegal assistance to it. Twenty-four cases involved activities by the union which the Board found to violate the secondary-boycott ban of the act and ordered halted.

Filings of Unfair Practice Charges Against Employers



* Employer filings

Chart III.—Filings of unfair labor practice charges against employer during fiscal years 1948–1955.

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.

Also, under an arrangement between the five-Member Board and the General Counsel,⁵ members of the agency's field staff function under the General Counsel's supervision 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 contested cases. However, decisions in contested cases of all types are ultimately 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.

In addition, the regional directors, acting under the General Counsel's statutory authority, issued formal complaints alleging violation of the act in 497 cases. Of these, 287 were against employers and 210 were against unions.

Of the 5,329 unfair labor practice cases which the field staff closed without formal action, 617, or 12 percent, were adjusted by various types of settlements; 1,632, or 31 percent, were administratively dismissed after investigation. In the remaining 57 percent the charges were withdrawn; in many cases such withdrawals actually reflected a settlement of the matter at issue between the parties through the officers of the field staff. Of the charges against employers 1,176, or 31 percent, were dismissed; 453, or 12 percent, were adjusted; and 2,203, or 57 percent, were withdrawn. Of charges against unions, 456, or 31 percent, were dismissed; 164, or 11 percent, were adjusted; and 854, or 58 percent, were withdrawn.

5. Division of Trial Examiners

Trial examiners for the Board, who conduct hearings in unfair labor practice cases, conducted hearings in 404 cases during fiscal 1955 and issued intermediate reports and recommended orders in 416 cases (some on cases heard in fiscal 1954). This was a decrease of almost 40 percent in the number of cases heard, compared with the 1954 fiscal year, and a decrease of 25 percent in the number of cases in which intermediate reports were issued.

⁵ See Board Memorandum Describing Authority and Assigned Responsibilities of the General Counsel (Effective April 1, 1955), 20 Federal Register 2175 (April 6, 1955)

Filings of Unfair Practice Charges Against Unions

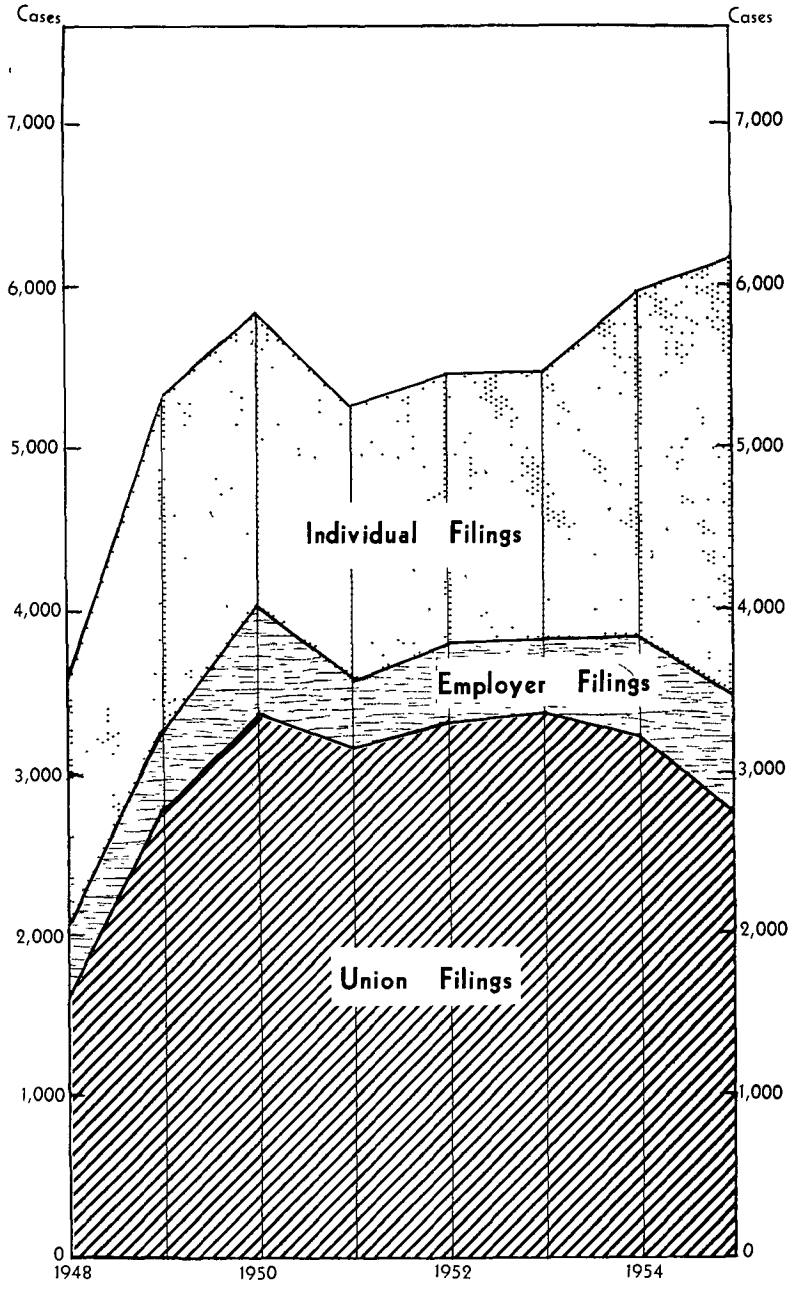


Chart IV.—Filings of unfair labor practice charges against unions by identification of charging party, fiscal years 1948-1955.

In 46 cases coming to the Board during the year, the trial examiners' reports were not contested by the parties, and thereby became orders of the Board.

During the year, 62 cases were closed by compliance with the trial examiners' recommended orders. This was 15 percent of the cases in which intermediate reports were issued, compared with 11 percent in fiscal 1954 and 1953.

6. Types of Unfair Labor Practices Charged

The most common charge against employers continued to be that of illegally discriminating against employees because of their union activities or because of their lack of union membership. Employers were charged with having engaged in such discrimination in 3,089 cases filed during the 1955 fiscal year. This was 70.8 percent of the 4,362 cases filed against employers.

The second most common charge against employers was refusal to bargain in good faith with representatives of their employees. This was alleged in 1,213 cases, which was 27.8 percent of the cases filed against employers.

A major 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 1,145 cases, or 63.3 percent of the 1,809 cases filed against unions.

Discrimination against employees because of their lack of union membership was also alleged in 1,145 cases. Other major charges against unions were secondary boycott, made in 303 cases, or 16.7 percent, and refusal to bargain in good faith, made in 145 cases, or 8 percent.

7. Results of Representation Elections

The Board conducted a total of 4,372 representation elections during the 1955 fiscal year. This was a decrease of 9.2 percent from 4,813 representation elections conducted in fiscal 1954.

In the 1955 representation elections, collective-bargaining agents were selected in 2,904 elections. This was 66.4 percent of the elections held and compared with selection of bargaining agents in 64.6 percent of the 1954 elections.

In these elections, bargaining agents were chosen to represent units totaling 386,440 employees, or 73.1 percent of those eligible to vote. This compares with 66.5 percent in fiscal 1954, and 79 percent in fiscal 1953.

Of 465,267 employees actually casting valid ballots in Board representation elections during the year, 341,252, or approximately 73 percent, cast ballots in favor of representation.

Of the 528,997 who were eligible to vote, 88 percent cast valid ballots.

Unions affiliated with the American Federation of Labor won bargaining rights in 1,748 of the 3,051 elections in which they took part. This was 57.3 percent of the elections in which they participated.

Affiliates of the Congress of Industrial Organizations won 828 out of 1,497 elections. This was 55.3 percent.

Unaffiliated unions won 328 out of 539 elections. This was 60.9 percent.

II

Representation and Union-Shop Cases

The act requires that an employer bargain with the representatives 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 general statement of the standards which the Board uses in determining whether to assert jurisdiction in a particular case, see Nineteenth Annual Report, pp 2-5

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 deals with decisions of the Board during the 1955 fiscal year which involve novel questions or set new precedents in representation or union-shop cases.

1. Showing of Employee Interest to Justify Election

To merit formal Board investigation, a petition for a representation election must be supported by a showing that either (1) a "substantial number" of the employees favor the purpose of the proposed election² or (2) the employer has been confronted by a bona fide claim to representation rights. The Board has long interpreted the statutory term "a substantial number" to mean a minimum of 30 percent.³ The 30-percent rule applies to petitioners for either certification or decertification elections, and the requirement of a bona fide representation claim applies only when the employer seeks the election.

a. Administrative Determination of Sufficiency

The purpose of requiring a potential representative to make a preliminary showing of interest is to enable the Board to determine whether the conduct of an election serves a useful purpose under the act.⁴ Showing of interest, therefore, has been consistently held to be an administrative matter which may not be litigated by the parties to a representation proceeding,⁵ and evidence to impeach a showing of interest will not be admitted at the hearing on a petition.⁶

If the employee designations of a participant in a representation proceeding are sufficient on their face, the Board will not inquire into the employees' motive in executing designations.⁷ But if evidence

² See section 9 (c) (1) of the act. See *Potomac Electric Power Company*, 111 NLRB 553, in which the majority, Member Rodgers dissenting, held that cards signed by employees expressing a desire for an election so that the petitioner "may be certified as the sole bargaining agency" satisfied the requirements of sections 101.16 and 101.17 of the Board's Statements of Procedure. Member Rodgers took the view that the Board's Rules require that the employees' cards designate the union as their representative.

³ In the case of a potential representative of employees seeking to intervene in a representation case, the Board does not require a showing of any particular percentage. See *Lenke Corporation*, 109 NLRB 1191.

⁴ See *Potomac Electric Power Co*, *supra*, quoting *N L R B. v J I Case Company*, 201 F.2d 597 (C. A. 9).

⁵ See *Schastopol Cooperative Cannery*, 111 NLRB 530, *Potomac Electric Power Company*, *supra*.

⁶ See *Potomac Electric Power Company*, *supra*; *John Pratto and Frank Pratto, d/b/a Globe Iron Foundry*, 112 NLRB 1200.

⁷ *Potomac Electric Power Co*, *supra*. A majority of the Board (Member Rodgers dissenting) here declined to determine whether *prima facie* valid authorization cards were unreliable because of their wording and the manner in which they were obtained. The majority also held that, even if considered, the proffered evidence would not establish the asserted unreliability of the union's cards. The majority held that the reliability of the cards was not affected by the union's accompanying campaign literature and campaign technique of offering a key case for the execution and return of cards.

going to the adequacy of interest is offered, the Board may consider it to determine whether further administrative investigation is merited. In *Potomac Electric*, the Board held that no further administrative investigation was warranted because the employer's allegations, if true, would not support an administrative determination that the showing was inadequate. But in a later case,⁸ when the employer's affidavit⁹ raised questions as to whether the petitioner's showing was tainted by fraud, the Board conducted a further administrative investigation. On the basis of this investigation, the Board decided that the challenged showing of interest was inadequate.

b. Showing in Seasonal Industry

In the case of petitions for a representation election among employees in a seasonal industry where employment fluctuates, the Board ordinarily requires the 30-percent showing only among the employees in the unit at the time the petition is filed.¹⁰ But during fiscal 1955 the Board was confronted with the situation that there were no employees in the requested unit at the time of the petition. The Board held that its administrative requirements are satisfied in such a case by a showing of interest in the total employee complement during the preceding season, of whom a substantial number expect to be rehired during the coming season.¹¹ The Board pointed out that to dismiss the petition under such circumstances would unduly hamper the free selection of a representative and also ignore the practical problems in seasonal industries, without in any way furthering the purposes and policies of the act.

2. Existence of a Question of Representation

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

In a proceeding initiated by a candidate for bargaining representative, the Board ordinarily directs an election if a request for recognition has been made by the petitioner and denied by the employer.

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 the employees in a proposed appropriate bargaining unit.¹²

⁸ *John Pratto and Frank Pratto, d/b/a Globe Iron Foundry, supra.*

⁹ The evidence, which was properly excluded during the representation hearing, was submitted to the Board in connection with the employer's motion to dismiss the petition.

¹⁰ *Sebastopol Cooperative Cannery, supra*; see also *Higgins, Inc.*, 111 NLRB 797.

¹¹ *Grower-Shipper Vegetable Association of Central California*, 112 NLRB 807. The Board distinguished this situation here from the one in *Holly Sugar Corporation*, 94 NLRB 1209, where the petitioner had at no time before or at the hearing shown an appropriate interest in the unit.

¹² Eighteenth Annual Report, p 11 (1953).

a. Request for Recognition

The request for recognition need not be made in any particular form and the filing of a petition has been held to be a sufficient demand.¹³ Moreover, recognition of the petitioner by the employer does not preclude the existence of a question of representation.¹⁴

However, no question of representation was found where a union's petition was based on the employer's refusal to bargain for employees in a certified bargaining unit because the employer considered them to be supervisory. The Board noted that neither the union nor the employer desired an election among these or any other employees in the unit, and that the employer in no way challenged the union's majority status or certification.¹⁵ The Board here treated the petition as a motion to clarify the description of the certified unit.

A union's request for a new contract has been considered the equivalent of a new demand for recognition.¹⁶ The Board has also found a demand for recognition where an employer's plant was picketed by a union which normally represents all the classifications of employees in the plant and which offered to remove the pickets if the employer would agree to the execution of a contract.¹⁷

In one case, a Board majority held that a representation question, initially raised by the petitioning union's strike for recognition, continued to exist, although the union later disclaimed interest in strike replacements and claimed to represent only the replaced strikers.¹⁸ Since the union nevertheless continued to picket the employer, the majority inferred that the union apparently sought discharge of the replacements, reemployment of the strikers, and eventual recognition as representative of the employer's ultimate work force. According to the majority, the union's bare disclaimer was therefore insufficient to remove the representation question.¹⁹

b. Current Demand in Employer Petitions

To raise a question of representation, an employer petition must be based on what amounts to a present demand for recognition.²⁰ However, the failure of an employer petition to allege a claim of represen-

¹³ *Heating, Piping & Air Conditioning Contractors, The Cincinnati Association*, 110 NLRB 261

¹⁴ Eighteenth Annual Report, p 11

¹⁵ *Public Service Company of Indiana, Inc.*, 111 NLRB 618

¹⁶ *Jewett & Sherman Co.*, 110 NLRB 806, holding also that neither the good faith of the employer in refusing recognition nor the legality of the refusal is pertinent to the determination of the existence of a question of representation

¹⁷ *Swee-T-Shirts, Inc.* 111 NLRB 377 See also *Calcasieu Paper Company, Inc.*, 109 NLRB 1186, Member Murdock dissenting on other grounds

¹⁸ *3 Beall Brothers 3*, 110 NLRB 685, Member Murdock dissenting. To the same effect *Witwer Grocery Company*, 111 NLRB 936.

¹⁹ The Board had previously denied the union's request for withdrawal as the union's continuing picketing was inconsistent with an unequivocal request for withdrawal

²⁰ See, e g, *Swee-T-Shirts, Inc.*, *supra*.

tation is not a jurisdictional defect.²¹ The requirement of a current claim was held to be satisfied where an employer petitioned for elections among employees in four separate units for which a union had been previously certified.²² During the intervening 2 years there had been no bargaining negotiations and no contract had been signed for any of the four units. Nevertheless, at the time of the employer's petition, the certified union still claimed majority status. At the same time, another union claimed to represent 3 of the 4 units and an individual filed a petition for a decertification election in the fourth group. In another case a representation question also was held to have been raised by an employer's petition for a single departmental unit comprising employees who for 9 years had been continuously represented in 2 separate units by 2 unions under a jurisdictional agreement.²³ The Board found that at least 1 of the 2 unions indicated by its conduct that it desired to represent all the employees here in 1 department, and, while acquiescing in the "temporary" jurisdictional agreement, continued to press its demands for the departmental unit proposed by the employer's petition. On the other hand, the Board found no question concerning representation existed where the petitioning employer, a company formed by the merger of three separate utility corporations, sought to consolidate existing divisional units into one unit and sought to bargain on a systemwide basis.²⁴ Here, the Board pointed out, neither of the unions representing the separate divisions proposed to represent a systemwide unit, and no party sought an election in the existing divisional units.

c. Disclaimer of Interest

The Board has continued to dismiss employer petitions where a representative, which had at one time requested recognition, later disclaimed its interest in the employees. The disclaimer, however, "must be clear and unequivocal and not inconsistent with [the representative's] acts."²⁵ A union's formal notice to the Board that it did not presently claim to represent the petitioning employer's employees was held ineffectual because the disclaimer could not be reconciled with the union's continuing picketing in order "to get area conditions of this trade for this shop." In the Board's view, the union was attempting to obtain, by means of picketing, conditions and concessions normally sought by collective bargaining, and to compel the employer to bargain without regard to the union's representative status. The picketing was therefore held to be tantamount to a present demand for recognition.²⁶

²¹ See *Calcasieu Paper Company, supra*

²² *National Aniline Division, Allied Chemical and Dye Corporation*, 111 NLRB 550.

²³ *Owens-Illinois Glass Company*, 112 NLRB 172.

²⁴ *The Housatonic Public Service Company*, 111 NLRB 877

²⁵ See, e. g., *Owens-Illinois Glass Company, supra*

²⁶ The same rules as to disclaimers apply in decertification cases. *Owens-Illinois Glass Company, supra*.

d. Refusal of Recognition at the Hearing

During fiscal 1955, the Board reaffirmed the *Advance Pattern*²⁷ rule that where an employer refuses to recognize a petitioning representative at the hearing, a question of representation is held to exist even though the petitioner may not have requested recognition before filing the petition.²⁸ In a later case the Board rejected a contention that this rule applies only where a request for recognition follows filing of a petition.²⁹ The Board observed that, while here the petitioner did not specifically request recognition at any time, "the existence of a real question concerning representation was made fully apparent at the hearing."

e. Motions to Amend Certification

The Board at times is confronted with requests to amend a union's certification so as to reflect a change in the union's affiliation. While such a request may be granted under proper circumstances,³⁰ a motion to this effect will be denied if, in fact, it raises a question of representation which the moving union seeks to resolve without resort to the act's election procedures.³¹ Thus, in one case, the Board during the past year declined to redraft a certification in favor of an intervenor in the representation proceeding which claimed that the certified petitioner had been dissolved and that its membership had affiliated with the intervenor.³² The Board noted that to grant the motion would result in certifying the very union which 6 months earlier had been rejected by a majority of the employees. In another case, the Board held that a similar motion was but an attempt of what purported to be a certified international's dissident local to have a question of representation determined without an election.³³

3. Qualification of Representative

Section 9 (c) (1) (A) of the act provides for employee representation by "an employee or group of employees or any individual or labor organization acting in their behalf." However, it is the Board's policy to deny representation rights to a proposed bargaining agent which is found to lack the requisite qualifications.

²⁷ 80 NLRB 29.

²⁸ *General Shoe Corporation*, 109 NLRB 618.

²⁹ *General Telephone Company of Michigan*, 112 NLRB 46.

³⁰ See, e. g., *University Metal Products Co., Inc.*, 102 NLRB 1567; compare *General Electric Company, Detroit Apparatus Shop*, 112 NLRB 1478

³¹ See Nineteenth Annual Report, pp 20-21.

³² *Gulf Oil Corporation*, 109 NLRB 861.

³³ *R. M. Hollingshead Corporation*, 111 NLRB 840.

a. Craft and Departmental Representatives—the “Traditional Representation” Test

During fiscal 1955, the Board emphasized the *American Potash* rule,³⁴ which requires in part that a union seeking to sever a craft or craftlike departmental group must have traditionally devoted itself to the special interests and problems of the particular group.³⁵ Thus, in one case the Board made it clear that the “traditional union” test applies only where a petitioner seeks to sever a craft or traditional departmental group in the face of a substantial history of bargaining on a broader basis.³⁶ In the absence of such a history, the petitioner, an industrial union, was therefore permitted to represent separately a group of skilled full-fashioned hosiery knitters. The Board in another case further held that the test had no application in the case of a petitioner which sought to represent a craft group as part of an existing production and maintenance unit, and did not request severance of the group.³⁷

The question whether a newly formed craft union meets the “traditional union” test was reexamined at the instance of an independent tool and die craftsmen’s union which requested reconsideration of the dismissal of its severance petition.³⁸ A majority of the Board revoked the dismissal and overruled *Elgin National Watch Company*³⁹ insofar as inconsistent concluding that

A union newly organized for the sole and exclusive purpose of representing members of that craft, in our view, can be as much a craft union as an older organization which has been representing craft members for many years. In fact, it is likely to be more strictly a craft union than some of the “traditional” craft unions, which started as craft unions, but over the years have become more industrial. The only difference between the well-established and the more recently organized craft unions is the factor of experience. But this, it seems to us, is a matter for the concern of the employees and not of the Board.

To hold to the contrary, as under our dissenting colleagues’ interpretation of the *American Potash* decision, would mean that craft employees who desire craft representation are forever wedded to the past.⁴⁰

The Board has also held that in order to be recognized as a “traditional union,” the petitioner is not required to demonstrate “actual,

³⁴ *American Potash & Chemical Corporation*, 107 NLRB 1418. Nineteenth Annual Report, p. 22.

³⁵ See, e. g., *Moe Light, Inc.*, 109 NLRB 1013; *American Cyanamid Company*, 110 NLRB 89; compare *Campbell Soup Company*, 109 NLRB 475, Member Rodgers dissenting on the ground that the petitioning union should have been permitted to adduce additional evidence to establish its “traditional union” status.

³⁶ *Mock, Judson, Voehringer Company of North Carolina, Inc.*, 110 NLRB 437.

³⁷ *Campbell Soup Company*, 109 NLRB 518.

³⁸ *Friden Calculating Machine Co., Inc.*, 110 NLRB 1618, Members Murdock and Beeson dissenting. The original dismissal is not reported.

³⁹ 109 NLRB 273.

⁴⁰ See also *International Harvester Company*, 111 NLRB 606. Members Murdock and Beeson favored adherence to the *Elgin Watch* rule which, in their view, does not preclude a new craft union from representing previously unrepresented craft employees but merely precludes it from severing a craft until it has acquired sufficient experience to meet the traditional union test.

historical representation" within the industry in question.⁴¹ Nor is a petitioner which meets the "traditional" test precluded from representing a craft to be severed from a production and maintenance unit because the petitioner represents other employees of the particular employer on a plantwide basis or because it represents employees other than members of the particular craft elsewhere.⁴²

b. Other Questions of Qualification

In one case during the past year, the Board rejected an employer's contention that the petitioner was disqualified from acting as bargaining representative because of its failure to charter a local union within the State as required by State law as a prerequisite for doing business in the State.⁴³ The Board reiterated the well-established rule that State law is not determinative of rights and obligations under the act, except where the act expressly so provides. In another case, where the hearing officer had declined to receive an offer of proof concerning the petitioner's alleged discriminatory membership practices against Negroes, it was pointed out that even if the discrimination were proved the Board would have no authority to pass on the union's membership requirement.⁴⁴ The Board made it clear, however, that it is its practice to police its certification of a statutory bargaining agent to see that it represents equally all employees in the bargaining unit regardless of race, color, or creed, and that a certification may be revoked for failure to do so.⁴⁵ The Board also called attention to the remedies available under the act's unfair labor practice provisions.

4. Contract as Bar to Election

During fiscal 1955, the rule that an existing collective-bargaining agreement generally will bar a present redetermination of the employees' representative was, as usual, invoked in numerous cases, and the Board had to decide whether the prerequisites for application of the rule were present. Generally, the Board has continued to require that in order for a contract to be a bar it must be in writing, must be signed by the parties, and must contain substantive terms and conditions of employment.

a. Contract Must Be in Writing

An oral agreement of a subcontractor on a construction project to "go along with" whatever contract the principal contractor on the

⁴¹ *Southern Paperboard Corporation*, 112 NLRB 302

⁴² *Remington Rand, Inc.*, 109 NLRB 622

⁴³ *General Shoe Corporation*, 109 NLRB 618

⁴⁴ *Pacific Maritime Association*, 110 NLRB 1647

⁴⁵ See, e. g., *Pittsburgh Plate Glass Company*, 111 NLRB 1210, where the Board during fiscal 1955 revoked the certification of a union in view of its representation of members only rather than all employees in the bargaining unit.

project might negotiate with the representative of its employees was held no bar to an election among the subcontractor's employees.⁴⁶ The fact that the subcontractor had complied with certain provisions of the contract covering the principal contractor's employees was considered immaterial, and no reason was found for applying contract-bar rules in the construction industry different from those applied in other industries.

b. Contract Must Be Properly Executed

The Board during the past year had occasion to emphasize that a party asserting a contract bar has the burden of proving that the contract was fully executed at the time alleged and before demand for recognition was made by the petitioner.⁴⁷

The general rule that a contract will bar a representation petition only if it has been fully executed includes the requirement that the contract be signed by all the parties.⁴⁸ Thus, a contract negotiated with 2 jointly certified unions but signed by only 1 of them was held no bar. And a contract provision requiring ratification, whether construed as a condition precedent or a condition subsequent, must be satisfied before the contract can operate as a bar.⁴⁹ The Board pointed out in one case that until ratification occurs the relationship between the contracting parties cannot be deemed stabilized.⁵⁰ But the Board declined to give the same effect to a provision in the union's constitution requiring ratification of contracts. A Board majority in this case rejected the contention that the contract, covering the employees of a single employer, was not effective as a bar because it had not been approved by the union's "mixed local"⁵¹ as required by the union's international constitution.⁵² Finding that approval by the "mixed local" was a formality rather than a necessary requirement, the majority pointed out that the contract here had been signed and put into effect by the contracting employer, and that it was executed by union officials who customarily signed agreements and had at least apparent authority to execute the contract. The majority considered the interpretation and application of the union's constitution an internal matter and declined to go behind the union's fully executed contract.⁵³

⁴⁶ *Lewis & Bowman, Inc.*, 109 NLRB 796.

⁴⁷ *Bo-Low Lamp Corp.*, 111 NLRB 505. Cf. *The Yale and Towne Mfg. Co.*, 112 NLRB 1268.

⁴⁸ See, for instance, *Remington Rand, Inc.*, 112 NLRB 1381.

⁴⁹ *Westinghouse Electric Corp., Small Motor Div.*, 111 NLRB 497, see also *Campbell Soup Co.*, 109 NLRB 518, and *General Electric Co., Distribution Transformer Dept.*, 110 NLRB 992.

⁵⁰ *Westinghouse Electric Corp.*, *supra*.

⁵¹ The "mixed local" represented employees of several employers.

⁵² *The Texas Co., Port Arthur Works*, 112 NLRB 169, Member Rodgers dissenting.

⁵³ To the same effect *Phelps Dodge Refining Corp.*, 112 NLRB 1209.

In some situations, the Board found a contract bar to exist although execution as to some formal aspects was not completed until after the filing of a petition. Thus, in one case, where the Board noted the parties' formal contract was not signed until the day after the filing of the petition, which antedated the petition, the agreement resulting from negotiations and the union's acceptance were both in writing; the parties considered the agreement to have been properly concluded and put into immediate effect some important provisions; and a formal contract was signed within a reasonable time after the agreement had been reached.⁵⁴ The principle of the *Oswego* case was again applied in a later case where a contract was recognized as a bar even though it was not formally signed until after the filing of a petition.⁵⁵ The Board pointed out that in cases of this kind, as in contract-bar cases generally, the controlling factor is "whether the contract imparts to the relationship of the parties a degree of stability which outweighs the right of the employees to a redetermination of bargaining representatives at that particular time."⁵⁶ Here, the Board noted, the employees at no time expressed a desire for a change of representative either before or during the difficult negotiations for a new contract; the employees ratified the agreement reached; the agreement was put in effect, and the language of the written contract was approved. Only the ministerial act of signing the agreed documents remained, having been deliberately delayed by a union official for reasons totally unrelated to any disagreement as to contract terms. On the other hand, no contract bar was found where the petition was preceded only by the employer's last "package offer," and where 2 days after filing the petition the intervenor declared itself prepared to accept the offer with certain changes. The final contract asserted as a bar was not signed until 4 weeks later.⁵⁷

In one case, the Board held that a "Memorandum Agreement" by which the parties had modified their previous automatically renewed contract was a bar to a petition although the agreement was subsequently "further implemented" by a formal contract as provided.⁵⁸ The Board here found that the two documents were substantially identical, and that the final contract was essentially a formalization of the agreement which was sufficiently final and comprehensive. The Board noted that there were no further negotiations after the date of the agreement.

⁵⁴ *Oswego Falls Corp.*, 110 NLRB 621.

⁵⁵ *Natona Mills, Inc.*, 112 NLRB 236.

⁵⁶ Citing *Nash Kelvinator Corporation, Body Plant # 6*, 110 NLRB 447, discussed at p 21

⁵⁷ *United Productions of America*, 111 NLRB 390. See also *Mt. Clemens Metal Products Co.*, 110 NLRB 931 and *The Brewer-Titchener Corp., Crandal-Stone Div.*, 112 NLRB 512.

⁵⁸ *Phelps Dodge Refining Corp.*, 112 NLRB 1209.

c. Contract Must Contain Substantive Terms

In one case during fiscal 1955, the Board had to determine whether its requirement that a contract contain substantial terms and conditions of employment was satisfied by a "Supplemental Agreement" dealing with hourly wage rates, improvements, and cost-of-living adjustments.⁵⁹ Dismissing the petition in the case, a majority of the Board⁶⁰ stated that a contract need not fix every aspect of employment and may constitute a bar if it contains "terms and conditions of employment of sufficient substance to reasonably justify the conclusion that in the light of the surrounding circumstances the contract is likely to preserve . . . the working relationship of the parties to it." Referring to the contract before it, the majority said :

We believe that the Intervenor's wage agreement embodies sufficient substantive terms and conditions of employment to be found a bar in the circumstances of this case. The execution of this agreement does not appear to have been in anticipation of a rival representation claim. Neither is it the result of the beginning efforts of a newly recognized bargaining representative or the only settled area in a relationship otherwise marred by serious and disruptive disputes. The Employer and Intervenor have long maintained a harmonious association, the success of which is evidenced by the many agreements and understandings reached through their regular and frequent negotiations. The agreement here submitted as a bar establishes not only a comprehensive schedule of wages but incorporates a dynamic stability in this central issue in collective bargaining by providing for improvement and cost-of-living adjustments to be made during its term. Under these circumstances we find that the "Supplemental Agreement" between the Employer and the Intervenor is a bar to an election at the present time.

d. Contract Must Be of Reasonable Duration

Contracts for a term of not more than 2 years continue to be considered as of reasonable duration for contract-bar purposes. A contract for a longer term generally is recognized as a bar only during the first 2 years.⁶¹

(1) Contracts of More Than 2 Years' Duration

Contracts whose terms exceeded 2 years were again given contract-bar effect by a divided Board for their entire term where they were found to be customary in the particular industry. Thus, the 3-year contracts of an aviation products company and a curtain manufacturer⁶² and the 5-year contract of a farm equipment manufacturer⁶³

⁵⁹ *Nash Kelvinator Corp., Body Plant #6, supra.*

⁶⁰ Member Rodgers dissented because in his view the contract was merely the kind of wage agreement which under the Board's *Laclede Gas Light Co.* rule (76 NLRB 199) was not effective as a contract bar.

⁶¹ See, for instance, *The Budd Company*, 111 NLRB 457.

⁶² *Republic Aviation Corp.*, 109 NLRB 569, Chairman Farmer and Member Rodgers dissenting; *Home Curtain Corp.*, 111 NLRB 336, Member Rodgers dissenting, favored a flat 2-year rule; Chairman Farmer did not participate.

⁶³ *Allis-Chalmers Mfg. Co.*, 111 NLRB 389.

were recognized because contracts for similar periods were found to cover a substantial part of the respective industries. However, a 5-year contract for an aircraft engine parts manufacturer was rejected as a bar in the absence of a showing that a substantial part of that industry had negotiated 5-year contracts.⁶⁴

(2) Contracts of Uncertain Duration

The Board has adhered to the rule that a contract of indefinite duration may serve as a bar to an election for a period of 2 years from its effective date. Applying the rule in one case, a majority of the Board declined to compute the time the contract had already run by adding together the period for which the employer's contract—one of indefinite duration—had been in effect and the effective period of the contract of the employer's predecessor, a contract which had been terminable at will⁶⁵ and which was still in effect at the time of the transfer of the business.⁶⁶ The Board majority was of the view that the contract between the purchasing employer and the intervenor created new contractual relations between a new set of parties. It was immaterial, the majority held, that the terms of the new contract, except for the termination provisions, were identical with those of the predecessor's agreement. The petition was dismissed because the new contract had not yet run 2 years.

In according 2-year-bar effect to contracts of uncertain duration, the Board distinguishes, however, between such agreements which "are designed to establish a stable, continuing [bargaining] relationship," and interim contracts which are merely "temporary and provisional in character" and which are to be superseded with a permanent agreement.⁶⁷ This distinction, according to a Board majority, is valid not only in the case of stopgap agreements extending an expired contract until a new final agreement has been negotiated, but also to initial agreements which are to continue in effect only while a complete agreement is being negotiated by the parties.⁶⁸

e. Contract Must Cover Employees in the Unit Involved

In accord with established practice, a contract continues to be given effect as a bar only if it covers employees in an appropriate unit who

⁶⁴ *Bendix Aviation Corporation*, 111 NLRB 456.

⁶⁵ Contracts terminable at will and contracts of indefinite duration are treated similarly for contract-bar purposes. See Nineteenth Annual Report, pp. 24-25.

⁶⁶ *Metropolitan Coach Lines*, 112 NLRB 1429, Member Rodgers dissenting.

⁶⁷ *Bridgeport Brass Co., Aluminum Div.*, 110 NLRB 997, Members Murdock and Beeson dissenting. See also *Union Bag & Paper Corp.*, 110 NLRB 1631, and *San Juan Commercial Co.*, 111 NLRB 599.

⁶⁸ *Bridgeport Brass Co.*, *supra*. The intervenor's contention here, that its "interim agreement" constituted a bar under *Rohm & Haas Company*, 108 NLRB 1285 (Nineteenth Annual Report, pp. 24-25), was rejected. The Board made it clear that any broad language in *Rohm & Haas* was not intended to have the asserted effect.

are involved in a representation proceeding. If an election is sought in an employee group not in existence at the time the asserted contract became effective, the Board determines the coverage question on the basis of the terms of the contract or the intention of the parties (as subsequently expressed). Thus, an election among employees in a new operation of the employer was held barred by the "Continuing Agreement" of a group of affiliated unions. The agreement provided for automatic extension to any affiliated local which subsequently should become the legal representative of an appropriate unit of the company's employees, and these conditions of the extension provision were satisfied.⁶⁹ In another case, where a contract covering "all production and maintenance employees," which was executed before the employer had a machine shop, was clarified by a supplemental agreement so as to cover newly hired machine shop employees, the contract was held to bar an election in the machine shop.⁷⁰ The machine shop employees were found to be typical and necessary categories in the kind of manufacturing operation involved. They were therefore considered normal accretions to the existing production and maintenance unit.⁷¹

But an election among employees in a completely new operation was held not barred by a contract which did not purport to cover operations not in existence when the contract was executed.⁷² In 1 case, an employer's consolidation of its 2-plant operations with the operations of a newly acquired, larger plant was held to have resulted in an entirely new operation, and an election in the consolidated unit was held not barred by the contract of the unions which had represented 2 of the 4 units existing before consolidation.⁷³ The Board noted that the contracts of the two unions covered only a fraction of the employer's enlarged employee complement.

The rule that a members-only contract cannot serve as a bar to a representation proceeding was applied in a case where the Board found that the contracting union had never in fact represented all employees equally without discrimination between members and non-members.⁷⁴ It was therefore considered immaterial whether or not the asserted contract purported to cover all employees in the bargaining unit.

⁶⁹ *Phelps Dodge Corp., Copper Queen Branch*, 112 NLRB 160. The Board noted that the agreement's extension clause was identical with that in an earlier case, *Phelps Dodge Corp., New Cornelia Branch*, 93 NLRB 990, and that the rationale of the earlier case disposed of the contract-bar issue here.

⁷⁰ *Solar Mfg. Co.*, 110 NLRB 1188.

⁷¹ See also *American Cast Products, Inc.*, 110 NLRB 705, where Chairman Farmer and Member Rodgers dissented from a similar finding because they believed that the employer's acquisition of a pattern shop did not merely result in "accretions" to the existing unit.

⁷² See *United States Rubber Co.*, 109 NLRB 1293, and *Bornstein Sea Foods, Inc.*, 111 NLRB 198, see also *Southwestern Greyhound Lines, Inc.*, 112 NLRB 1014, and *General Electric Co.*, 111 NLRB 1246.

⁷³ *Industrial Stamping & Mfg. Co.*, 111 NLRB 1038.

⁷⁴ *Cargo Packers, Inc.*, 109 NLRB 1184.

f. Contract Must Be Consistent With the Act—Union-Security Agreements

The Board has consistently disregarded for contract-bar purposes agreements which conflict with the basic policies of the act, such as agreements containing union-security provisions not permitted under section 8 (a) (3).

Contract-bar effect was again denied during the past year in the case of union-shop agreements which accorded employees less than 30 days for acquiring union membership, or deprived them of the statutory grace period entirely by requiring the contracting employer to give preference in hiring to union members in good standing.⁷⁵

However, a provision that an employer's old employees, not members of the union, "shall promptly become members," was held not to have made the union's contract ineffective as a bar.⁷⁶ The Board noted that there was no indication that any of the employees who at one time were subject to the clause⁷⁷ were deprived of the statutory 30-day grace period, or that even a single employee was discriminated against under the contract. The Board then went on to say:

We are not in this case concerned with a charge of unfair labor practices involving the protection of employee rights.⁷⁸ We are called upon only to determine whether or not an election is appropriate at this time. This is an entirely different problem which requires us to consider other and equally pertinent objectives of the statute, not the least of which is that of fostering stability and discouraging labor turmoil and unrest. Specifically, we must decide whether we will brush aside an existing contract between an employer and a bona fide union, under which the parties have achieved satisfactory and stable labor relations, and entertain a petition for a mid-contract election solely because of a technical omission in contract language, which, insofar as the record shows, has not resulted in harm to a single employee.

Our contract-bar principle was devised and has long been applied in election cases as a purely administrative rule having as its salutary purpose safeguarding and fostering stability of labor relations. A petitioner—seeking to disturb a peaceful and harmonious relationship under an existing contract which the employer and the contracting union are living under in good faith—should not be permitted to circumvent the operation of our contract-bar rule on the technical and legalistic ground urged by this Petitioner.

The principle of the *Sandler* case was again applied in a later case.⁷⁹ Here, the Board held that the failure of the contract's union-security

⁷⁵ *Massachusetts Leather Manufacturers' Association*, 112 NLRB 513; *Ira Grob, Inc.*, 110 NLRB 626, *Seaboard Terminal and Refrigeration Co.*, 109 NLRB 1094.

⁷⁶ *A. Sandler Co.*, 110 NLRB 738, Member Rodgers dissenting

⁷⁷ The clause was adopted in the union's original contract which later was amended and extended for an additional 2-year term

⁷⁸ Member Murdock, who concurred in the result, dissented from the conclusion that the legality of a union-security clause is to be appraised differently in a representation proceeding on a contract-bar issue from that in an unfair labor practice proceeding.

⁷⁹ *Milwaukee Gas Light Co.*, 111 NLRB 837, Member Rodgers dissenting. The Board here also reaffirmed the *Krause Milling Co.* rule (97 NLRB 536) that old employees who were already members of the union when the contract became effective are not entitled to the statutory grace period.

clause to provide expressly for a 30-day escape period did not invalidate the contract for bar purposes since it was not shown that any employee had been required to become a member of the contracting union in violation of the act, or had been discriminated against under the contract. Nor was the contract here held invalid because one of its provisions required new employees to authorize an immediate dues and initiation fee checkoff. The Board pointed out that another provision, and the actual practice of the parties, made it clear that checkoff authorizations of new employees were entirely voluntary.

g. Effect of Schism or Change of Status of Bargaining Agent

According to established policy, a contract will not bar an election if a split or schism within the ranks of the contracting union creates such confusion that the existing contract no longer stabilizes industrial relations between the parties. This doctrine was applied in a series of cases involving contracts of affiliates of the United Electrical Workers which had been expelled from its parent organization for reasons including Communist domination.⁸⁰ It is the Board's continued belief—

that expulsion of a labor union by its parent organization coupled with disaffiliation action at the local level for reasons relating to the expulsion, disrupts any established bargaining relationship between an employer and that union and creates such confusion that the existing contract with such union no longer stabilizes industrial relations between the employer and its employees.⁸¹

As heretofore, the Board has declined to find a schism for contract-bar purposes unless the asserted disaffiliation action was taken by the contracting union's membership at a formal meeting called by the union for the announced purpose of considering disaffiliation. Thus, no schism was found where following the contracting union's suspension by its parent for failure to pay per capita tax, a "mass meeting" voted unanimously to form a new organization. The meeting had not been called by any officer or trustees then functioning for the suspended union, and its special purpose had not been announced.⁸² Moreover, the old officers and trustees of the suspended union were replaced by newly elected officers, and the union continued to function thus indicating that it was capable of administering the contract. Nor was asserted disaffiliation found to have resulted in a schism

⁸⁰ *General Electric Apparatus & Service Shop*, 110 NLRB 1054; *Continental Electric Co.*, 110 NLRB 1062; *International Harvester Co., Farmall Works*, 110 NLRB 1247; *The Magnavox Co.*, 111 NLRB 379; *Copeland Refrigeration Corp.*, 111 NLRB 533; *Whirlpool Corp.*, 111 NLRB 547. Member Rodgers, concurring in the direction of election in these cases, expressed the view that since Communism was a reason for the contracting union's expulsion, its contract should not be recognized as a bar for reasons of broad public policy and regardless of the existence of a schism. Compare *San Juan Commercial Co.*, 111 NLRB 599.

⁸¹ See *A. C. Lawrence Leather Company*, 108 NLRB 546, quoted in *The Magnavox Co.*, *supra*.

⁸² *North American Aviation, Inc.*, 112 NLRB 1377.

where at a regular meeting of the contracting union a disaffiliation resolution was adopted, and where the dissident group, which subsequently considered itself an independent organization, attempted to affirm the earlier disaffiliation action.⁸³ Here, a majority of the Board pointed out that: (1) The original action was ineffective under the schism rule because no notice was given that disaffiliation was to be considered, the disaffiliation expression was merely that of a dissident element, and subsequently there was no effective change in the existence and functioning of the contracting union; and (2) the formalized disaffiliation vote of the "independent" group had no validity since it was not the necessary vote of a meeting of the contracting union. As to the pendency of legal proceedings covering the legality of the asserted disaffiliation and the property rights involved, the Board's decision again made it clear that such litigation does not require a finding that confusion exists as to the identity of the bargaining representative of the unit concerned.

The Board has continued to disregard the contract of a union which has ceased to function on behalf of the employees covered and is defunct.⁸⁴

h. Effect of Rival Petitions

Generally, the Board applies the rule that a contract executed or renewed after the filing of a petition does not operate to bar an election. The rule was held to apply in the case of a contract entered into after the dismissal of the petition but while the petitioner's motion for reconsideration was pending.⁸⁵ The Board also held that a petition was not barred by a contract which had been negotiated with the understanding that no formal documents would be entered into during the pendency of the representation proceeding.⁸⁶

(1) Amendment of Petition

A contract executed during the interval between the filing of a petition and its amendment becomes a bar if the amendment is substantial. Thus, a postpetition contract covering a group of employees not included in the petitioner's unit request was held to bar the petitioner's request at the hearing for an election in a unit including the group.⁸⁷ However, a contract executed for the purpose of changing from the

⁸³ *Aleo Mfg Co*, 109 NLRB 1297, Chairman Farmer dissenting

⁸⁴ See, for example, *Fulrol Corp*, 109 NLRB 1071, *Wales-Strippit Corp.*, 110 NLRB 951, *International Harvester Co*, 111 NLRB 276; *Arthur C. Harvey Co.*, 110 NLRB 338. See also *San Juan Commercial Co*, *supra*. Compare *Aleo Mfg Co*, *supra*

⁸⁵ *Baldwinville Products, Inc*, 111 NLRB 752 The Board here cited *Refrigeration Manufacturing, Inc*, 104 NLRB 510, 512, where it was pointed out that a contrary ruling would penalize the petitioner for the necessary delay inherent in the Board's decisional processes

⁸⁶ *Washington Metal Trades, Inc*, 110 NLRB 327, contract only "negotiated."

⁸⁷ *Grand Sheet Metal Products Co*, 110 NLRB 1654.

members-only bargaining, which had prevailed despite the obligations of a certification,⁸⁸ was held no bar to an amended petition asking a unit larger than the one specified in the original petition.⁸⁹ The Board held that the general contract-bar rule in case of substantial enlargement of the scope of the unit by the petitioner was inapplicable here because the change in the unit stemmed entirely from the existence of a defective bargaining history.

(2) Petitions Filed Before Effective Date of Contract

The general rule that a contract with a deferred effective date does not become operative as a bar before that date was invoked during the past year in a case where the asserted contract, executed before the petition, was not to become effective immediately because of economic considerations related to the proximity of the end of the current calendar year.⁹⁰ The Board noted that heretofore an exception to the general rule had been recognized only where a new contract was executed between the operative date of the old contract's automatic renewal clause and its expiration date,⁹¹ and that was not the situation here. Nevertheless, the Board held that application of the general rule was not appropriate. The Board noted that there was no indication that the parties manipulated the contract's effective date to preclude the filing of rival petitions, and the postponement of the effective date for only a few days at the end of the calendar year could not be considered unreasonable. Under these circumstances the Board concluded that a present election was therefore not appropriate because the contract clearly tended to stabilize bargaining relations.

(3) Timeliness of Petition—Prematurity

In the face of the well-established rule that a petition filed before a contract's automatic renewal—or "Mill B"—⁹² date prevents the contract from remaining a bar, the effectiveness of the petition is at times attacked on the ground that it was filed too far in advance of the contract's renewal. Reiterating in 1 case that a question of representation can be appropriately raised by a petition about 3 months before the automatic renewal of a contract, the Board in 1 case held that the filing of a petition 1 year before automatic renewal was untimely.⁹³ Nor, according to the Board, was this case comparable to those where an election was directed notwithstanding the untimeliness of the peti-

⁸⁸ The contracting union's certification was revoked because of the violation of its terms.

⁸⁹ *Pittsburgh Plate Glass Co.*, 111 NLRB 1210

⁹⁰ *Royal Dalton, Ltd.*, 112 NLRB 760.

⁹¹ The Board cited *Mississippi Lume Company*, 71 NLRB 472, *De Soto Creamery & Produce Co.*, 94 NLRB 1627; 1629-33; *Arvin Industries, Inc.*, 104 NLRB 300.

⁹² *Mill B, Inc.*, 40 NLRB 346

⁹³ *Home Curtains Corp.*, 111 NLRB 1253; citing *De Soto Creamery and Produce Company*, *supra*.

tion, as for instance where the automatic renewal date of the contract was only about 1 month away,⁹⁴ or where the expiration date of the contract was only about 3 months in the future.⁹⁵ In 2 cases, the Board held that petitions filed about 1 month before the asserted contract's renewal date were not premature.⁹⁶ In one of these cases it was noted further that at the time of the Board's decision the renewal date had passed and the contracts in question were about to expire.⁹⁷

i. Effect of Rival Claims

The Board has continued to apply the 10-day rule⁹⁸ that a claim for recognition, other than one with a substantial and recognizable basis, does not forestall a subsequent contract from becoming a bar unless the claimant files a petition with the Board within 10 days.⁹⁹ If the last day of the 10-day period falls on a day when the Board's offices are normally closed, filing of the petition on the next business day is timely.¹

(1) The 10-Day Rule—Suspension for Extenuating Circumstances

As pointed out in 1 case during the past year, extenuating circumstances may justify an election on a petition which is untimely under the 10-day rule.² Thus, the Board noted, an exception had been made where, as here, the employer at one time promised that it would bargain without an election among the employees whom the petitioner claimed to represent.³ The Board held, however, that the exception did not apply in the circumstances of the case before it because the petitioner by its later conduct acquiesced in and encouraged the execution of a contract between the employer and another union. The Board said

it is precisely situations such as the present one that illustrate the salutary effect of the rule requiring petitions to be filed within 10 days after the initial request for recognition and bargaining. Failure to conform to this well-established Board requirement frequently leads, as it did here, to factual disputes that would otherwise not have occurred.

⁹⁴ *General Electric Company (Tiffin Plant)*, 100 NLRB 1318; *Republic Steel Corporation (Troy Furnace Division)*, 64 NLRB 387.

⁹⁵ *Round California Chain Corporation, Ltd.*, 64 NLRB 242.

⁹⁶ *Warner Electric Brake & Clutch Co.*, 111 NLRB 268; *Massachusetts Leather Manufacturers' Assn.*, 112 NLRB 513.

⁹⁷ *Massachusetts Leather Manufacturers' Assn.*, *supra*.

⁹⁸ Also known as the *General Electric X-Ray* rule from the case in which it was stated, 67 NLRB 997 (1946).

⁹⁹ See, for example, *Westinghouse Electric Corp.*, 110 NLRB 475; cf. *Campbell Soup Co.*, 109 NLRB 518; *The Brewer-Titchener Corp., Crandal-Stone Div.*, *supra*.

¹ *Associated Food Distributors, Inc.*, 109 NLRB 574, Member Murdock dissenting in other respects.

² See *Best Art Products, Inc.*, 111 NLRB 81.

³ The Board cited *Arrow Candy Co.*, 100 NLRB 573; *Chicago Bridge & Iron Company*, 88 NLRB 402.

(2) Modification of 10-Day Rule

During fiscal 1955, the 10-day rule was modified by eliminating the requirement that a union seeking to invoke the rule must allege in its notice to the employer, at least by implication, that it represents a majority of the employees.⁴ A majority of the Board, in announcing the new rule, noted that the rule is not predicated upon the assumption that the claimant actually represents a majority but, on the contrary, is based on what have been termed "bare" or "naked" claims. It was further pointed out that the accuracy of the previously required claim had little significance since the claimant must show only a 30-percent interest in connection with its petition. The majority concluded that the policy behind the rule requires only

that the employer be reasonably apprised that the petitioner actively seeks to become the exclusive bargaining representative, whether by notice of the outside union's assertion of a majority, by notice of its request for recognition or by notice of its intention to initiate a representation proceeding before this Board to challenge the position of the incumbent union. Accordingly, we find that where, as here, the employer is made aware that another union is about to file a petition, and that petition, supported by a 30-percent showing of interest, is actually filed within 10 days, a contract signed in the interim cannot operate as a bar to an election.

(3) Application of Rule to Noncomplying Union

The Board during the past year had occasion to consider for the first time whether a union, which was not in compliance with section 9 (f), (g), and (h) when it requested recognition, may invoke the *General Electric X-Ray* rule if it has achieved compliance before filing its petition.⁵ The Board announced that to extend the benefit of the rule under such circumstances would be inconsistent with the policies of section 9 (f), (g), and (h), which precludes investigation of any question concerning representation raised by a noncomplying union. It was pointed out that to validate a petition filed under such circumstances would be to entertain a representation question raised by a union which was not in compliance at the time it took action essential to the raising of that question.⁶

j: Termination of Contracts

Determination of the existence of a contract bar frequently depends on whether the asserted contract has in fact been terminated.

⁴ *Associated Food Distributors, Inc., supra*, Member Murdock dissenting. Compare *Royal Dalton, Ltd, supra*, where the petitioner relied solely on the distribution of a circular among the employees on the day the contract was signed.

⁵ *North American Aviation, Inc.*, 109 NLRB 269.

⁶ Chairman Farmer and Member Rodgers expressed the view that the new rule should not be applied retroactively in the present case, or applied so as to disregard extenuating circumstances.

(1) Automatic Renewal of Contract

A contract which provides for its automatic renewal in the absence of notice to terminate or modify continues to constitute a bar if no timely notice is given.⁷ Failure to give notice was held to result in renewal notwithstanding the fact that the contracting union had appointed a negotiating committee before the contract's renewal date and that the renewal date contract changes were negotiated by the parties.⁸

(2) Defects in Termination Notice

The Board has held that a union's notice for contract negotiations, though given 2 days after the date provided in the contract, forestalled automatic renewal in view of the employer's waiver of the untimeliness of notice.⁹ The employer consented to negotiations and invited submission of detailed specification by the union in accord with the parties' past practice. In another case, where the employer had likewise waived the defect in the timeliness of a union's notice under the contract, the union was held estopped from asserting that the defect prevented its notice from removing the contract as a bar to a present election.¹⁰ The Board noted that not until the union's representative status was placed in jeopardy by a rival petition did it attempt to countermand its letter of termination which had created the impression that the union intended to forestall automatic renewal of its contract. The Board made it clear that it will not lend its processes to a party which seeks to seize upon a technicality for the purpose of vitiating its own action. The same rule was applied in a case where a union sought to take advantage of the inadvertent failure of its termination notice to specify to which of two concurrent contracts it referred.¹¹ The Board found that the conduct of the parties clearly indicated which contract was to be opened and that the union did not become aware of its inadvertence until the filing of the petition in the case.

In one case, the Board rejected a union's contention that its termination notice was ineffective because the employer declined to accept the notice, no such acceptance being required under the terms of the contract.¹² And in another case, the Board held that the contract of an international and certain locals was effectively terminated by the notice of a joint executive board which had negotiated and endorsed the contract.¹³ The Board noted that, under the circumstances, the joint executive board had at least apparent authority to give the notice in question.

⁷ Compare *Tennessee Egg Co.*, 110 NLRB 189.

⁸ *Doak Aircraft Co.*, 110 NLRB 792.

⁹ *The Carter's Ink Co.*, 109 NLRB 1042

¹⁰ *Diamond Printing Co.*, 109 NLRB 112

¹¹ *A. O. Smith Corp., Kankakee Works*, 111 NLRB 1042.

¹² *Doak Aircraft Co.*, *supra*.

¹³ *Capital District Beer Distributors Assn.*, 109 NLRB 176.

(3) Intention to Terminate Contract

In cases where the intention of the contract parties does not clearly appear from an asserted termination notice, the Board interprets the terms of the notice in the light of their conduct. Thus, a notice assertedly intended merely to reopen a contract for wage discussion within the contract's narrow wage-reopening clause was found to have reopened and therefore terminated the entire contract.¹⁴ The union's notice was given only 3 weeks prior to the last possible date when the contract could be terminated; it contemplated "discussion of wages, hours of employment, working conditions, and other matters of mutual interest"; and the employer agreed to reopen the entire contract. Under these circumstances, and in view of the fact that the parties did not resort to the contract's narrow wage-reopening provision, the majority of the Board concluded that it was the parties' intention to forestall the contract's automatic renewal. Similarly, when a union just before the automatic renewal date of its contract made the request that "negotiations on the labor agreement . . . be continued," a Board majority viewed it as a timely notice to negotiate a new contract rather than a reference to the contract's limited wage-reopening provision.¹⁵ In addition to the timing of the notice, the majority observed, wage negotiations had ended 3 months before the union's notice, and the agreement which was later reached was not limited to a wage increase. Conversely, a petitioner's contention that a reopening notice had prevented automatic renewal of the contract in question was rejected when the later conduct of the parties did not disclose an intent to terminate, but was consistent with the parties' own interpretation of the notice as permitting only the negotiation of wages under the contract's limited wage-reopening clause.¹⁶ The *American Lawn Mower Co.* rule¹⁷ that a contract is terminated by a *broad* notice under a modification clause which is coterminous with the contract's termination clause was held inapplicable here because the union had requested discussion of only wages and "fringe economic benefits."¹⁸ In one case, the union wrote a letter to the employer just before the notice date suggesting that certain modifications be incorporated in the existing contract.¹⁹ This was held not to constitute a notice of desire to negotiate a new agreement and to terminate the existing one. The Board noted that apparently the only negotiations for contract changes occurred before the date of the

¹⁴ *Union Bag & Paper Corp.*, 110 NLRB 1631, Member Murdock dissenting. See also *Westinghouse Electric Corp., Small Motor Div.*, *supra*

¹⁵ *Western Electrochemical Co.*, 112 NLRB 1276, Member Murdock dissenting.

¹⁶ *Eagle Signal Corp.*, 111 NLRB 1006

¹⁷ 108 NLRB 1589.

¹⁸ Member Murdock disassociated himself from the decision insofar as it implied that a *broad* notice to reopen requires an implication of intent to terminate the existing contract and to negotiate a new one

¹⁹ *Koppers Company, Inc., Wood Preserving Division*, 112 NLRB 1212

union's letter whose only purpose was to clarify the existing points of agreement and disagreement.

The *American Lawn Mower* rule²⁰ that notice under a modification clause which is coterminous with the contract's termination clause removes the contract as a bar,²¹ was applied in 1 case although the language of the 2 clauses was not parallel.²² The Board noted that the contract's modification clause was unlimited in scope and the cutoff date for requesting changes coincided with the automatic renewal date under the termination clause. The Board concluded that the two clauses were in effect coterminous and that the notice to modify necessarily implied an intent to suspend the contract. Moreover, the Board here further held that, even if considered not coterminous, a notice under either provision must be given the effect of a notice to terminate if the terms of the notice and the conduct of the parties indicate a desire to reopen the entire contract at a time normally appropriate for notice to terminate.

The Board during fiscal 1955 again held that an employer's termination notice which is based on the union's breach of the no-strike clause of its contract renders the contract ineffective as a bar.²³

k. Effect of Reopening Provisions

The Board has reaffirmed its view that a contract cannot serve as a bar if it permits renegotiation of all of its provisions, sanctions a strike if the parties fail to agree on new terms, and in case of strike allows the employer to terminate the contract.²⁴ Such a contract is held not to stabilize labor relations for the full nominal term of the contract and, therefore, not to bar a timely rival petition.²⁵ However, it was made clear, during the past year, that this rule does not apply where the reopening clause of the contract is not of unlimited scope and does not empower the employer to terminate the contract although the union is permitted to strike if negotiations are unsuccessful.²⁶

1. Premature Extension of Contract

The Board during fiscal 1955 reaffirmed the rule that the premature extension of a contract does not bar a petition which is timely in respect to the contract's renewal date.²⁷ The purpose of the premature-

²⁰ 108 NLRB 1589. Nineteenth Annual Report, p. 32.

²¹ See, for instance, *Sangamo Electric Co.*, 110 NLRB 1.

²² *Westinghouse Electric Corp., Small Motor Div.*, *supra*.

²³ *Electrical Products Corp.*, 109 NLRB 951. See *Moore Drop Forging Co.*, 108 NLRB 32; Nineteenth Annual Report, p. 32.

²⁴ *General Electric Co.*, 109 NLRB 747 and 1372; *Westinghouse Electric Corp., Sunnyvale Plant*, 110 NLRB 872. The rule was announced during the preceding year, see *General Electric Co.*, 108 NLRB 1290, Nineteenth Annual Report, pp. 32-33.

²⁵ *Anaconda Copper Mining Co.*, 112 NLRB 1347.

²⁶ *Anaconda Copper Mining Co.*, *supra*.

²⁷ See *Worthington Corp.*, 109 NLRB 1306 Compare *National Foundry Co. of New York*, 109 NLRB 357.

extension rule is to enable employees to change their bargaining agent, if they so desire, at reasonable and clearly predictable intervals.²⁸ The rule, the Board reiterated, in no way impedes the execution of a new agreement for valid economic reasons during the term of an existing agreement.

In several cases, however, in which the rule was invoked the Board had to consider whether its application should be rigid or flexible. In this respect, the *Sefton* case²⁹ made it clear that the

premature-extension rule, like the contract-bar rule itself³⁰ is essentially a discretionary principle and . . . was not intended to be rigidly applied in every situation where a new agreement with an extended term was executed during the life of an existing contract. . . . circumstances surrounding the negotiation and execution of the new agreement may remove that contract from the ambit of the premature-extension rule.³¹

A majority of the Board found that an exception to the rule was warranted because the sole purpose of the contracting union and employer here was to conform the term of their single-plant contract to the terms of an associationwide contract in order to implement the long-considered determination to join a multiemployer bargaining group. This purpose was accomplished as soon as the time was ripe.³² A majority of the Board, however, found in another case that the circumstances relied on did not justify a similar relaxation of the premature-extension principle.³³ In this case the parties to a fixed-term contract executed a midterm supplemental agreement which, among other provisions, extended the term of the existing contract for an additional year. Three months later the parties executed a complete new agreement which reflected certain wage changes and was to terminate on the same date as the earlier supplemental agreement. The majority pointed out that there were no "special circumstances" such as those in the *Sefton* case, and that that case was not intended to introduce "a substantive variation in its well established [premature-extension] rule."

m. Contract Provision for Waiver of Contract Bar

The effectiveness of a contract as a bar to an election may be waived by the parties. Thus, the Board during fiscal 1955 held that an election was proper because the contract, which otherwise would have constituted a bar, contained an addendum providing in clear and unequivocal terms that the employees shall have the right to an election to

²⁸ *Worthington Corp*, *supra*

²⁹ *Sefton Fibre Can Co*, 109 NLRB 360

³⁰ The Board here cited *N. L. R. B. v Grace Company*, 189 F. 2d 258 (C A 8)

³¹ The Board here cited *Raytheon Manufacturing Company*, 98 NLRB 785 and 1330 Compare *La Pointe Machine Tool Co*, 109 NLRB 514

³² Chairman Farmer concurred Member Peterson dissented on the ground that the premature-extension rule is to be rigidly applied and that no exception was justified under the circumstances here.

³³ *American Steel & Wire Division of United States Steel Corporation*, 109 NLRB 373, Chairman Farmer and Member Murdock dissenting

determine whether the contracting union should no longer continue to serve as collective-bargaining agent.³⁴ Insofar as the addendum conditioned the contract-bar waiver on the signing of a petition by at least 50 percent of the employees in the unit, the Board held that the condition was satisfied when over 50 percent of the employees signed individual cards requesting an election.

5. Impact of Prior Determinations

Direction of an election is subject to certain administrative and statutory limitations which implement the principle that the representative of an appropriate bargaining unit is entitled to a reasonable time within which to establish contractual relations with the employer without interference by rival claims.

a. Effect of Certification

During the preceding fiscal year, the Board announced that, while a certified union ordinarily is allowed 1 year to negotiate a contract, there is no need to protect the union's certification further once a contract is executed within the 1-year period.³⁵ During fiscal 1955, it was again pointed out that in such situations the certification year merges with the contract which in turn becomes controlling with respect to the timeliness of a rival petition.³⁶ In one case, a national agreement which was extended by the international union to an affiliated local upon the latter's certification was held to satisfy the *Ludlow* rule.³⁷ The pendency of negotiations for "local supplements" to the national agreement at the time of the filing of the petition, in the Board's opinion, was not controlling. The "local supplements" merely filled out the terms of the national agreement which was the international's basic collective-bargaining contract for the employer's plants, and by which the local became bound following its certification. In another case, the *Ludlow* rule was held inapplicable where the written contract between 2 jointly certified unions and the employer was not signed by 1 of the unions.³⁸ However, the Board declined to give effect to the 1-year certification rule because the status of joint representatives of the certified unions had ceased to exist.

In one case, a union contended that its year-old certification was entitled to further protection under the *Allis-Chalmers* rule,³⁹ because

³⁴ *Conc Mills Corporation*, 110 NLRB 830. The Board cited *Hidden Warehouse and Forwarding Company*, 80 NLRB 1587; and *The American News Co., Inc.*, 102 NLRB 196.

³⁵ *Ludlow Typograph Co.*, 108 NLRB 1463, Nineteenth Annual Report, p. 35. For reaffirmation of the 1-year rule see *Remington Rand, Inc., Engineering Research Associates Div.*, 112 NLRB 1381.

³⁶ See *Pioneer Division, Flintkote Co.*, 109 NLRB 1273, Members Murdock and Peterson dissenting on the retroactive application of the rule in the circumstances of this case, *Natvar Corp.*, 109 NLRB 1278. Member Murdock dissenting again on the same ground.

³⁷ *Westinghouse Electric Corp., Sunnyvale Plant*, 110 NLRB 872.

³⁸ *Remington Rand, Inc., Engineering Research Associates Div.*, *supra*.

³⁹ *Allis-Chalmers Manufacturing Co.*, 50 NLRB 306.

there had been no actual opportunity for contract negotiations during the period when the employer utilized Board processes to have its doubts resolved regarding the appropriateness of the certified bargaining unit.⁴⁰ Rejecting the contention, the Board made it clear that the *Allis-Chalmers* exception to the 1-year rule was the product of wartime conditions and was intended solely as a compensation for the agreement of labor not to strike and to submit disputes to the War Labor Board. No reason was found to extend the strictly limited application of the rule.

b. Effect of Settlement of Refusal-to-Bargain Charges

During fiscal 1955, the Board had to decide whether an election should be deemed barred by the settlement of an incumbent union's charges under section 8 (a) (5) which antedated the filing of the rival petition.⁴¹ The Board held that the reasoning of the *Poole Foundry & Machine Co.* case,⁴² which involved a comparable situation, was applicable here. That case had pointed out that a settlement agreement containing a bargaining provision, like a Board order to bargain, must be treated as giving the parties thereto a reasonable time in which to conclude a contract if the settlement is to achieve its purpose. Dismissing the petition, the Board observed that long before its filing the incumbent union had diligently filed unfair labor practice charges and that the petitioner itself had contributed to, if not caused, the employer's withdrawal of recognition from the incumbent. The Board concluded that once the employer agreed to the settlement of the refusal-to-bargain charges and the settlement was approved by the regional director, the policies of the act required that the parties to the agreement be given a reasonable time to carry out the agreement free of rival union claims and petitions.

In a later case, application of the *Dick Brothers* rule depended on (1) whether an interchange of letters between the regional director and the employer amounted to an informal settlement of refusal-to-bargain charges, and (2) whether the period during which the parties subsequently bargained constituted a reasonable time.⁴³ As to the first point: The employer, following the filing of the charges, notified the regional director that it would bargain with the charging union if its challenge of the appropriateness of the certified unit, then pending in another proceeding, should be overruled. In view of the employer's commitment, the regional director replied that issuance of a complaint would be withheld. Later the regional director dismissed the charges because of the Board's amendment of the unit and because of his understanding that bargaining had been resumed. As to point two: The

⁴⁰ *The Daily Press, Inc.*, 112 NLRB 1434

⁴¹ *Dick Brothers, Inc.*, 110 NLRB 451

⁴² 95 NLRB 34, enforced 192 F. 2d 740 (C. A. 4)

⁴³ *The Daily Press, Inc.*, *supra*

Board held that, while the informal settlement thus made brought into operation the *Dick Brothers* rule, the circumstances indicated that the parties to the agreement had had sufficient time in which to conclude a contract so that the settlement was no longer a bar to an election. In reaching this conclusion, the Board noted particularly that the regional director, who had closely observed the bargaining relations, did not dismiss the charges until he had determined that the parties had bargained in good faith to an impasse. The Board further took into consideration that the employees involved had not had an election for 1½ years and that there had been considerable turnover in the bargaining unit.

c. Effect of Prior Election

Section 9 (c) (3) prohibits more than 1 valid Board election in a unit of employees during the same 12-month period. Moreover, the Board may, as a matter of policy, decline to direct an immediate election shortly after some other public or private agency has conducted a poll among the employees which satisfies certain standards.

(1) The 12-Month Limitation

The 12-month limitation on elections was again held not to preclude the issuance of a direction of election during that period as long as the election is not to take place before the 12 months have passed. The 12-month limitation becomes operative only where a "valid" election has previously been held. The Board therefore found no obstacle to the holding of a new election less than 12 months after an earlier election which was set aside upon finding that the petitioning union had not been in compliance with the act's filing requirements.⁴⁴ In view of the fact that the 12-month limitation by terms of the statute applies only to a new election in the same "bargaining unit" or "subdivision" thereof, a prior election in a single department was held no bar to an immediate election in an overall unit.⁴⁵

(2) Effect of Non-Board Elections

In one case during the past year, the Board stated its position that effect will be given to an election conducted by a Government agency, or one conducted privately but with an impartial overseer in charge, if the election reflects the employees' true desires for representation with a high degree of certainty.⁴⁶ But a majority of the Board⁴⁷ held that an election conducted by an employer and an incumbent union is

⁴⁴ *Crown Upholstering Co.*, 110 NLRB 22. Chairman Farmer and Member Beeson believed, however, that a new election should be denied under the 1-year rule where an evasion of the filing requirements is involved.

⁴⁵ *Pacific Maritime Association*, 110 NLRB 1647.

⁴⁶ *Interboro Chevrolet Co.*, 111 NLRB 783, overruling *Punch Press Repair Corp.*, 89 NLRB 614, insofar as inconsistent.

⁴⁷ Member Murdock dissenting.

not the type of election which provides the necessary safeguards. A decertification petition filed 2 months after such an election was therefore held not barred.

6. Unit of Employees Appropriate for Bargaining

The act requires the Board to determine in each case under the provisions of section 9 whether the unit in which the employees may be appropriately represented shall be "the employer unit, craft unit, plant unit, or subdivision thereof." Referring to this provision, the Board during the past year pointed out that

the unit types listed in the statute as appropriate for bargaining purposes [are] presumptively appropriate, and should, other things being equal, prevail over other unit types not designated in the statute.⁴⁸

If the parties to a representation proceeding agree on the composition of the unit, the agreement is considered binding on the parties and is given effect, unless the stipulated unit violates established Board policy.⁴⁹

The more important cases of fiscal 1955 dealing with the determination of bargaining units are discussed in this section.

a. Collective-Bargaining History

In determining the appropriateness of the unit of employees for future bargaining, the Board continues to give consideration to the grouping followed in any past bargaining for the employees involved. However, the bargaining history of an employee group is not a controlling factor and, as again pointed out during the past year, will be disregarded if the past unit has "no warrant in any of the customary factors relevant to determining appropriate units."⁵⁰ Thus, no weight was accorded to 9-year separate bargaining for 2 halves of a department under contracts which were but a device for accommodating the conflicting jurisdictional claims of the contracting unions.⁵¹

Bargaining on a basis which deviates substantially from a prior unit determination by the Board is not controlling in a subsequent proceeding in which a redetermination of the unit is sought.⁵² And the Board has declined to predicate a unit finding on the bargaining history of an illegally assisted union.⁵³

⁴⁸ *Beaumont Forging Co.*, 110 NLRB 2200. The Board cited Member Murdock's concurring opinion in *Hygrade Food Products Corp.*, 85 NLRB 841, 848. The union's petition in *Beaumont* for a plant unit was granted because the smaller departmental units proposed by the employer had not been shown to be more appropriate.

⁴⁹ *United States Gypsum Co.*, 109 NLRB 1402; *The Yale and Towne Mfg Co.*, 112 NLRB 1268; *Hoffman Hardware Co.*, 112 NLRB 982; *Jewel Food Stores*, 111 NLRB 1368

⁵⁰ *Owens-Illinois Glass Co.*, 112 NLRB 172.

⁵¹ *Ibid.*

⁵² *Armour Leather Co.*, 109 NLRB 1311.

⁵³ *Pacific Maritime Association*, 110 NLRB 1647.

(1) Multiplant Bargaining

In several instances, the effect of a contractual multiplant bargaining history was determined on the basis of the apparent intent of the contracting parties. In 1 case, successive "agreements of amendment" to 3 identical single-plant contracts were held to have been intended as independent contracts which contemplated the merger of the 3 separate contracts into a single multiplant agreement.⁵⁴ This, the Board noted, was indicated by the character of the amendments, the negotiations on a multiplant basis, and the fact that each amendment covered all three plants. Giving effect to the resulting 5-year multiplant bargaining pattern, the Board also observed that where, as here, a subsequent agreement extends a basic contract, a new contract is created which supersedes the original.⁵⁵ On the other hand, a majority of the Board declined to give controlling weight to a multiplant bargaining history which it considered equivocal. The history of basic or master agreements between certain affiliated unions and the employer here, covering 37 of its plants, was held not to indicate clearly whether the parties intended to consolidate the local plant units which had been covered by separate contracts.⁵⁶ The majority noted that some of the features of the master agreement were consistent with multiplant bargaining, while others were consistent with the preservation of the local units as separate bargaining entities. The majority concluded that the apparent purpose of these agreements was bargaining convenience and that there was "no unequivocal manifestation of an intent to extinguish the right of employees in each of the individual plant units to select and change their bargaining representative . . . in plant-wide elections."⁵⁷ The same Board majority reached a similar conclusion in a later case.⁵⁸ Here again, successive master agreements entered into by a parent union for itself and in behalf of listed locals was found not to indicate clearly that a consolidation of the preexisting separate plant units was contemplated. On the contrary, the majority noted, those units were not only preserved but important rights were reserved to them.

b. Employees' Wishes in Unit Determinations

In cases where it is found that several units proposed by competing unions are equally appropriate, the Board continues to base its ulti-

⁵⁴ *Gulf Atlantic Warehouse Co.*, 111 NLRB 1249

⁵⁵ The Board cited *The United States Finsing Company*, 63 NLRB 575 at 576-577, *Aluminum Company of America*, 86 NLRB 189

⁵⁶ *American Can Co.*, 109 NLRB 1284 (Chairman Farmer and Member Peterson dissenting)

⁵⁷ The decision cites *Hygrade Food Products Corporation*, 85 NLRB 841.

⁵⁸ *Continental Can Co., Inc.*, 110 NLRB 1042; Chairman Farmer and Member Peterson dissenting.

mate unit determination on the employees' wishes ascertained in a self-determination election.⁵⁹

Self-determination (or "Globe")⁶⁰ elections have again been directed for the purpose of determining whether craft or departmental groups were to be represented separately or as part of a larger unit.⁶¹ "Globe" type elections were also directed where a group of employees who previously enjoyed separate representation were sought to be included in a broader unit and where the past bargaining agent desired to continue to represent the group separately.⁶² The Board also adhered to the *Zia Company*⁶³ rule, announced during the preceding year, under which the request of an incumbent union to add to its unit a previously unrepresented fringe group will not be granted unless the group has had an opportunity to determine for themselves whether to become part of the existing bargaining unit or to continue to forego representation.⁶⁴ The Board has again made it clear that in this type of situation the group is entitled to a self-determination election even though it is not by itself an appropriate unit.⁶⁵ On the other hand, the Board had occasion to point out that in order for the *Zia* rule to apply the basic unit to which a fringe group is to be added must itself be appropriate.⁶⁶

The Board also grants self-determination elections for the purpose of determining whether employees in an employer's newly established or acquired plant desire representation in an overall unit or in a separate group.⁶⁷ However, the Board has repeatedly pointed out that the mere establishment or acquisition of a new plant does not of itself warrant the holding of such an election where it appears that the new plant does not constitute a separate appropriate unit.⁶⁸

c. Craft and Departmental Units

The establishment of craft and departmental units during fiscal 1955 was governed by the *American Potash* rules⁶⁹ which were further clarified in some respects.

⁵⁹ Section 9 (b) (1) makes a self-determination election mandatory where it is proposed to include professional employees in a unit with nonprofessionals. See for instance *Huron Portland Cement Co.*, 112 NLRB 1465.

⁶⁰ See *The Globe Machine and Stamping Co.*, 3 NLRB 294.

⁶¹ For cases dealing with craft and departmental units see the following chapter. For self-determination elections in the utility industry see pp 43-44.

⁶² *Long Electric Sign Co.*, 109 NLRB 770; *Reynolds Metals Co.*, 110 NLRB 812.

⁶³ *The Zia Company*, 108 NLRB 1134, Nineteenth Annual Report, pp. 42-43.

⁶⁴ *Long Electric Sign Co.*, *supra*.

⁶⁵ *Public Service Co. of Indiana*, 111 NLRB 618. If the group votes against representation, a certification of the results of the election to that effect is issued.

⁶⁶ *Reynolds Metals Co.*, 110 NLRB 812, distinguishing *Zia Company*, *supra*.

⁶⁷ See *Southwestern Greyhound Lines*, 112 NLRB 1014; *General Electric Co.*, 111 NLRB 1246.

⁶⁸ *Hess, Goldsmith & Co.*, 110 NLRB 1384; see also *Bulova Research and Development Laboratories, Inc.*, 110 NLRB 1036.

⁶⁹ *American Potash & Chemical Corp.*, 107 NLRB 1418, Nineteenth Annual Report, pp 38-41.

(1) Craft Status

In many cases the granting of requests for craft units depended on whether or not the employees concerned belonged to a true craft. Among the employee groups found to have craft status were maintenance plumbers,⁷⁰ photoengravers,⁷¹ lithographic pressmen,⁷² and printing and cutting pressmen.⁷³ On the other hand, craft representation was denied to licensed steam engineers,⁷⁴ oilers,⁷⁵ machine repairmen,⁷⁶ instrument mechanics,⁷⁷ and refrigeration employees.⁷⁸

Upon reexamining the status of welders, a Board majority found that welders do not satisfy the rigid craft requirements established in *American Potash*.⁷⁹ It was announced, however, that in future craft severance proceedings welders, who are regularly assigned to work with particular crafts, will be included in a unit of the particular craft provided the welders utilize a high degree of skill. In a subsequent case, welders who operated out of a central pool and were not regularly assigned to work with any particular craft were included in an overall production and maintenance unit.⁸⁰

The Board includes in craft units trainees⁸¹ and apprentices⁸² who are in direct line of craft progression. And a craft unit was held appropriate even though it was presently composed only of trainees and apprentices and did not include journeymen.⁸³

It was again pointed out, during the past year, that the *American Potash* craft skill standards are applicable not only in severance cases but also when there is no prior bargaining history.⁸⁴

(2) Craft and Departmental Severance

The Board made it clear during fiscal 1955 that, except as to craft skill requirements,⁸⁵ the principles of the *American Potash* case apply only "where a petitioner seeks to sever a craft group or traditional

⁷⁰ *Rheem Mfg. Co.*, 110 NLRB 904.

⁷¹ *Oswego Falls Corp.*, 112 NLRB 92

⁷² *American Can Co.*, 110 NLRB 3; see also *Continental Can Co.*, 110 NLRB 1042

⁷³ *Sutherland Paper Co.*, 112 NLRB 622.

⁷⁴ *Mountain States Telephone & Telegraph Co.*, 110 NLRB 1076

⁷⁵ *Campbell Soup Company*, 109 NLRB 475.

⁷⁶ *W. R. Grace & Co.*, 110 NLRB 85.

⁷⁷ *American Bemberg, Division of Beaunit Mills, Inc.*, 111 NLRB 963

⁷⁸ *Merck & Co., Inc.*, 111 NLRB 960.

⁷⁹ *Clayton & Lambert Mfg. Co.*, 111 NLRB 540, Member Rodgers dissenting in this respect.

⁸⁰ *Rayonier, Inc.*, 111 NLRB 1090. Member Rodgers, dissenting, believed that the welders could as craftsmen constitute a separate unit in the absence of any history of representation on a broader basis.

⁸¹ *Remington Rand, Inc.*, 109 NLRB 622.

⁸² *American Can Co.*, *supra*

⁸³ *Continental Can Co., Inc.*, 110 NLRB 409.

⁸⁴ *Northrop Aircraft, Inc.*, 110 NLRB 1349.

⁸⁵ See footnote 69, above.

departmental group from a plantwide unit in the face of a substantial history of collective bargaining on a broader basis.”⁸⁶

In departmental severance cases, the appropriateness of the departmental unit sought was again made to depend on whether the group involved was functionally distinct and separate or was of a kind which had been traditionally recognized as entitled to separate representation. Severance was granted on this basis in the case of such groups as film cameramen of a television station,⁸⁷ lithographic employees,⁸⁸ truckdrivers,⁸⁹ boilerroom firemen,⁹⁰ restaurant bakers,⁹¹ and machine shop employees.⁹² On the other hand, severance requirements were held absent in the case of telephone directory artists,⁹³ maintenance electricians,⁹⁴ and garage employees.⁹⁵

The existence of employees with similar skills outside of an otherwise appropriate craft or departmental unit has been held not to preclude severance.⁹⁶ And in 1 case employees in 1 of the classifications in the requested departmental unit were excluded because they worked in another department.⁹⁷

(3) The “Traditional Representation” Test

The *American Potash* requirement that a craft or departmental representative, in order to qualify, must have “traditionally” represented the particular craft or department was clarified by the announcement that the rule applies only in severance cases.⁹⁸ Accordingly, an industrial union was held entitled to represent separately hosiery knitters when there is no bargaining history on a broader basis, even though the union had not traditionally represented the separate interests of such knitters.⁹⁹ And the representation of certain craft employees in a production and maintenance unit by a union which had not traditionally represented the crafts likewise was held proper.¹

The Board during fiscal 1955 was faced with the further question whether the “traditional” test for the purpose of craft representation

⁸⁶ *Mock, Judson, Voehringer Co. of North Carolina*, 110 NLRB 437, citing *Campbell Soup Co.*, 109 NLRB 518.

⁸⁷ *Columbia Broadcasting System*, 110 NLRB 2108.

⁸⁸ See e. g., *Diamond Printing Co.*, 109 NLRB 112.

⁸⁹ See e. g., *Tennessee Egg Co.*, 110 NLRB 189.

⁹⁰ *Natvar Corporation*, 109 NLRB 1278; see also *Pioneer Division, Flintkote Co.*, 109 NLRB 1273.

⁹¹ *The Brass Rail, Inc.*, 110 NLRB 1656.

⁹² *R. D. Werner Company*, 110 NLRB 1049.

⁹³ *Southwestern Bell Telephone Co.*, 110 NLRB 989.

⁹⁴ *Bucyrus-Erie Co.*, 110 NLRB 314.

⁹⁵ *Armour & Company*, 110 NLRB 587.

⁹⁶ *Procter & Gamble Mfg. Co.*, 109 NLRB 315.

⁹⁷ *Kinnear Manufacturing Company*, 109 NLRB 948. Members Murdock and Rodgers dissented on the ground that the employees sought were craftsmen, and that, therefore, the employees outside the department should be included as craftsmen of the same type. See also *Moo Light, Inc.*, 109 NLRB 1013; *Spaulding Fibre Co., Inc.*, 111 NLRB 237.

⁹⁸ *Mock, Judson, Voehringer Co. of North Carolina*, *supra*, citing *Campbell Soup Co.*, *supra*. See also p. 40.

⁹⁹ *Mock, Judson, Voehringer Co. of North Carolina*, *supra*.

¹ *Campbell Soup Company*, 109 NLRB 518.

is satisfied by a union newly organized for the sole and exclusive purpose of representing a particular craft. In the opinion of a majority of the Board,² holding in the affirmative, *American Potash* was intended to indicate that craft severance would be granted only to a craft union.³ Historical representation was not to be the exclusive test. The difference in the experience of well established as compared with recently organized craft unions, according to the majority, "is a matter for the concern of the employees and not of the Board." In a later case, the Board also had occasion to reject the contention that "traditional representation" should be interpreted to mean "actual, historical representation within the industry in question."⁴

d. Craft Units in Integrated Industries

In accord with the policy announced in *American Potash*,⁵ the Board has again declined to extend further the *National Tube* doctrine⁶ so as to deny craft and departmental severance in highly integrated industries other than those to which the doctrine had been applied prior to *American Potash*.⁷ Thus, the Board denied requests to apply the *National Tube* principle in the atomic energy,⁸ glass,⁹ and cement¹⁰ industries.

In one case, severance of powerplant employees at a lumber manufacturing plant was denied because *National Tube* remains applicable in the lumber industry.¹¹ On the other hand, a manufacturing plant, 60 percent of whose operations was devoted to aluminum production and 40 percent to copper production, was held not within the "basic aluminum" industry so that *National Tube* did not preclude craft and departmental severance.¹²

In one case, the Board rejected a contention that a departmental unit in a public utility was proper since public utilities were not one of the industries to which *National Tube* had been applied.¹³ The Board pointed out that the policy of considering a systemwide unit in a public utility as the optimum unit is independent of the *National Tube* doctrine, and that *American Potash* is therefore not relevant to the issue of severance in a public utility.

² Members Murdock and Beeson dissenting

³ *Friden Calculating Machine Co., Inc.*, 110 NLRB 1618

⁴ *Southern Paperboard Corp.*, 112 NLRB 302. For cases denying severance because the petitioner was not a traditional representative see *American Cyanamid Co., Organic Chemicals Division*, 110 NLRB 89; *W. R. Grace & Company*, 110 NLRB 85.

⁵ See Nineteenth Annual Report, p 41

⁶ See *National Tube Co.*, 76 NLRB 1199.

⁷ *Viz.*, basic steel (*National Tube Co.*, *supra*), aluminum (*Permanente Metals Corp.*, 89 NLRB 804), lumber (*Weyerhaeuser Timber Co.*, 87 NLRB 1076), and wet milling (*Corn Products Refining Co.*, 80 NLRB 362)

⁸ *E. I. DuPont de Nemours & Co. (Savannah River Plant)*, 111 NLRB 649

⁹ *T. C. Wheaton Co.*, 109 NLRB 158

¹⁰ *Southwestern Portland Cement Co.*, 110 NLRB 1388

¹¹ *Seattle Cedar Lumber Mfg Co.*, 112 NLRB 54.

¹² *Revere Copper and Brass, Inc.*, 111 NLRB 1241

¹³ *Public Service Co. of Indiana*, 111 NLRB 618.

e. Units in Specific Industries

In public utilities, systemwide industrial units, as heretofore, are generally considered the optimum units, even where there has been a bargaining history on a less comprehensive basis.¹⁴ However, the Board during the past year also pointed out that, while such a unit is ultimately the most desirable, a systemwide unit is not at all times and in all circumstances the only appropriate type of unit for public utilities, and a unit of lesser scope may be held appropriate particularly where no labor organization seeks a broad unit.¹⁵ Thus, the Board granted the request of the only union in the case for a unit of a mixed utility's electric generating and steam heating employees, excluding gas production employees.¹⁶ It was found that the employees in the requested unit constituted a homogeneous, identifiable, departmental group with interests separate from those of the employer's other employees.

In two utility cases where both systemwide units and certain units of lesser scope were found to be appropriate, self-determination elections were directed in order to ascertain the units to be certified. In 1 case, a contractual unit of 15 out of 17 divisions of an electric and gas utility was sought to be augmented by adding the 2 previously unrepresented divisions.¹⁷ The other case involved an electric utility whose five districts were found to constitute an appropriate systemwide unit in view of the central control of management and labor relations, integration of clerical and accounting functions, and similarity of classifications and working conditions.¹⁸ However, bargaining by the company had been confined to 3 districts, and 1 of the 2 presently unrepresented districts was found to be sufficiently independent to constitute a separate unit.¹⁹

¹⁴ *Western Light & Telephone Co.*, 109 NLRB 630, *Philadelphia Electric Co.*, 110 NLRB 320.

¹⁵ See the cases cited in footnote 14.

¹⁶ *Philadelphia Electric Co.*, *supra*.

¹⁷ *Montana-Dakota Utilities Co.*, 110 NLRB 1056. A majority of the Board here directed a self-determination election to ascertain whether the employees in 1 of the 2 unrepresented divisions, where the petitioner had an adequate interest, desired inclusion in a unit with the 15 contractually represented divisions. No election was directed in the other unrepresented division where the petitioner had no interest. Nor was a question of representation found to exist in the 15 represented divisions. Members Murdock and Rodgers believed that an election should have been directed in a systemwide unit. Member Murdock also expressed the view that a self-determination election was not appropriate here. See also *The Housatonic Public Service Co.*, 111 NLRB 877; and *Pennsylvania Electric Co.*, 110 NLRB 1078.

¹⁸ *Upper Peninsula Power Co.*, 110 NLRB 1082.

¹⁹ A majority of the Board here again directed self-determination elections to ascertain (1) whether the employees in the district which could constitute a separate unit desired separate or overall representation, and (2) whether the previously unrepresented employees in the other district wished to become part of a systemwide unit. Member Murdock here again expressed his belief that previously unrepresented groups of utility employees should not be separately balloted and that the *Zia Company* rule (108 NLRB 1134, as amended 109 NLRB 312) for balloting fringe groups in manufacturing plants should not be extended to the public utility industry.

The principle that the most appropriate unit in public utilities is a systemwide unit has also been applied in the telephone industry.²⁰ But the Board has pointed out that, while the interdependence of telephone operations warrants the combination of *all* departments in a systemwide unit, units combining *some* but not all departments will not be held appropriate absent a bargaining history thereon or agreement of the parties.²¹

Insurance agents are usually included in companywide units.²² However, the Board found in 1 case that a unit of the agents of 1 of an insurer's 26 branches was also appropriate. The branch here covered a single State and its agents were licensed by that State.²³ In another case the Board declined to hold that the same considerations as to scope of unit apply for an insurance company's office clerical employees as apply in the case of agents.²⁴ The Board noted that the duties and working conditions of office clericals in the insurance business differ from those of agents and are comparable to those of office clericals in other businesses.

In determining the scope of a construction industry unit, the Board in one case took into consideration the unusual nature of the industry which requires contractors to transfer the employment situs to wherever they are able to obtain a contract.²⁵ The Board here gave effect to the agreement of the parties that the unit should be limited to the union's territorial jurisdiction which extended over a number of specified counties. It was made clear, however, that the determination of the unit on this basis was in no way to be taken as a jurisdictional award in the sense of job content or work assignments.

f. Residual Units

The Board has adhered to its policy of including in separate units employee groups omitted from an established bargaining unit, in order to afford such residual groups the benefits of collective bargaining.²⁶ However, in order to constitute an appropriate residual unit, the group to be separately represented must include all unrepresented employees in the particular category.²⁷

In one case, a Board majority found that truckdrivers who had in fact been excluded from a contractual production and maintenance

²⁰ *General Telephone Company of Ohio*, 112 NLRB 1225. Here, as in the cases discussed above, the Board (Member Murdock dissenting) directed self-determination elections among unrepresented as well as previously represented groups which were to be included in the systemwide unit. No representation question was found to exist in the nucleus of the systemwide unit presently represented by the petitioner.

²¹ *General Telephone Co of Michigan*, 112 NLRB 46.

²² *Allstate Insurance Co*, 109 NLRB 578.

²³ *Ibid.*

²⁴ *Texas Prudential Insurance Co*, 109 NLRB 319.

²⁵ *The Heating, Piping & Air Conditioning Contractors*, 110 NLRB 261.

²⁶ See for instance *The Yale and Towne Mfg Co.*, 112 NLRB 1268, Member Murdock dissenting (overruling *Packard Motor Car Co*, 94 NLRB 1550, insofar as inconsistent).

²⁷ *The Daily Press, Inc*, 110 NLRB 573.

unit were entitled to residual representation even though contract benefits had been extended to them.²⁸ And in another case, a group of plant clericals composed of timekeepers and dispatchers, who had not been "formally included" in the established production and maintenance unit, was found to constitute an appropriate residual unit, notwithstanding the fact that the intervenor in the case was willing to represent the group as part of the existing unit.²⁹

g. Plant Guards

Administration of the statutory prohibition against the inclusion of plant guards in units with nonguard employees has again required determinations as to whether employees with certain protective functions were, within the definition of section 9 (b) (3), individuals "employed . . . to enforce against employees or other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises."

The definition was held to apply to the employees in both the operating and plant departments of a company supplying, by means of electrical devices, protection against fire and unlawful entry.³⁰ The employer's uniformed and armed guard-operators who primarily answered emergency alarms from a central station were found to be clearly guards. Plant department employees likewise were held to have guard status. While this personnel's primary function was the installation and maintenance of electrical signaling devices, they also were found to work as guard-operators a substantial portion of their time.³¹

Firemen were held not to be guards in one case,³² but were found to have guard status in another case.³³ Thus in *McDonnell Aircraft*, a majority of the Board concluded that the enforcement of fire-prevention rules was insufficient to meet the statutory definition of guard duties. The fire-prevention rules enforced by the firemen encompassed only a limited segment of the employer's plant-protection rules and the enforcement was only incidental to the firemen's main duties. In the majority's view, Congress in enacting section 9 (b) (3) intended to insure that during strikes or labor unrest the employer

²⁸ *Miller Mfg. Co.*, 110 NLRB 909, Members Murdock and Beeson dissenting.

²⁹ *The Yale and Towne Mfg. Co.*, overruling *Packard Motor Car Co.* in this respect insofar as inconsistent, see footnote 26 above.

³⁰ *A. D. T. Co.*, 112 NLRB 80. The Board cited *Armored Motor Service Co.*, 106 NLRB 1139, where it held during the preceding year that controlling effect should no longer be given to the fact that the property protected by the employees in question belongs to their employer's customers rather than to their own employer. See Nineteenth Annual Report, p. 46.

³¹ The Board cited *Walterboro Mfg. Corp.*, 106 NLRB 1383. See Nineteenth Annual Report, p. 47. *American District Telegraph Co.*, Case No. 13-RC-3584, March 22, 1954 (not reported in printed volumes of Board Decisions and Orders), was overruled insofar as inconsistent.

³² *McDonnell Aircraft Corp.*, 109 NLRB 967, Members Murdock and Beeson dissenting.

³³ *Chance Vought Aircraft, Inc.*, 110 NLRB 1342.

would have a core of plant-protection employees of undivided loyalty who could enforce rules for the protection of persons and property.³⁴

However, in *Chance Vought Aircraft*, a majority of the Board found that an essential part of the firemen's duties and responsibilities was the enforcement of other plant-protection rules and regulations. Thus, the majority pointed out, the duties of firemen here differed from those of the firemen in *McDonnell*³⁵ and required inclusion of the firemen in a guard unit.³⁶ The employer's firemen dispatchers in *Chance Vought* also were held to be guards. These employees were found to handle communications for both the company's guard and fire groups, and to be charged with the same responsibilities as firemen and guards in the enforcement of plant-protection rules.

In another case, uniformed "barrier guards" at an ice-skating rink were held to have guard status.³⁷ These employees were charged with preventing spectators from defacing the rink and from congregating in passageways. They also had authority to bar unauthorized persons from admission to the skating area and had to guard against removal of skates belonging to the employer.

h. Employees Excluded From Unit by the Act

The act's definition of the term "employee" in section 2 (3) expressly excludes, among others, agricultural laborers and independent contractors.³⁸ As in previous years, the Board during fiscal 1955 had to determine in a number of cases whether employee groups sought to be represented came within one of these exempt categories.

(1) Agricultural Laborers

Under a continuing rider to its appropriation act, the Board is required to relate its definition of "agricultural laborer" to the definition of the term "agriculture" in section 3 (f) of the Fair Labor Standards Act. Since 1954, the appropriations rider has specifically included irrigation employees within the term "agricultural laborers," thus barring their inclusion in bargaining units by the Board. During the past year, the Board was called upon to determine whether the amendment was intended to enlarge upon the agricultural laborer definition

³⁴ The dissenting members of the Board believed, however, that the possibility of conflict of loyalty envisaged by Congress exists in the case of firemen as much as in the case of guards.

³⁵ *Nash Kelvinator Corporation*, 107 NLRB 644, was also distinguished.

³⁶ The majority also noted that the *Chance Vought* firemen's duties were of the same type as those found to be guards in *Republic Aviation Corporation*, 106 NLRB 91.

³⁷ *The Union News Co.* 112 NLRB 584. The Board cited *Pinkerton National Detective Agency*, 111 NLRB 504, where it was held that guards and ushers at a raceway track constituted a single appropriate guard unit.

³⁸ Section 2 (3) also excludes supervisors, individuals employed by a parent or spouse, domestic servants, and individuals subject to the Railway Labor Act.

by including not only irrigation employees but also other employees whose services are needed in agriculture, such as fertilizer employees. The Board concluded that such a view had no support in either the rider's language or legislative history, and was refuted by the fact that the provision was reenacted in 1955 in the identical form in which it was first adopted in 1954.³⁹

In one case, the Board held that among the garden and greenhouse employees of an employer which operates service, mercantile, and recreation facilities throughout a town, only greenhouse and nursery employees came within the agricultural labor exemption since they alone produced agricultural products as marketable items.⁴⁰ The Board noted that other employees in the division, while engaged in planting and cultivating agricultural products for decorative and ornamental purposes, did not produce a marketable agricultural product. Insofar as some of the greenhouse and nursery employees occasionally performed nonagricultural duties, the Board adhered to its policy of considering as agricultural laborers all employees who spend a substantial part of their time in performing agricultural work.⁴¹ On the other hand, laborers assigned to the greenhouse and nursery from time to time from a labor pool were not considered agricultural where their identity, extent of assignment, and specific duties were not shown.

The question of whether fruit or produce packingshed workers were agricultural laborers again was presented in several cases. In each case the statutory exemption was held not to apply. The Board noted in one case that the employer, not a grower in its own right, operated its packingshed as a separate commercial enterprise.⁴² In another case, it was found that the employer of the packingshed workers sub-contracted its harvesting operation to independent contractors who hired their own employees none of whom worked in the packingshed.⁴³ In a third case, the packingshed workers involved were employed by a cooperative citrus grower association which merely furnished services to its grower-members. The Board pointed out that the work performed by the cooperative was thus "not work performed *by* a farmer but *for* farmers."⁴⁴ Not being engaged in agricultural work, or in work performed by a farmer as an incident to farming operations, the shed workers were held not to be agricultural employees.

³⁹ *Mississippi Chemical Corp.*, 110 NLRB 826, see also *Associated Cooperatives, Inc.*, 112 NLRB 1012.

⁴⁰ *Hershey Estates*, 112 NLRB 1300.

⁴¹ See *Clinton Foods, Inc.*, 108 NLRB 85; Nineteenth Annual Report, p. 49. See also *Antle Carrots, Inc.*, 110 NLRB 741, in which agricultural status is accorded to a maintenance man who repaired farm machinery in a packingshed, on the road, and during an undisclosed percentage of his time in the field.

⁴² *Antle Carrots, Inc.*, *supra*.

⁴³ *C. A. Glass Co.*, 111 NLRB 1366.

⁴⁴ The Board quoted an Interpretive Bulletin of the Administrator, Wage and Hour Division, Department of Labor, 29 Code of Fed. Reg. 1947 Supp., Sec. 780.82.

(2) Independent Contractors

In determining whether individuals who work for another person are within the act's independent-contractor exemption, the Board continues to rely primarily on the "right of control" test,⁴⁵ which is based upon the extent to which the performance of the particular work is controlled by the person for whom the work is performed. The Board has pointed out that "whether an individual is an independent contractor or an employee depends on the facts of each particular case and . . . no one factor is determinative."⁴⁶

One case involved the question of whether a fishermen's unit could properly include "lumpers," or whether lumpers had to be excluded because they were independent contractors. These men were hired exclusively for the purpose of unloading fish from the shiphold and were paid on the basis of the amount of fish unloaded. Finding the lumpers to be employees, the Board noted that, while they were paid on a basis different from that of other employees and could work elsewhere, the lumpers had recently worked primarily for the employer involved and they were supervised by the processing plant foreman and had social-security and withholding taxes paid by the employer. They had belonged to, and had been bargained for, and had their grievances processed by the union which represented the company's employees.

In another case, insurance agents were likewise held to be employees rather than independent contractors notwithstanding a certain latitude in performing their services.⁴⁷ The Board here noted, among other things, the employer-drawn employment contracts which agents were compelled to sign; the right to terminate contracts at will; and the required training periods for new agents. The Board further noted that instructional memoranda and production programs and standards were supplied by the employer, and that agents were restricted to certain territories. Moreover, the employer withheld from paychecks amounts for taxes, social-security deductions, hospitalization and group insurance, and a profit-sharing plan.

As in prior years, the status of operators of company-owned or leased equipment had to be determined. One case concerned the appropriateness of including in a bargaining unit "company fishermen" with whom canning companies contracted for the purchase of fish caught with the use of boats and equipment owned and furnished by the company.⁴⁸ The Board held that the fishermen were independent contractors. Support for this conclusion was found in the following facts: The captain of each fishing boat selected his own crew and determined the share each crew member would receive; the captain se-

⁴⁵ See Nineteenth Annual Report, p. 50.

⁴⁶ *Hoster Supply Co.*, 109 NLRB 466, Members Peterson and Rodgers dissenting from the finding that the drivers here were not independent contractors.

⁴⁷ *Allstate Insurance Co.*, 109 NLRB 578.

⁴⁸ *Alaska Salmon Industry, Inc.*, 110 NLRB 900.

lected the fishing site; settlement for payment of fish caught was made at the end of the season with the captains, who in turn settled with their crew; and the company did not supervise and exercise any control over fishing operations. It was further noted that company fishermen received the same price for fish as independent fishermen, prices being fixed before the start of the fishing season. The fact that some canneries deducted social-security and withholding taxes was held not to be controlling, particularly because there was no showing that such deductions were required.⁴⁹

The status of drivers of trucks leased by transportation companies continues to require determination in cases where such drivers are sought to be included in a bargaining unit. The Board during the past year again pointed out that the question whether drivers of leased vehicles are independent contractors or employees of the lessee company depends upon "the total situation, including the risk undertaken, the control exercised, the opportunity for profit from sound judgment."⁵⁰ In one case, the Board found that owner-operators of leased tractors were independent contractors who in turn employed nonowner-operators.⁵¹ Both owner- and nonowner-drivers, not being employees of transportation company, were therefore excluded from the unit. Consideration was given to the following factors: The company had no control whatever over the nonowner-operators of leased tractors who had to be supplied as part of the owner's lease operation; owners were paid a single mileage sum for the service of their tractors and drivers; nonowner-drivers were treated differently from the company's own hourly rated drivers. Thus, the Board observed, the terms of the lease and other evidence indicated that the company accomplished its manifest intention, understood by the equipment owners, that an independent-contractor relationship was to be created.⁵²

In two companion cases,⁵³ which were distinguished in *Cement Transport*, a Board majority on the other hand concluded that certain owner-operators and nonowner-operators of leased equipment were employees of the lessee company. In *Hughes Transportation*, involving a company licensed by the Interstate Commerce Commission to transport explosives and ammunition for the United States Government, it was found that the company was required to use a

⁴⁹ Compare *Block Cut Manufacturers, Inc.*, 111 NLRB 265, where "contract layers-off" who shape and press gloves for glove manufacturers, at times in a rented area in the manufacturer's building, were also held to be independent contractors. The manufacturer here had no control or supervision over the "laying off" activities and the contractor's employees received none of the benefits granted the manufacturer's employees.

⁵⁰ *Cement Transport, Inc.*, 111 NLRB 175, quoting *U. S. v. Silk*, 331 U. S. 704, 719.

⁵¹ *Cement Transport, Inc.*, *supra*.

⁵² The Board cited *Eldon Miller, Inc.*, 107 NLRB 557; 103 NLRB 1627, Nineteenth Annual Report, pp. 51-52.

⁵³ *Hughes Transportation, Inc.*, 109 NLRB 458, Chalman Farmer and Member Peterson dissenting; *Hoster Supply Co.*, 109 NLRB 466, Members Peterson and Rodgers dissenting.

high degree of care in the selection and control of drivers; and that it prescribed routes and required that loads could be swapped only by its leave. These factors, together with the almost unqualified exercise of dominion over leased equipment and the deduction from the drivers' pay of social-security and income taxes, were held to indicate the existence of an "employer-employee" relationship.⁵⁴ In *Hoster Supply*, the majority of the Board held that owner-drivers of trucks leased to the company occupied a dual relationship and, as lessors, were independent businessmen, while as drivers they were no different from any other driver employees. The employee relationship, according to the majority, was indicated by the method in which they were paid, their direction and supervision by the company, as well as the fact that the company furnished workmen's compensation coverage and made social-security and withholding tax payments from the drivers' earnings.⁵⁵

In a later case, the Board similarly held that the truckdrivers of a transport company were employees rather than independent contractors.⁵⁶ Particular weight was accorded the control exercised by the company over the drivers, and the furnishing, insuring, and maintenance of the equipment by the company.⁵⁷

i. Unit Treatment of Special Types of Employees

During fiscal 1955, the Board had to determine questions regarding the unit treatment of certain other than regular full-time employees, relatives of management, and foreign nationals.

In the case of other than full-time employees, the Board again made it clear that its unit determinations are based on functionally related occupational categories so that part-time employees who regularly perform the same duties as those performed by full-time employees will be included in the bargaining unit.⁵⁸ However, the Board also announced that where the parties stipulate for the exclusion of regular part-time employees from a unit the stipulation will be given effect.⁵⁹

In one case, part-time employees who had worked less than 18 weeks for the employer were held not to be regular part-time employees as that term is used by the Board.⁶⁰ They were therefore excluded from

⁵⁴ Distinguishing *Eldon Miller, Inc.*, *supra*

⁵⁵ Distinguishing *Malone Freight Lines, Inc.*, 107 NLRB 501 and 106 NLRB 1107.

⁵⁶ *The Transport Co of Texas*, 111 NLRB 884

⁵⁷ For an extensive review and discussion of the cases dealing with the owner-operator problem in the freight transportation field see the intermediate report in *Consolidated Forwarding Company, Inc.*, 112 NLRB 357

⁵⁸ See, e. g., *Fanny Farmer Candy Shops, Inc.*, 112 NLRB 299; *Dependable Parts, Inc.*, 112 NLRB 581

⁵⁹ *Bachmann Uxbridge Worsted Corp.*, 109 NLRB 868. The Board stated that it will no longer follow the previous policy set forth in *Essex-Graham Co.*, 107 NLRB 1491. See also *King Brooks, Inc.*, 108 NLRB 56.

⁶⁰ *Albers Super Markets, Inc.*, 110 NLRB 474.

the unit. On the other hand, the fact that an employer's operations required a maximum workweek of only 30 hours was found not to indicate that the work involved was part-time in nature.⁶¹ The Board here also held that the high turnover in the group which resulted from the short workweek and night hours—conditions common to all in the group—was not a sufficient reason for denying them the right to self-organization.

Regarding the unit treatment of near relatives of management representatives,⁶² the Board reaffirmed its view that the mere coincidence of a family relationship between an employee and his employer does not require the employee's exclusion from the bargaining unit "absent evidence that because of such relationship he enjoys a special status which allies his interests with those of management."⁶³ Under this rule, according to a majority of the Board,⁶⁴ it was proper to include in the bargaining unit the father and mother of a member of a partnership. The partner's parents were employed respectively as maintenance man and charwoman. In the majority's view, certain minor deviations from standard employment conditions in their favor were insufficient to establish that the partner's parents enjoyed a special status within the meaning of the *International Metal* rule.

Two cases called for a determination as to whether "bonded Canadian" woodsmen, imported for seasonal logging and pulpwood operations, should be included in a unit with domestic woodsmen.⁶⁵ The Board found that inclusion was proper under the circumstances.⁶⁶ The Canadians were imported by the employer under 6-month Government permits and upon posting of a bond for each importee. Once employed, the Canadian woodsmen worked alongside and under the same conditions as domestic employees in like classifications. The employer was free to apply his labor policies to both imported and domestic employees.

j. Units for Decertification Purposes

The Board during fiscal 1955 reexamined the previously established rule that the principles for severing part of an established bargaining unit for certification purposes are also applicable in decertification cases and that all units otherwise severable are severable on a decertification petition.⁶⁷ Upon reconsideration the Board now believes that,

⁶¹ *Swift & Co.*, 111 NLRB 545.

⁶² Section 2 (3) specifically excludes from the term "employee" any individual employed by his parent or spouse.

⁶³ *Buffalo Tool & Die Mfg. Co.*, 109 NLRB 1343, citing *International Metal Products Co.*, 107 NLRB 65. See Nineteenth Annual Report pp. 53-54.

⁶⁴ Members Murdock and Beeson dissenting.

⁶⁵ *Brown Co.*, 109 NLRB 173; *Paris Mfg Co.*, 109 NLRB 172; *Nadeau Lumber Co.*, 109 NLRB 171.

⁶⁶ No elections were directed because of inadequate showing of interest by the petitioners.

⁶⁷ See, among others, *Illinois Bell Telephone Company*, 77 NLRB 1073 at 1076-1077; *Gabriel Steel Company*, 80 NLRB 1361 at 1362-1363.

in the absence of statutory provision for the decertification of part of an existing bargaining unit or overriding policy considerations, decertification proceedings should not be made available for severance purposes.⁶⁸ The only appropriate unit in decertification proceedings, therefore, is the existing bargaining unit.

7. Conduct of Representation Elections

Section 9 (c) (1) of the act provides that the Board direct a secret-ballot election whenever it finds that a petition raises a question of representation. However, election details, such as determination of voting eligibility, timing and mechanics of elections, as well as standards to insure free elections, are left to the Board's administrative discretion.

a. Eligibility to Vote

During the last quarter of fiscal 1955, the Board had occasion to articulate its basic policy of extending the franchise to all employee categories in the appropriate bargaining unit.⁶⁹ This policy statement was made in response to an employer's request that certain part-time employees, even if considered within the bargaining unit, should be precluded from voting. The Board made it clear that the question whether employees are part-time rather than full-time employees is relevant only in determining whether they should be included in the bargaining unit and that, if included, their eligibility to vote follows automatically.

In addition to determining whether particular classifications of employees are eligible to vote, the Board also must determine whether particular individual employees are entitled to vote. This depends ultimately on the particular person's status both on the eligibility payroll and on the date of the election.⁷⁰ On these dates, the person must be an "employee" as defined in section 2 (3) of the act,⁷¹ and he must be in the bargaining unit.⁷² Moreover, in order to vote the person must be *employed and working* on the established eligibility date,⁷³ unless he was absent for one of the reasons specified in the Board's usual

⁶⁸ *Campbell Soup Co.*, 111 NLRB 234; *Menasco Mfg. Co.*, 111 NLRB 604. *Illinois Bell Telephone Co.*, 77 NLRB 1073; *Gabriel Steel Co.*, 80 NLRB 1361; *Ciba Products Corp.*, 109 NLRB 873, and similar cases were overruled insofar as inconsistent.

⁶⁹ *Sears Roebuck & Co.*, 112 NLRB 559.

⁷⁰ See, for instance, *Gulf States Asphalt Co.*, 106 NLRB 1212.

⁷¹ *Gulf States Asphalt Co.*, *supra*.

⁷² *Miller and Miller, Inc.*, 106 NLRB 1228. Compare *Hospital Pavia*, 109 NLRB 746. Individuals whose status is in doubt are permitted to vote subject to challenge. See, for example, *Philadelphia Electric Co.*, 110 NLRB 320; *Montgomery Ward & Co.*, 110 NLRB 256; *Pacific Maritime Association*, 110 NLRB 1647. Compare *Cuttingham Buick, Inc.*, 112 NLRB 386.

⁷³ See, e. g., *J. Halpern Company*, 108 NLRB 1142.

direction of election.⁷⁴ Thus, for instance, challenges to the ballots of employees who were found to have been permanently laid off on the eligibility date were sustained even though they were rehired in different jobs to fill unexpected vacancies after the eligibility date but before the election.⁷⁵

(1) Eligibility of Economic Strikers

Inasmuch as an economic striker may be permanently replaced, the Board at times must ascertain whether he has been so replaced, in order to determine his right to vote in an election. In one case during fiscal 1955, the Board was asked to hold that economic strikers in a department store, whose jobs were taken over by successive replacements, had not been permanently replaced and therefore had not become ineligible to vote.⁷⁶ The fact that the job of each of the strikers had been held by more than one person was considered insufficient to support the inference that the replacements were temporary rather than permanent.⁷⁷ Noting that rapid personnel turnover is common in department stores, the majority was of the view that the "turnover of replacements" here supported the inference that the replacements were permanent. In another case, economic strikers who had not yet been recalled in accordance with a strike settlement agreement, and apparently had no reasonable expectancy of being recalled in the near future, were held ineligible to vote in a forthcoming election.⁷⁸

(2) Effect of Discrimination Charges

An employee who is found to have been discriminatorily discharged and to be entitled to reinstatement on the eligibility date is eligible to vote.⁷⁹ And an individual whose unfair labor practice charges under section 8 (a) (3) are pending at the time of the election may vote subject to challenge.⁸⁰ If the charges are subsequently dismissed, a challenge to his ballot will be sustained. The Board made clear during the past year that where a regional director's dismissal of a voter's dis-

⁷⁴ *Viz*, employees who are ill or on vacation or temporarily laid off, employees in the military service who appear in person at the polls, and strikers, except strikers who are not entitled to reinstatement.

⁷⁵ *Gerber Plastic Co.*, 110 NLRB 269; *Sylvania Electric Products, Inc.*, 91 NLRB 296, was overruled insofar as inconsistent. See also *Dura Steel Products Co.*, 111 NLRB 590, where an economic striker who had been permanently replaced and was not an employee on the eligibility date was held not entitled to vote although he was rehired before the election as a new employee when a vacancy occurred.

⁷⁶ *John W. Thomas Co.*, 111 NLRB 226.

⁷⁷ Member Peterson, dissenting, believed that the case should be remanded for the purpose of determining on the basis of evidence whether the challenged voters here had lost their right to reinstatement.

⁷⁸ *Plastic Molding Corp.*, 112 NLRB 179. Compare *Cuttingham Buick, Inc.*, 112 NLRB 386.

⁷⁹ *H. N. Thayer Co.*, 112 NLRB 792.

⁸⁰ See, for instance, *Wayside Press*, 104 NLRB 1028.

crimination charges is upheld by the General Counsel, the dismissal will not be reviewed and no independent investigation of the charges will be made by the Board.⁸¹ In one case, employees who unsuccessfully protested their discharge to the employer but filed no unfair labor practice charges, and employees who filed charges but failed to appeal from their dismissal by the regional director, were held not entitled to vote.⁸² In another case,⁸³ discriminatees who were entitled to reinstatement under a Board order and court decree⁸⁴ and had been placed on layoff status and preferentially listed because of lack of available jobs, were held ineligible since they had no reasonable expectancy of reemployment. Other employees, whose reinstatement rights had not yet been determined, however, were permitted to vote subject to challenge.

(3) Eligibility in the Shipping Industry

In directing an election, the Board usually orders that it be held within 30 days, and eligibility to vote is determined on the basis of the employer's payroll for the period immediately before the date of the Board's order directing the election. However, in case of elections in seasonal industries and in some other circumstances, the Board delegates the authority for fixing the time of election to the regional director. In such cases, eligibility to vote is determined by the payroll for the period just before the date on which the regional director issues the notice of election.⁸⁵ However, where special circumstances prevail, as in certain parts of the shipping industry, a different eligibility yardstick may be selected in order to extend the franchise to a representative number of employees in the bargaining unit. Thus, in directing an election among employees of a group of stevedoring companies, the Board found that voting eligibility should be extended to those employees who had worked for the employers an average of 18 hours per month or more during the past 6 months (a total of 108 hours), and whose names appeared at least once each month on any weekly payroll during that period.⁸⁶ The Board took into consideration such factors as contract provisions as to the minimum employment required in order to entitle employees to vacations, health and welfare benefits, and payroll figures indicating average periods of

⁸¹ *Colonial Provision Co.*, 112 NLRB 1056, citing *Times Square Stores Corp.*, 79 NLRB 361, 365. See also *Tube Distributors Co., Inc.*, 112 NLRB 296, where disposition of the challenge of a voter was postponed because his discrimination charges, though found without merit by the regional director, had not yet been formally dismissed because of the vacancy of the office of General Counsel.

⁸² *Dura Steel Products Co.*, 111 NLRB 590.

⁸³ *H. N. Thayer Co.*, 112 NLRB 792.

⁸⁴ *Thayer Company*, 213 F. 2d 748 (C. A. 1), cert. denied 348 U. S. 883.

⁸⁵ See, for instance, *Pacific Maritime Association*, 110 NLRB 1647.

⁸⁶ *Associated Banning Co.*, 110 NLRB 1644.

employment. Similarly, in a case involving longshoremen, the Board found that in order to permit a representative number of employees to participate in the election, all employees who worked 60 or more days during the preceding calendar year should be eligible to vote.⁸⁷ However, in view of the rapid turnover among the employees and the intermittent nature of their employment, the Board provided also that, in order to make certain that voters were still in the industry, they must have appeared on 3 or more daily payrolls in the 4 months preceding the direction of election.

However, in the case of shipboard³ employees, the Board declined to deviate from the usual practice of extending voting eligibility to employees on the payroll immediately before the issuance of the regional director's notice of election and still employed at the time of the election.⁸⁸ The Board noted that this method of determining eligibility in such cases had in the past resulted in representative votes notwithstanding the substantial turnover and work-spreading practices in the industry.

b. Timing of Elections

Ordinarily, the Board provides for elections to be held not later than 30 days from the date of its direction of election. However, where an immediate election would not insure an opportunity for participation to most employees in the unit, the Board continues to select a different, more appropriate time, such as the seasonal peak in industries with fluctuating employment, or the time when the work force in a new or changed operation has become representative.

(1) Seasonal Industries

Unless seasonal employment is at its peak at the time of the Board's decision,⁸⁹ the selection of the election date is left to the regional director.⁹⁰ However, in a shoe manufacturing plant where over 50 percent of the working force were permanent employees, an immediate election was directed although seasonal employment in the plant was not at its peak.⁹¹ And in the case of produce and fruit packing operations with two distinct seasons of unequal duration, the Board provided for the election to be held at the peak of the longer season when the greater number of employees would be working.⁹²

⁸⁷ *Seaboard Terminal and Refrigeration Co*, 109 NLRB 1094.

⁸⁸ *Pacific Maritime Association*, 110 NLRB 1647.

⁸⁹ *Lewis & Bowman, Inc*, 109 NLRB 796.

⁹⁰ See, for example, *American Can Co*, 110 NLRB 3; and *Sebastopol Cooperative Cannery*, 111 NLRB 530.

⁹¹ *Comfort Slipper Corp*, 111 NLRB 188.

⁹² *C. A. Glass Co.*, 111 NLRB 1366, *Brooksville Citrus Growers Association*, 112 NLRB 707.

(2) New and Changed Operations

Where an employer contemplates expansion or reduction of his working force, an immediate election will not be directed unless the present working force is representative of the contemplated ultimate employee complement.⁹³ Thus, the Board during the past year declined to direct an election and dismissed a petition covering a new plant which was not yet in full operation and where a substantial and representative complement of employees in the proposed unit was not contemplated for several months.⁹⁴ Conversely, an immediate election was found appropriate at a new plant where production had reached about 30 percent of anticipated capacity and where about one-third of the full employee complement was at work.⁹⁵ The Board here denied the employer's request that the election be postponed for at least 6 months. Where it was found that future expansion or reduction in operations was only speculative, and that the present employee complement was representative, the Board also directed an immediate election.⁹⁶ And a recent substantial reduction in the work force has been held not to preclude an immediate election in the absence of any present plans of the employer for again increasing its work force.⁹⁷

(3) Pendency of Unfair Labor Practice Charges

In 2 cases during the past year, the Board declined to postpone direction of an election while an appeal from the dismissal of unfair labor practice charges against 1 of the parties was pending.⁹⁸ The Board noted that the charges had been dismissed by the regional director for lack of merit, and that it would promote the orderly processes of collective bargaining to direct an immediate election.

c. 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. The standards are generally set forth in the Board's Rules and Regulations and in the decisions of the Board. If these standards are not met, any party to the election may file objections within 5 days.

⁹³ See, for example, *General Electric Co.*, 112 NLRB 839; *General Motors Corp.*, 111 NLRB 841; *Lykes Bros., Inc. of Georgia*, 112 NLRB 575; compare *Stewart-Warner Corporation*, 112 NLRB 1222.

⁹⁴ *Cramet, Inc.*, 112 NLRB 975.

⁹⁵ *Springfield Body & Trailer Co.*, 112 NLRB 1287.

⁹⁶ *Technical Tape Corp.*, 111 NLRB 845; *American Brake Shoe Co.*, 109 NLRB 1282; *Standard Automotive Mfg. Co.*, 109 NLRB 726; *The Ransom and Randolph Co.*, 110 NLRB 2204; *Moynahan Bronze Co.*, 112 NLRB 1476.

⁹⁷ *Higgins, Inc.*, 111 NLRB 797; *E. I. DuPont de Nemours and Company (Indiana Ordnance Works)*, 112 NLRB 434.

⁹⁸ *Harbor Furniture Manufacturing Company*, 109 NLRB 794; *Stewart-Warner Corporation*, 112 NLRB 1222.

(1) Mechanics of Election

Objection may be made to the manner, or mechanics, of holding the election. Objections of this type during fiscal 1955 involved such matters as election notices, voting periods and facilities, balloting by mail, the validity of individual ballots, counting of ballots, and the use of duplicate eligibility lists. In one case, the Board rejected an employer's contention that the regional director had abused his discretion by giving only 8 days' notice of the date of the election.⁹⁹ The assertion that the employer was thereby prevented from meeting the union's election propaganda was held unsupported. A similar objection that an election notice was posted too late also was overruled where it was shown that 57 of 60 eligible voters cast ballots and no one had been prevented from voting.¹

An election was set aside in 1 case because the use of an inaccurate timepiece resulted in the closing of the polls about 2 minutes in advance of the designated time.² Here it was shown that at least 1 of 39 nonvoting eligibles had been prevented from voting, and the votes of the nonvoters could have affected the result of the election. Likewise, objections to the voting facilities provided were overruled in view of the small number of employees who failed to vote and the absence of objections to the voting place and arrangements at the time of the election itself.³ In another case, the Board reaffirmed the rule that, absent unusual circumstances, the voting period specified in the notice of election should not be extended.⁴ However, a majority of the Board⁵ allowed an exception to this rule in one case where the polls were reopened for the purpose of permitting part-time workers to vote.

The Board has reaffirmed the broad discretion of the regional director in selecting election methods.⁶ In the exercise of this discretion, he may conduct elections by mail, and mail balloting is proper even though a manual ballot has been conducted in a prior election, which was set aside.⁷ In one case, mail balloting aboard ship was held not to be invalidated by the fact that the ballots were distributed by captains who were members of one of the participating unions.⁸ The Board noted that, among the precautions to insure a secret election, delegates from each participating union were present at the time of distribution of the ballots.

⁹⁹ *Comfort Slipper Corp.*, 112 NLRB 183.

¹ *Glauber Water Works*, 112 NLRB 1462, Member Murdock dissenting on another point.

² *Repcal Brass Mfg. Co.*, 109 NLRB 4.

³ *Thomas Electronics, Inc.*, 109 NLRB 1141.

⁴ *Glauber Water Works*, *supra*.

⁵ Member Murdock dissenting.

⁶ *Shipowners' Association of the Pacific Coast*, 110 NLRB 479; *Pacific Maritime Association*, 112 NLRB 1280; *Kresge-Newark, Inc.*, 112 NLRB 869.

⁷ *Shipowners Association of the Pacific Coast*, *supra*.

⁸ *Pacific Maritime Association*, *supra*.

The Board also reaffirmed its policy not to interfere with the regional director's exercise of his discretion in marking arrangements with respect to the counting of ballots, unless unusual circumstances are present.⁹ No reason was found for sustaining an employer's objection to the impounding by the regional director of ballots cast in 3 out of 6 elections, involving 1 union and several employers, until completion of the balloting in the remaining 3 elections. The regional director impounded the ballots to prevent any possibility of chain voting and to avoid placing either the employers or the union at any disadvantage by announcing the results of the first three elections. In another case, the Board held that the use of IBM voting cards in a New York waterfront election was entirely within the regional director's discretion and could not be litigated by the parties.¹⁰

In one case, the Board adopted a regional director's recommendation that an election be set aside because of the temporary misplacement of a box containing unopened mail ballots.¹¹ While there was no indication that the ballots had been tampered with, the regional director and the Board were of the view that in order to remove any doubt, and to maintain the strict standards required in Board elections, it was imperative that the election be set aside.

As to the validity of individual ballots which are not marked in the customary manner or contain extra markings, the Board continued to hold that a ballot is valid if it clearly indicates the voter's intent.¹² Conversely, where the voter's intent is not clear, the ballot will be voided.¹³ Moreover, a *prima facie* ambiguity in the ballot, according to the Board, cannot be removed by a showing that under local custom and election rules the ballot is valid.¹⁴

The Board also had occasion to reaffirm its rule against the use of duplicates of the official eligibility list.¹⁵ The use of such a duplicate list by an election observer was held to have been properly prohibited by a Board agent even though the observer was going to use the list only to mark the names of voters he intended to challenge.¹⁶ The Board pointed out that, while it had been held that an observer may keep a list of names for the purpose of preserving his right to challenge,¹⁷ a duplicate eligibility list is not the kind of list which may be used for that purpose. However, permitting a representative of one of the parties to inspect the official voting list was found not to

⁹ *Independent Rice Mill, Inc.*, 111 NLRB 536

¹⁰ *New York Shipping Association*, 109 NLRB 310. See also the Board's earlier Second Direction of Election in this case, 108 NLRB 555, at 556.

¹¹ *New York Telephone Co.*, 109 NLRB 788.

¹² *General Steel Tank Co.*, 111 NLRB 222; *Pioneer Electronics Corp.*, 112 NLRB 1010, Member Peterson dissenting.

¹³ See, for instance, *Gerber Plastic Co.*, 110 NLRB 269

¹⁴ *Rockwell Valves, Inc.*, 111 NLRB 242, where ballots were held void

¹⁵ *Milwaukee Cheese Co.*, 112 NLRB 1383.

¹⁶ *Ibid.*

¹⁷ See *Bear Creek Orchards*, 90 NLRB 286

have invalidated the election in another case.¹⁸ The Board here noted that no record was taken of the names or clock numbers of employees who had or had not voted.¹⁹

(2) Electioneering Rules

In order to assure that employees in a Board election shall have an opportunity to express their free and uncoerced choice in selecting a bargaining representative, the Board has continued to require the parties to the representation proceeding to abide by certain rules. These rules impose certain limitations on the place and time for electioneering and campaigning by the parties and prohibit preelection conduct which tends to have a coercive effect on the voters. The Board during fiscal 1955 again made it clear that in determining whether its rules have been violated no attempt will be made "to evaluate the precise impact of improper conduct by one of the parties to an election upon the exercise by the voters of their freedom of choice [but that] it is sufficient that such conduct is reasonably calculated to have the effect of interfering with a free choice."²⁰

(a) The *Peerless Plywood* 24-hour rule

The *Peerless Plywood*²¹ prohibition against campaign speeches during the 24-hour period immediately preceding an election was further clarified during fiscal 1955.

Regarding the application of the *Peerless* rule,²² a majority of the Board pointed out in one case²² that

Violation of the *Peerless Plywood* rule, as in the case of improper electioneering, constitutes ground for setting aside an election, entirely apart from the considerations which accompany findings of specific interferences with an election. It is sufficient that *Peerless Plywood* speeches tend to prevent a free election; the actual effect upon the voters in any case—even if it could be measured—is not material. Nor is it necessary that such conduct affect enough employees to change the election result. [Footnotes omitted.]

The Board had occasion to make it clear that the rule is strictly limited to noncoercive employer and union speeches to massed assemblies of employees on company time during the 24-hour period before the scheduled start of an election, and that the rule will not, for equitable considerations, be extended to such speeches made before that period.²³ It was also pointed out again that the rule is intended only

¹⁸ *A. D. Juilliard and Co.*, 110 NLRB 2197.

¹⁹ The Board distinguished such cases as *Belk's Department Store of Savannah*, 98 NLRB 280, where the use of lists of persons who voted was held objectionable because the employees apparently knew that their names were being recorded.

²⁰ *Spartan Aircraft Co.*, 111 NLRB 1373. Compare *The Great Atlantic & Pacific Tea Company*, 111 NLRB 623, Chairman Farmer dissenting.

²¹ *Peerless Plywood Co.*, 107 NLRB 427.

²² *The Great Atlantic & Pacific Tea Company*, *supra*.

²³ See *Jewett & Sherman Co.*, 111 NLRB 534; see also *Sprague Electric Co. of Wisconsin*, 112 NLRB 165.

to prohibit campaign speeches under the circumstances specified in *Peerless*, and does not apply to the use of other campaign media, as for instance circulation of campaign literature, at any time before the election, be it by employers²⁴ or unions.²⁵

The *Peerless* rule that an election may be invalidated because of a speech made "on company time" was held violated by a speech to employees at an employer-sponsored dinner.²⁶ The Board here found that because late-shift employees who attended the dinner were paid for time not worked the employer's speech must be regarded as having been made on company time. And an employer's preelection speech during the crucial 24-hour period, made at a time when many employees had completed their day's work, nevertheless was held to have been made on "company time" since some of the employees admittedly worked after the speech.²⁷ But union speeches broadcast from a sound truck during the 24-hour period were held not to have invalidated the election.²⁸ The speeches here were heard only by employees who were leaving the plant on their own time after they had completed their shift.

The question of whether an employer's preelection speeches were made to "massed assemblies" within the *Peerless* rule was answered in the affirmative by a majority of the Board in a case where 9 employee groups, ranging from 3 to 10 employees, had been addressed by a representative of the employer at 8 of its 396 stores which were managed by 38 district supervisors.²⁹ The majority rejected the view that the *Peerless* rule prohibits only speeches which are "more or less formalized." It was sufficient, according to the majority, that the speeches here were "planned and systematic," and that they conveyed substantially the same message to all employees addressed, and were timed and calculated to influence their votes in favor of one of the incumbent unions.

The *Peerless* rule was held similarly violated by an employer who, on the morning before the election, successively assembled groups of about 50 employees on company time and property for the purpose of reading a campaign speech.³⁰ The Board in the *Ottenheimer* case³¹ also pointed out that the employer's speech there was not merely an

²⁴ *Crown Drug Company*, 110 NLRB 845.

²⁵ *Dallas City Packing Co.*, 110 NLRB 8; *Ohmite Manufacturing Company*, 111 NLRB 888; *Phelps Dodge Copper Products Corp.*, 111 NLRB 950. See also *Comfort Slipper Corp.*, 112 NLRB 183, where the Board held that the use of such media shortly before the election does not entitle the opposing party to reply in a campaign speech.

²⁶ *Texas City Chemicals, Inc.*, 109 NLRB 115.

²⁷ *Mid-South Packers, Inc.*, 110 NLRB 628.

²⁸ *Repal Brass Mfg. Co.*, 110 NLRB 193.

²⁹ *The Great Atlantic & Pacific Tea Company*, *supra*, Chairman Farmer dissenting.

³⁰ *Ottenheimer Bros Mfg. Co.*, 109 NLRB 183. To like effect, *Riblet Welding and Mfg. Corp.*, 112 NLRB 712.

³¹ See preceding footnote.

informal or nonpartisan address which was outside the *Peerless* rule.³² On the contrary, the Board held, the address was a "preelection" speech recapitulating in part a preelection letter to the employees in which the employer had set forth its position concerning the election. Conversely, an employer's announcement on the morning of the election that the polling would take place in the afternoon and urging that the employees vote was found to have been nonpartisan and not to have constituted a prohibited campaign speech.³³

In view of the rule that a party may not urge its own misconduct as a ground for setting aside an election,³⁴ the Board in one case held an employee estopped from objecting to an election on the basis of either its own campaign speech during the 24-hour period, or the union's speech made in reply with the employer's permission.³⁵ This rule, the Board held, was necessary to protect the integrity of its own processes.

(b) Electioneering near the polls

The rule against electioneering at or near the polling place was again enforced in order to assure an atmosphere free from any pressure or influence at the time and place where employees cast their ballots.³⁶ Thus, an election was set aside because certain employees, found to be ineligible supervisors, appeared at the polls at the employer's request and attempted to vote and encouraged employees to cast a "No" vote.³⁷ On the other hand, the Board overruled objections based on the assertion that a participating union had caused ineligible persons to vote.³⁸ While not condoning conduct of the kind alleged, the Board declined to infer that the voting under challenge of a disproportionate number of ineligible persons in the presence of other voters impaired the latter's free choice.

Union distribution of noncoercive handbills more than 60 feet from the voting area has been held legitimate propagandizing.³⁹ And electioneering by permissible methods during the voting period, some 130 feet from the polling place, was held not to have violated the Board's rules.⁴⁰ Nor are the electioneering rules violated by the mere presence of union representatives in the voting area,⁴¹ or by the distribution of campaign literature before the polls have opened.⁴²

³² Citing *General Motors Corporation*, 108 NLRB 1207, Nineteenth Annual Report, p. 66.

³³ *John W. Thomas Co.*, 111 NLRB 226.

³⁴ See *Wilmington Casting Company*, 110 NLRB 2114.

³⁵ *Camp Milling Company*, 109 NLRB 471, Member Murdock concurring.

³⁶ *Spartan Aircraft Co.*, 111 NLRB 1373, 1375. See *General Steel Tank Co.*, 111 NLRB 222, 224.

³⁷ *Spartan Aircraft Company*, *supra*.

³⁸ *Minerals and Metals Corp.*, 110 NLRB 710; *The Hitchcock Corp.*, 110 NLRB 477.

³⁹ *E. H. Blum*, 111 NLRB 110. See also *West Coast Loading Corp.*, 109 NLRB 955.

⁴⁰ *Phelps-Dodge Copper Products Corp.*, 111 NLRB 950.

⁴¹ *Gastonia Combed Yarn Corp.*, 109 NLRB 585; *Kaiser Services*, 111 NLRB 1093.

⁴² *General Steel Tank Co.*, *supra*; *Dallas City Packing Co.*, 110 NLRB 8.

(c) Use of sample ballots

Upon reexamining past policy regarding the use of copies of the Board's official ballot by the parties to an election for propaganda purposes, the Board in *Allied Electric Products, Inc.*,⁴³ announced during the past year that

in the future it will not permit the reproduction of any document purporting to be a copy of the Board's official ballot, other than one completely unaltered in form and content and clearly marked sample on its face, and upon objection validly filed, will set aside the results of any election in which the successful party has violated this rule. [Footnotes omitted.]

Earlier cases,⁴⁴ approving the circulation of a copy of the official ballot marked "sample ballot," and also marked in favor of one of the parties, were overruled. It is the Board's belief that the use of any altered ballot for campaign purposes tends to suggest that the material on the ballot bears the Board's approval and thereby tends to interfere with the Board's election processes and a free choice in the election. The new rule was to be applied in the case of all future objections to the use of sample ballots, regardless of whether or not the election preceded announcement of the rule.⁴⁵ It was pointed out that the rule is remedial, not punitive, and that the only effect of its retroactive application is to permit the holding of a new election in an atmosphere more conducive to freedom of choice.⁴⁶

In setting aside elections under the new sample-ballot rule the Board further held that: The distribution of altered ballots *per se* invalidates the election irrespective of whether employees were actually misled;⁴⁷ it is immaterial that the party distributing the ballot had no improper motive, the ballot differed from the official ballot in color, type, size, and placement of the word "sample," or the ballot was accompanied by propaganda material.⁴⁸ Nor was the use of an altered ballot by one party held excused by the fact that another party committed a like violation of the Board's rule.⁴⁹

However, the mere reproduction in a propaganda leaflet of voting boxes with markings indicating a proposed choice to the voters has been held not within the proscription of the *Allied Electric* rule.⁵⁰

(d) Preelection propaganda

Evaluation of objections based on the content of the parties' preelection propaganda continues to be subject to the rule that union

⁴³ 109 NLRB 1270

⁴⁴ Including *L Gordon & Son, Inc*, 100 NLRB 438, *Gray Drug Stores, Inc*, 95 NLRB 171; and *Gate City Table Co*, 87 NLRB 1120.

⁴⁵ *Tube Reducing Corp*, 110 NLRB 1080

⁴⁶ *The Wilmington Casting Co*, 110 NLRB 2114.

⁴⁷ *Superior Knitting Corp*, 112 NLRB 984.

⁴⁸ *Wallace & Tiernan, Inc*, 112 NLRB 1352

⁴⁹ *The Wilmington Casting Co.*, *supra*; *Scharco Mfg. Corp.*, 110 NLRB 2112.

⁵⁰ *Phelps-Dodge Copper Products Corp*, 111 NLRB 950, *Lincoln Plastics Corp*, 112 NLRB 291.

campaigns will not be censored or policed. Reiterating what had previously been said in *Merck & Co.*,⁵¹ the Board stated in one case⁵² that the truth or falsity of official union utterances [will not be considered] unless the ability of the employees to evaluate such utterances has been so impaired by the use of forged campaign material or other campaign trickery that the uncoerced desires of the employees cannot be determined in an election.

Moreover, the Board in the same case declined to circumscribe election campaigns so as to prohibit the parties from making use of information unavailable to the other side.

In one case, the Board held that an election need not be set aside because the union misrepresented the employer's profits and other matters.⁵³ While noting that it does not condone such conduct, the Board pointed out that there had been no forgery, trickery, or conduct so misleading as to prevent the exercise of a free choice by the voters. Nor was impropriety found in the union's assertion that it had pledge cards from a majority of the employees. The Board particularly rejected the contention that because pledge cards may be submitted to the Board as evidence of representation they have a quasi-official status. Evaluation of such propaganda, in the Board's view, may safely be left to the good sense of the voters. On the other hand, the limits of legitimate propaganda were held to have been exceeded by a union which, on the eve of the election, and in the face of the employer's direct contradiction, repeated previous misrepresentations concerning wage rates paid under the campaigning union's contract with another employer.⁵⁴ This conduct, according to the Board, lowered the standards of campaigning to a level which impaired the free and untrammelled expression of choice by the employees.

(e) Preelection threats and promises

The Board has continued to set aside elections where the preelection statements of a party prevented a free expression of choice because they contained coercive threats or promises and were not mere expressions of opinion and predictions such as are protected by section 8 (c).⁵⁵ Thus, employer threats of loss of benefits or of employment, as well as promises of advantages intended to induce rejection of a union or selection of a favored union, were again held to invalidate elections.⁵⁶ And an election was set aside because the campaigning

⁵¹ *Merck & Co., Inc.*, 104 NLRB 891.

⁵² *Comfort Slipper Corp.*, 112 NLRB 183.

⁵³ *Comfort Slipper Corp.*, *supra*.

⁵⁴ *The Gummed Products Company*, 112 NLRB 1092

⁵⁵ For cases where preelection statements were held to have been permissible under section 8 (c), see, for instance, *Fall River Foundry Co.*, 112 NLRB 1307; *Lincoln Plastics Corp.*, *supra*; *L. G. Everist, Inc.*, 112 NLRB 810; *Westinghouse Electric Corp.*, 110 NLRB 332; *P. W. Woolworth Co.*, 111 NLRB 766, Member Murdock dissenting in part

⁵⁶ See, for instance, *Rein Company*, 111 NLRB 537, Member Rodgers dissenting; *Boston Mutual Life Insurance Co.*, 110 NLRB 272, Chairman Farmer and Member Beeson dissenting; *Armstrong Cork Co.*, 109 NLRB 1341, *Franchester Corp.*, 110 NLRB 1391.

union had distributed cards offering employees membership without payment of the usual initiation fee in the event the union won the election.⁵⁷

While preelection threats and promises have been held to prevent free elections, the Board has not ignored industrial realities and has declined to set aside large elections on the basis of conduct involving only a small number of voters.⁵⁸ Nor have elections been set aside because of the conduct of persons whose acts could not be attributed to the employer or participating union, and were not such as to create a general atmosphere of confusion and fear of reprisal.⁵⁹

(f) Other preelection conduct

Aside from the type of preelection conduct discussed above, any conduct which tends to interfere with the employees' free choice of a bargaining agent will be held to invalidate the election. The Board during fiscal 1955 held in one case that an employer improperly interfered with an election by calling all employees in the unit individually to his office on 2 occasions and urging them, in interviews lasting as long as 3 hours, to reject the union.⁶⁰ This conduct, in the Board's view, warranted setting the election aside regardless of the noncoercive nature of the employer's actual remarks. However, in a later case, it was made clear that an employer's technique of talking individually to his employees does not *per se* invalidate the election.⁶¹ Distinguishing *Economic Machinery*, the Board in *Mall Tool* overruled objections based on the employer's conversations with about 50 percent of the employees in interviews at their work benches which lasted no more than 3 minutes.

In one case the Board held that it was a permissible campaign tactic for a union to solicit pledge cards from prospective voters.⁶² The Board here pointed out that the employees who signed the cards were not irrevocably committed to vote for the union and that their freedom to vote according to their own desires was fully protected by the secret ballot in the ensuing election.

d. Rules on Filing of Objections

If a Board election has not been conducted in accordance with the Board's standards, any party to the election may, within 5 days after receipt of the tally of ballots, file objections to the conduct of the election or conduct affecting its results.

⁵⁷ *Lobue Bros.*, 109 NLRB 1182.

⁵⁸ *Goodyear Clearwater Mill No. 2*, 109 NLRB 1017, Member Murdock dissenting; *Gastonia Combed Yarn Corp.*, 109 NLRB 585; *Western Table Co.*, 110 NLRB 17; *Crown Drug Co.*, 110 NLRB 845; *E. H. Blum*, 111 NLRB 110; *Lincoln Plastics Corp.*, 112 NLRB 291.

⁵⁹ See, for example, *Bridgeport Casting Co.*, 109 NLRB 749; *White's Uvalde Mines*, 110 NLRB 278; *J. Spevak & Co.*, 110 NLRB 954.

⁶⁰ *Economic Machinery Co.*, 111 NLRB 947.

⁶¹ *Mall Tool Co.*, 112 NLRB 1313.

⁶² *Frank H. Smith & Co.*, 112 NLRB 144.

(1) Timeliness of Filing

The Board's Rules and Regulations⁶³ provide in section 102.61 that

Within 5 days after the tally of ballots has been furnished, any party may file with the regional director four copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall immediately be served upon each of the other parties by the party filing them, and proof of service shall be made.

The Board requires strict adherence to these rules. Thus, no consideration was given to objections which did not reach the Board's regional office until after the close of business, and after all Board personnel had departed, on the last day on which objections could be filed.⁶⁴ The Board pointed out that, under its rules on service and filing of papers,⁶⁵ objections were required to be received before the close of business. In another case, the Board upheld the regional director's dismissal of objections which had been filed timely but without serving copies on the other parties at the same time.⁶⁶ The Board held that placing copies of the objections in the mail, addressed to the parties, 2 days after the objections were filed, was not service made "immediately" within rule 102.61. To achieve certainty in procedural matters, the Board said, it is essential that parties be held to strict adherence to the rules. An exception to the strict rules of timeliness of service is made, however, where the irregularity is attributable to an agent of the Board.⁶⁷

Where a party filing objections fails to furnish supporting evidence, the regional director is not required to investigate the objections further. Also, exceptions to the regional director's dismissal will be overruled unless the exceptions cite specific, substantial evidence controverting the director's conclusions.⁶⁸

(2) Objections to Preelection Conduct—The *A & P* Rule

Early in the fiscal year, the Board had occasion to reconsider its *A & P* rule⁶⁹ to the effect that any substantial interference which occurs during the crucial period before an election may be urged through postelection objections as a basis for setting aside the election. This general policy was reaffirmed,⁷⁰ except that the cutoff date for objec-

⁶³ Rules and Regulations, Series 6, as amended.

⁶⁴ *Smithfield Packing Co.*, 112 NLRB 940.

⁶⁵ Rules and Regulations, Sec. 102.83.

⁶⁶ *General Time Corp.*, 112 NLRB 86.

⁶⁷ *New York Telephone Co.*, 109 NLRB 788 at 789, footnote 1.

⁶⁸ *N. B. Liebman & Co.*, 112 NLRB 88; *Pacific Maritime Association*, 112 NLRB 1280; *J. Spevak & Co.*, 110 NLRB 954

⁶⁹ *The Great Atlantic & Pacific Tea Co.*, 101 NLRB 1118; Eighteenth Annual Report, pp. 26-27. See also *The Liberal Market, Inc.*, 108 NLRB 1481, Nineteenth Annual Report, p. 59.

⁷⁰ *F. W. Woolworth Co.*, 109 NLRB 1446, Members Murdock and Rodgers not participating.

tions in a contested election case was changed. Under the *A & P* case the cutoff was the date of the issuance of notice of hearing. The Board would not consider for purposes of the election any conduct occurring *before* this date. But, in reexamining the rule, the Board recognized that there was a discrepancy in the time lapse between cutoff date and election in contested cases, and the corresponding time lapse in consent-election cases where the cutoff date is the execution of the election agreement or stipulation. In order to equalize the time factor in the two types of cases, the Board announced that in contested cases it will consider objections based on objectionable conduct occurring after either (1) the date of issuance of the decision and direction of election, or (2) the date of any amendment of the original decision and direction. In the case of consent elections, the cutoff date established in the *A & P* case was retained.⁷¹

The Board has adhered to the *A & P* principle that failure to lodge a preelection protest is not a waiver of a union's right to have the Board consider, on the merits, any alleged election interference occurring after the applicable cutoff date.⁷²

(3) Objections in the Nature of Unfair Labor Practice Charges

In two types of situations, objections to elections were overruled on the ground that they amounted to unfair labor practice charges. Thus, the Board declined to consider the merits of objections which were but a reiteration of unfair labor practice charges, dismissal of which by the regional director had been sustained by the General Counsel.⁷³ In making it clear in the *Parker* case that such a dismissal will not be reviewed in the guise of considering objections to an election, a majority of the Board⁷⁴ pointed out that this was the doctrine of the *Times Square Stores* case,⁷⁵ a case decided soon after the effective date of the amended act. In the majority's view, the *Times Square* case, while involving the question of voter eligibility, is applicable to *all* cases where the subject matter of unfair labor practice charges is later made the basis for objections to an election.

Objections which in substance amount to allegations of unfair labor practices likewise will not be considered.⁷⁶ Nor will proceedings on objections to an election be stayed pending the disposition of unfair labor practice charges which were not raised as objections to the election.⁷⁷

⁷¹ For applications of the new rule following *Woolworth*, see *Sprague Electric Co. of Wisconsin*, 112 NLRB 165; *Lincoln Plastics Corp.*, 112 NLRB 291; *Lindsay Newspapers, Inc.*, 112 NLRB 1206; *Franchester Corp.*, 110 NLRB 1391. See also *White's Uvalde Mines*, 110 NLRB 278.

⁷² *Armstrong Cork Co.*, 109 NLRB 1341; *Franchester Corp.*, *supra*.

⁷³ See *National Trucking Co.*, 110 NLRB 837, *Parker Brothers & Co.*, 110 NLRB 1909. Compare *E. H. Blum*, 111 NLRB 110.

⁷⁴ Chairman Farmer and Member Peterson dissenting.

⁷⁵ *Times Square Stores Corp.*, 79 NLRB 361 (August 1948).

⁷⁶ *Shipowners' Association of the Pacific Coast*, 110 NLRB 479.

⁷⁷ *Thomas Electronics, Inc.*, 109 NLRB 1141.

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 are filed with the regional office of the Board in the area where the unfair practice allegedly was committed.

This chapter deals with decisions of the Board during the 1955 fiscal year which involve novel questions or set new precedents.

A. Unfair Labor Practices of Employers

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. Violations of this general prohibition may take the form of (1) any of the types of conduct specifically identified in subsections 2 through 5 of section 8,¹ or (2) any other conduct which independently tends to restrain or coerce employees in exercising their statutory rights. This section treats only of cases within the latter category—independent violations of section 8 (a) (1).

a. Questioning of Employees

Early in the fiscal year, a majority of the Board in the *Blue Flash Express* case,² reversed the prior Board doctrine³ that it was *per se* unlawful for an employer to interrogate his employees as to their union activities and sympathies. In *Blue Flash*, the employer was charged with a violation of section 8 (a) (1) because, following the complain-

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

² *Blue Flash Express, Inc.*, 109 NLRB 591, Members Murdock and Peterson dissenting.

³ See *Standard-Coosa-Thatcher Company*, 85 NLRB 1358.

ing union's request for recognition, he questioned individual employees systematically as to whether they had signed union cards. Finding no violation, the majority noted that: (1) Each employee was advised that the information sought was to verify the union's majority claim; (2) the employees were assured there would be no economic reprisals; and (3) the questioning occurred against a background free from employer hostility to union organization. The fact that the employees gave false answers, while relevant, was held not controlling. The majority further concluded that, proper safeguards having been taken, the fact that the interrogation was systematic did not, of itself, render it coercive. The majority pointed out:

... We are not holding in this decision that interrogation must be accompanied by other unfair labor practices before it can violate the Act. We are merely holding that interrogation of employees by an employer as to such matters as their union membership or union activities, which, when viewed in the context in which the interrogation occurred, falls short of interference or coercion, is not unlawful.

* * * * *

In our view, the test is whether, under all the circumstances, the interrogation reasonably tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act.

The majority went on to say that, rather than granting employers a license to interrogate employees as to union affiliation or activity, its decision reaffirms the Board's position that "any employer who engages in interrogation does so with notice that he risks a finding of unfair labor practices if the circumstances are such that his interrogation restrains or interferes with [the employees' statutory rights]," i. e., if "the surrounding circumstances together with the nature of the interrogation itself" rendered the interrogation coercive.

Restraint in the foregoing sense was found present in the *Graber Manufacturing* case,⁴ where the questioning was not limited to ascertaining the union's majority status but, as noted by the Board, extended generally to the employees' union activities, particularly to union leadership. The Board concluded that, since the questioning of many employees was conducted systematically by top officials and was accompanied by other unlawful antiunion conduct, it exceeded the type of questioning held permissible in *Blue Flash*.⁵ In another case, widespread questioning of employees as to their membership in a union which had made no claim for recognition was held not to have been intended merely to obtain information, and to have been unlawful

⁴ *Graber Manufacturing Company, Inc*, 111 NLRB 167.

⁵ A majority of the Board also rejected the trial examiner's conclusion that under the *Walmac Company* case (106 NLRB 1355), which on the date of the intermediate report had not yet been superseded by *Blue Flash*, the interrogation here did not violate section 8 (a) (1) because it was not shown that all employees in the unit had been questioned.

under the *Blue Flash* principles.⁶ The fact that the employer sought to intimidate the employees, in the Board's view, was indicated by the repeated questioning of the same employees by an official who had absolute hiring and firing power and who enlisted the aid of a rank-and-file employee in order to insure systematic interrogation.⁷

b. Polling of Employees

The Board regards the polling of employees as to their union sentiments as being akin to interrogation and applies the *Blue Flash* tests in determining its unlawfulness under section 8 (a) (1).⁸ Thus, in the *Gilbert* case⁹ that section was found to have been violated by the polling of employees in a manner which necessarily created in the minds of the employees an element of coercion. The employer here first interrogated the employees, then arranged an open meeting where they could decide whether to organize, and finally conducted a secret poll because of the doubts of some employees concerning the accuracy of the open poll. Regarding this conduct, the Board said:

Even though the Employer's purpose . . . may have been intended only to satisfy the doubts of a few employees, and therefore to have been done in good faith, such successive interrogation usurping as it did the Board's established procedure which exists for the sole purpose of finally resolving questions of majority status, extended beyond the permissible limits of employer interrogation as envisaged in the *Blue Flash* decision. As the statute, through the Board, has established a regular procedure to resolve representation issues, and the Respondents had every right to avail themselves of that procedure, there was no need or occasion for the Respondents to embark on such repeated unilateral pollings of employee sentiment.

In another case, successive polls designed to ascertain union sentiment at a plant, which were accompanied by other unfair labor practices, were likewise held to have had a coercive effect on the employees.¹⁰ Here the polling technique was used by the employer to measure the effectiveness of his antiunion statements and to determine the course of his continuing antiunion campaign.

c. Surveillance of Union Activities

Actual surveillance of the employees' union activities by their employer continues to be held a violation of section 8 (a) (1).¹¹

⁶ *Union News Company*, 112 NLRB 420.

⁷ For other instances of interrogation which in their context were held violative of section 8 (a) (1) under the *Blue Flash* rule, see, for instance, *The Dalton Company, Inc.*, 109 NLRB 1228; *School-Timer Frocks, Inc.*, 110 NLRB 1659 (Board majority); *The Plastic Molding Company, Inc.*, 110 NLRB 2137; *Hammond Brick Company*, 111 NLRB 1; *Delta Finishing Company*, 111 NLRB 659.

⁸ *A. L. Gilbert Company*, 110 NLRB 2067.

⁹ See preceding footnote. Compare *Richards and Associates*, 110 NLRB 132.

¹⁰ *Avildsen Tools and Machines, Inc.*, 112 NLRB 1021.

¹¹ See, for instance, *The Jefferson Company, Inc.*, 110 NLRB 757; *Franchester Corporation*, 110 NLRB 1391; *Bowman Transportation, Inc.*, 112 NLRB 387; *L. C. Products, Inc.*, 112 NLRB 872. Compare *Columbus Marble Works*, 111 NLRB 1162 (Board majority).

However, applying the rationale of the *Blue Flash* case,¹² the Board during the past year repudiated the doctrine of the *Thayer* case¹³ that mere instructions to supervisors to obtain information concerning the employees' union activities violate the act, regardless of whether or not the instructions are to be carried out by unlawful means, and whether or not the instructions are ever carried out. Thus, instructions to a foreman—never carried out by him—to report on a rumor that a union was trying to get into the employer's plant were held not to constitute a violation of section 8 (a) (1).¹⁴

d. Rules Restricting Union Activities

The extent of an employer's right to prohibit union activities in the interest of orderly and efficient operations was again involved in a number of cases. The most important issues presented concerned (1) the distribution of union literature by nonemployee organizers in parking areas provided by the employer, and (2) the effect of the promulgation of no-solicitation rules on the employer's right to campaign against a union which seeks to organize his employees.¹⁵

(1) Distribution of Literature by Nonemployee Organizers in Parking Areas

In three cases¹⁶ during fiscal 1955, employers were found to have violated the rule that—

. . . nonemployee union representatives [may not be denied] the privilege of distributing union campaign literature on the company's parking lot . . . if in fact it is impossible or unreasonably difficult for the union to distribute organizational literature to the employees entirely off the employer's premises.¹⁷

In each case, the conclusion that section 8 (a) (1) had been violated was predicated on the fact that a high percentage of the employees traveled over public highways to and from a plant which was located in the outskirts of an urban community, and that traffic conditions were such that distribution of literature to them before they reached the parking area was hazardous or impossible.¹⁸ The Board's order

¹² *Supra*, p. 68.

¹³ *H N Thayer Company*, 99 NLRB 1122, 1125, enforced in part, without mention of this point, and remanded in other respects, 213 F 2d 748 (C. A. 1).

¹⁴ *Florida Builders, Incorporated*, 111 NLRB 786

¹⁵ For conventional types of cases involving unlawful extension of no-solicitation rules to the employees' own time, and the discriminatory application of otherwise valid rules, see, for instance, *Delta Finishing Company*, 111 NLRB 659; *Airfan Radio Corp (KFSD-TV)*, 111 NLRB 566; *Franchester Corporation*, 110 NLRB 1391. Cf. *The General Industries Company*, 110 NLRB 712. As to the employees' right to wear union insignia see *Graber Manufacturing Company, Inc*, 111 NLRB 167; *Safeway Stores, Incorporated*, 110 NLRB 1718; *Brown and Root, Inc*, 112 NLRB 1068, *Avildsen Tools and Machines, Inc.*, 112 NLRB 1021; see also *B. V. D Company, Inc*, 110 NLRB 1412.

¹⁶ *Seamprufe, Inc (Holdenville Plant)*, 109 NLRB 24; *The Babcock & Wilcox Company*, 109 NLRB 485; *Ranco, Inc.*, 109 NLRB 998, Member Beeson dissenting

¹⁷ The rule is thus stated in the *Ranco* case in the concurring opinion of Chairman Farmer and Member Peterson.

¹⁸ In the *Babcock* case, for instance, union organizers had been advised by a State highway patrolman that distribution of leaflets at the juncture of the State highway with the company's parking lot road was hazardous to traffic and had to be discontinued.

enjoining the employer from denying access to its parking area to union organizers for the purpose of distributing literature was enforced by the Sixth Circuit Court of Appeals in the *Ranco* case.¹⁹ Enforcement of similar orders in the *Seamprufe* and *Babcock* cases, however, was denied²⁰ by the Tenth and Fifth Circuits. Supreme Court decision on the issue involved is now pending in the three cases, certiorari having been granted by the Court.

(2) Discriminatory Application of No-Solicitation Rules

In one case, a Board majority dismissed unfair labor practice charges to the extent that they were based on the employer's enforcement against a union of plant rules forbidding posting, solicitation, and distribution of literature, at a time when the employer was campaigning against the union by posting and distributing antiunion material.²¹ Finding that the plant rules involved were valid in themselves, the majority held that there was no violation of the act. The majority said: "Valid plant rules against solicitation and other forms of union activity do not control an employer's actions. Management prerogative certainly extends far enough so as to permit an employer to make rules that do not bind himself." The majority further pointed out that the campaign literature distributed by the employer contained no coercive statements and was therefore protected by section 8 (c). The situation, according to the majority, thus was akin to that in the *Livingston Shirt* case²² and was controlled by the rule established there. It was held immaterial that in that case the employer had expressed his views in a speech addressed to the employees, whereas here he resorted to the posting and distribution of campaign literature. Nor, in the view of the majority, were the employer's protected utterances converted into unfair labor practices because he had violated the act in other respects.

On the other hand, a Board majority held in an earlier case²³ that an employer violated the act (1) by maintaining an invalid "broad" no-solicitation rule which applied on company property during both working and nonworking hours, and (2) by conducting an antiunion campaign on company time and property while enforcing the rule. The *Woolworth* case,²⁴ where the court held that the employer was not precluded by its no-solicitation rule from campaigning against union organization, was held inapplicable because the no-solicitation rule there was valid.

¹⁹ *N. L. R. B. v. Ranco, Inc.*, 222 F. 2d 543.

²⁰ *N. L. R. B. v. Seamprufe, Inc. (Holdenville Plant)*, 222 F. 2d 858 (C. A. 10); *N. L. R. B. v. Babcock & Wilcox Company*, 222 F. 2d 316 (C. A. 5).

²¹ *Nutone, Incorporated*, 112 NLRB 1153, Member Murdock dissenting on this point.

²² *Livingston Shirt Corporation*, 107 NLRB 400. Nineteenth Annual Report, pp. 74-76.
²³ *Johnston Lawn Mower Corporation*, 110 NLRB 1955, Member Beeson dissenting and Member Murdock not participating.

²⁴ *N. L. R. B. v. F. W. Woolworth*, 214 F. 2d 78 (C. A. 6)

e. Interference Through Contract—*Midwest Piping* Rule Modified

During the past year, the Board reexamined the rule prohibiting an employer from executing a collective-bargaining agreement with one of several rival unions whose conflicting claims are pending before the Board in a representation proceeding which raises a valid question of representation.²⁵ A majority of the Board concluded that the *Midwest Piping* doctrine generally should not apply where the employer “contracts with a labor organization which is an incumbent union actively representing the employer’s employees.”²⁶ The majority declared that, under such circumstances,

... stability in industrial relations, the primary objective of the Act,²⁷ requires that continuity in collective-bargaining agreements be encouraged, even though a rival union is seeking to displace an incumbent. Furthermore continuance of a preexisting collective-bargaining relationship between an incumbent union and an employer does not encroach upon the right of the employees to change their bargaining representative. For, as the Board has uniformly held—and indeed decided in the representation case here involved—any contract entered into by an incumbent union and an employer after a rival union has made a timely representation claim does not bar an election in the representation proceeding.

Overruling the *Midwest Piping* line of cases to this extent, the majority concluded that, in the interest of industrial stability, an employer must be free to continue recognition of an active, incumbent bargaining representative and to contract with it until the latter is displaced in an appropriate Board proceeding.

However, in a later case,²⁸ likewise involving the execution of a contract with an incumbent union during the pendency of a rival petition, the attending circumstances were held to make the *Gibson* rule inapplicable. In this case there was no extended history of bargaining between the employer and the incumbent union. The contract in question was executed after the incumbent’s expulsion by its parent union and after the filing of a petition by a union newly formed by the incumbent’s former parent. Moreover, the employer had by other acts violated section 8 (a) (1) and (3) of the act, and had agreed to the incorporation in the contract of unlawful union-security provisions identical with those which the employer and incumbent union had adopted before the union’s expulsion from its parent.

²⁵ *Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060 (1945) as modified by *William Penn Broadcasting Company*, 93 NLRB 1104 (1951).

²⁶ *William D. Gibson Co.*, 110 NLRB 660, Members Rodgers and Murdock dissenting from the modification of the *Midwest Piping* rule. See also *General Electric Company*, 110 NLRB 1109.

²⁷ The majority here cite *Colgate-Palmolive-Peet Co. v. N. L. R. B.*, 338 U. S. 355.

²⁸ *Jersey Contracting Corp.*, 112 NLRB 660.

2. Employer Domination or Support of Employee Organizations

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

In determining whether these provisions were violated, the Board must at times consider the contention that the organization in which the employer took an active part was not a "labor organization" within the meaning of section 2 (5) of the act so that the employer's participation could not have constituted an unfair labor practice. As pointed out by the trial examiner in one case,²⁹ the Board at an early date recognized the congressional intent that the term "labor organization" be construed broadly in order to make the prohibitions of section 8 (a) (2) effective.³⁰ Loosely constituted groups or committees, therefore, have been held labor organizations for section 8 (a) (2) purposes, so long as it was found that they existed at least in part for the purposes specified in section 2 (5); i. e., "dealing with grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."³¹ In one case,³² on the other hand, a majority of the Board agreed with the trial examiner that "employee assemblies" which met periodically on company property during working hours, in accordance with a company policy, could not be regarded as meetings of a "labor organization." Thus, there was no basis for finding a violation of section 8 (a) (2), even though the assemblies were utilized by the employer to impress on the employees that the success of a campaigning union in a forthcoming election would endanger their jobs and job benefits.

In section 8 (a) (2) cases, the Board has continued to differentiate for remedial purposes between employer interference with labor organizations which amounts to domination as against assistance and support falling short of domination.

a. Domination

In a number of cases, the Board sustained the trial examiner's conclusion that employee organizations, which had been instigated by employers, were in fact employer dominated and therefore illegal under section 8(a) (2). These cases involved: (1) An employee committee instigated by the employer to handle grievances and to bring in

²⁹ *Northeastern Engineering, Inc.*, 112 NLRB 743.

³⁰ See also the discussion in the trial examiner's report in *Texas City Chemicals, Inc.*, 112 NLRB 218.

³¹ See *California Cotton Cooperative Association, Ltd.*, 110 NLRB 1494. See also the trial examiner's conclusions adopted by the Board in *Northeastern Engineering, Inc.*, *supra*; *Texas City Chemicals, Inc.*, *supra*; *Tri State Manufacturing Company*, 109 NLRB 410; *Standard Coil Products Co., Inc.*, 110 NLRB 412; and *Nutone, Incorporated*, *supra*.

³² *Avildsen Tools and Machines, Inc.*, *supra*, Member Murdock dissenting.

another union to displace the certified union;³³ (2) a committee proposed and contractually recognized by the employer almost immediately after receipt of the bargaining request of the representative chosen by a majority of the employees;³⁴ (3) a committee decided upon by the employer before the beginning of operations and intended to carry out employer-determined functions when employment reached a certain volume, and actually organized under employer auspices after a union had started to organize the plant;³⁵ (4) a committee initiated by the employer after a union had lost an election;³⁶ and (5) an "advisory council" initiated and functioning according to a plan established by the employer and with facilities furnished by him.³⁷

In one of the foregoing cases,³⁸ the Board had occasion to point out that the employer's action there was not justified by the fact that it was resorted to during an illegal strike of the employees' bargaining representative. According to the Board, the employer, though entitled to refuse to deal with the striking union and to discipline the strikers, could not lawfully engage in the wholly disconnected conduct of assisting or dominating another labor organization.

In two cases where employers were charged with illegal assistance and support, as well as domination, of a labor organization, the domination charges were dismissed because they rested solely on a single instance of employer participation in the organization's activities and were unsupported by a showing that the employer attempted to influence the organization's policies.³⁹

b. Assistance and Support

As in prior years, unlawful interference with labor organizations usually took the form of employer attempts to facilitate the organization and functioning of a favored union by permitting it to use company time and facilities, by supporting it financially and otherwise, and by discriminating in employment against employees who failed to support, or opposed, the favored organization.

The Board has again found that illegal union-security arrangements and agreements constitute illegal support to the union concerned. Thus, an employer who delegated to a union the determination of the seniority standing of his employees and acted on the union's discriminatory determinations, was held to have violated both subsections (2) and (3) of section 8 (a).⁴⁰ And the execution and enforcement of pref-

³³ *California Cotton Cooperative Association, Ltd.*, 110 NLRB 1494.

³⁴ *Ben Corson Manufacturing Co.*, 112 NLRB 323.

³⁵ *Standard Coil Products Co., Inc.*, *supra*.

³⁶ *Tri State Manufacturing Company*, *supra*.

³⁷ *Texas City Chemicals, Inc.*, *supra*.

³⁸ *California Cotton Cooperative Association, Ltd.*, *supra*.

³⁹ *Ephraim Haspel*, 109 NLRB 37; *Nutone, Inc.*, 112 NLRB 1153, Member Murdock dissenting.

⁴⁰ *Minneapolis Star and Tribune Company*, 109 NLRB 727

erential hiring agreements,⁴¹ as well as the execution of an illegal union-security clause,⁴² were likewise held to have constituted illegal assistance to the contracting union. In one case, the Board rejected the trial examiner's conclusion that a discriminatory hiring agreement was not unlawful because the contracting union had a proprietary interest in the plant.⁴³

The rule that recognition of a union not freely selected by the employees violates section 8 (a) (2) was held to apply where an employer recognized a "shop union" formed by the employees in consequence of the employer's insistence that they choose between organizing their own union or joining the union which was then pressing for recognition.⁴⁴ In the Board's view, it is "incompatible with true freedom of choice to limit employees to a selection between two unions, both suggested by the employer, foreclosing any expression of preference for other unions or for no union at all." And an employer was held to have violated section 8 (a) (2) by granting separate recognition to 1 of several locals of the association which jointly represented the employees in all of the company's 11 divisions.⁴⁵

As to whether it is unlawful assistance to recognize one of several rival unions while a question concerning representation is pending before the Board, the *William D. Gibson* case announced a modification of the *Midwest Piping* rule which prohibits such recognition.⁴⁶

c. Remedies for Section 8 (a) (2) Violations

In all cases of employer domination, the Board continues to direct that the dominated organization be completely disestablished,⁴⁷ even though it may have ceased to function.⁴⁸ Where, on the other hand, assistance and support not amounting to domination are found, the usual remedy is to order the employer to cease recognizing or giving effect to any contract with the assisted organization unless and until it is certified by the Board. If there is evidence that the employer enforced an involuntary checkoff or otherwise coerced its employees into paying dues and fees,⁴⁹ such deductions by the employer on behalf of the organization under checkoff authorizations and under contractual provisions must be refunded to the employees.⁵⁰

⁴¹ *Dickford Shoes, Inc.*, 109 NLRB 1346.

⁴² *Jersey Contracting Corp.*, 112 NLRB 660

⁴³ *Dickford Shoes, Inc.*, *supra*.

⁴⁴ *Ephraim Haspel*, 109 NLRB 37

⁴⁵ *Eastern Massachusetts Street Railway Company*, 110 NLRB 1963.

⁴⁶ *William D. Gibson Co.*, 110 NLRB 660, Members Rodgers and Murdock dissenting as to the modification. For further discussion of this and later cases on the points, see p. 72.

⁴⁷ See, for instance, *Standard Coal Products Co., Inc.*, 110 NLRB 412; *Texas City Chemicals, Inc.*, 112 NLRB 218; *Ben Corson Manufacturing Co.*, 112 NLRB 323, *Northwestern Engineering, Inc.*, 112 NLRB 743.

⁴⁸ *Tri State Manufacturing Company*, 109 NLRB 410.

⁴⁹ See *Bowman Transportation, Inc.*, 112 NLRB 387.

⁵⁰ See, for instance, *Safeway Stores, Inc.*, 111 NLRB 968

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." However, a proviso to section 8 (a) (3), commonly called the union-shop proviso, permits an employer to make an agreement with a labor organization requiring that employees, as a condition of continued employment, join and maintain membership in the union.

In order to support a finding that section 8 (a) (3) was violated it must be shown⁵¹ that the discharge, or other discrimination in employment, of the complaining employee was motivated by activities on his part which section 7 of the act protects.⁵² The mere existence of a reason for which the employee might have been lawfully disciplined is not a defense if the real reason for the employer's action was the employee's participation in protected activities.⁵³

Whether the activities for which an employee was discriminated against come within the protection of section 7 frequently is an issue which the Board must decide in cases under section 8 (a) (3).

a. Protected and Unprotected Activities

The protection of the act is not limited to 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."⁵⁴ Nevertheless, the right of employees to engage in such activities without risk of discrimination is subject to the employer's right to make and enforce reasonable nondiscriminatory rules regulating such activities on company time for legitimate business considerations.⁵⁵

(1) Concerted Activities

For concerted employee activities to be protected and participants to be secure against discrimination, the activities must be carried on in a lawful manner and must have a lawful objective.

⁵¹ By either direct or circumstantial evidence; see *Thomason Plywood Corp*, 109 NLRB 898, 906.

⁵² Such discrimination also violates section 8 (a) (1) independently, and may be found to violate that section alone. Whether viewed as a violation of section 8 (a) (3) or section 8 (a) (1), the employee's right to reinstatement and back pay is the same. See e. g., *Chronicle Publishing Company, Inc*, 112 NLRB 519; *Tex-Togs, Inc.*, 112 NLRB 968.

⁵³ See *The Plastic Molding Co*, 110 NLRB 2137, 2138.

⁵⁴ Section 7.

⁵⁵ *Terry Poultry Co.*, 109 NLRB 1097, Members Murdock and Peterson dissenting from the finding of no violation. See also *Richardson Manufacturing Co.*, 109 NLRB 136, Member Peterson concurring, Member Murdock dissenting from the dismissal of the complaint.

(a) The 60-day "cooling-off" provision of section 8 (d)

Section 8 (d) of the act requires that a party to a collective-bargaining agreement who desires to modify or terminate the agreement give 60 days' notice of its intention to do so.⁵⁶ Following such notice there may be no lockout or strike "for a period of sixty days . . . or until the expiration date of such contract, whichever occurs later."⁵⁷ Employees who engage in a strike during this period lose their employee status vis-a-vis their employer until reemployed by him.⁵⁸

During fiscal 1955, the Board had to construe section 8 (d) in order to determine whether a striking union had, as contended by the employer, failed to observe the waiting requirement and whether the participants in the strike lost the act's protection.⁵⁹ The parties had a collective-bargaining contract which could be amended after a fixed date upon 60 days' notice. The contract also provided that in case of failure to reach a new agreement during the 60-day notice period the contract could be permanently terminated after another 60 days' notice by the party seeking such termination. Notice to amend was given by the union as provided in the contract. Negotiations for new contract terms were unsuccessful and the union called a strike after the end of the 60-day period following its notice to amend. A majority of the Board⁶⁰ held that the strike was lawful. According to the majority, in order to comply with section 8 (d) a union must withhold strike action until after the expiration of the 60-day notice period or the "expiration date" of the parties' contract if that date occurs later. The 60-day notice period in the view of the majority is the minimum, not the maximum, period during which strike action is unlawful.⁶¹ The majority pointed out, however, that here the end of the notice period coincided with the contract's "expiration date," as that term must be understood in the light of the legislative purpose of section 8 (d), so that a strike called at any time after that period was lawful. The holding that the parties' contract "expired"

⁵⁶ Section 8 (d) provides that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification."

⁵⁷ See section 8 (d) (4).

⁵⁸ See the last sentence of section 8 (d) which reads: "Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employees shall terminate if and when he is reemployed by such employer."

⁵⁹ *Lion Oil Co.*, 109 NLRB 680.

⁶⁰ Member Peterson concurring specially, Member Murdock dissenting.

⁶¹ The majority made it clear that if the contract expires before the end of the 60-day notice period, the end of the notice period is the controlling date. The Board's construction of section 8 (d) in the *Lion Oil* case was rejected by the Eighth Circuit Court of Appeals. See pp. 126-127. The Board has petitioned the Supreme Court to review the decision of the court of appeals.

is predicated on the view that the term "expiration date" in section 8 (d) refers not only to the terminal date of a collective-bargaining contract but also to the date agreed upon in the contract when the parties can effect changes in its provisions. Thus, the majority held, a contract expires for section 8 (d) purposes on (1) its terminal date if it is a fixed-term contract with no provision for reopening; (2) the earliest date on which modification or termination can become effective in the case of contracts with an automatic renewal clause and contracts providing for wage reopening at a prescribed period; and (3) at the end of 60 days following notice to terminate or modify a contract of indefinite duration.

Applying section 8 (d) as construed in *Lion Oil*, the Board held in a later case⁶² that employees lost the protection of the act by participating in a strike for contract modification after the statutory 60-day notice period had run out but before the contract had expired.

The Board had occasion during the past year to make clear that section 8 (d) cannot be invoked by an employer in defense of discrimination charges unless the employees did in fact engage in a "strike."⁶³ Thus, longshoremen who picketed boats they were prevented from loading by the owners during negotiations for contract modifications were held not to have violated the waiting provision of section 8 (d). The Board pointed out that where "employees desire to work under their contract but the employer refuses to permit them to work, there cannot be a strike."

(b) Breach of no-strike agreement

A strike which violates the specific terms of a union's contractual no-strike pledge is not protected by section 7 and subjects participants to employer discipline.⁶⁴ Thus, a strike found by a Board majority⁶⁵ to have been called in protest against what in fact were lawful discharges of fellow workers was held unprotected because it violated an agreement not to strike except "in connection with a general wage dispute arising as a result of a wage reopening" under the existing contract.⁶⁶ And employees who engaged in a 1-hour work stoppage for the purpose of presenting a grievance were held not protected against discharge because they were under a contract providing that trade disputes or grievances "shall be settled without cessation of work."⁶⁷ Similarly, the act was held not to protect a stoppage during working hours to attend a meeting away from the plant where the employees

⁶² *Snively Groves, Inc.*, 109 NLRB 1394.

⁶³ *Wakefield's Deep Sea Trawlers, Inc.*, 112 NLRB 1357.

⁶⁴ Participants in unprotected activities, other than strikes in violation of section 8 (d) (*supra*, p. 77), do not automatically lose employee status, but their status "may be terminated by affirmative and timely action of their employers." See, e. g., *Dorsey Trailers, Inc.*, 80 NLRB 478, 483.

⁶⁵ Chairman Farmer and Member Peterson dissenting from this finding.

⁶⁶ *California Cotton Cooperative Association*, 110 NLRB 1494.

⁶⁷ *Armstrong Cork Co.*, 112 NLRB 1420.

were to accept or reject the employer's latest offer on the settlement of a grievance.⁶⁸ Since no impasse had been reached regarding the settlement and the contractual grievance procedure had not yet been exhausted, the Board held that the union's action violated its undertaking not to engage in a strike during the settlement of a grievance.

(c) Partial strikes

The status of so-called "partial strikes" for the purpose of the protection of section 7 was involved in two cases during fiscal 1955. In one case,⁶⁹ the complaining union had decided to take action against what the Board found to have been an unlawful refusal to bargain (1) by filing unfair labor practice charges and (2) by instructing its members to work only 8 hours and to cut out the customary 1-hour overtime. On the day following, the employer was informed of this decision and a number of employees ignored the employer's 9-hour schedule and walked off at the end of 8 hours. Upon returning to work the next day, the employees who had struck refused the employer's request to submit to personal interviews without the presence of a union representative. They were then refused admittance to the plant. A majority of the Board⁷⁰ held that the employees in carrying out the union's instructions not to work overtime engaged in an unprotected partial strike.⁷¹ The majority pointed out that—

The vice in such a strike derives from two sources. First, the Union sought to bring about a condition that would be neither strike nor work. And, second, in doing so, the Union in effect was attempting to dictate the terms and conditions of employment. Were we to countenance such a strike, we would be allowing a union to do what we would not allow any employer to do, that is to unilaterally determine conditions of employment. Such a result would be foreign to the policy objectives of the act.

The fact that overtime had been unilaterally instituted by the employer, according to the majority, "did not privilege the union's resort to the partial strike as a self-help device, any more than the union would have been privileged to engage in a sit-down strike or slow-down to protest the [employer's] action." The argument that an otherwise unprotected partial strike becomes protected if it is the result of unfair labor practices was thus rejected.⁷²

⁶⁸ *Michigan Lumber Fabricators, Inc.*, 111 NLRB 579.

⁶⁹ *Valley City Furniture Co.*, 110 NLRB 1589.

⁷⁰ Members Rodgers and Beeson, with Chairman Farmer concurring.

⁷¹ Members Murdock and Peterson, dissenting, were of the view that the strike here was not *partial* because the employees actually struck but on one occasion and there was no *continuing* and *recurring* refusal to work overtime. The union's announced intention to strike similarly in the future alone was held not sufficient to make the strike an unprotected one, in the minority's view.

⁷² *The Mastro Plastics Corp.* rule [103 NLRB 511, Eighteenth Annual Report, p. 37] that the strike limitations of section 8 (d) are inapplicable to unfair labor practice strikes was considered inapposite.

Similar questions were presented in a later case.⁷³ Here, lack of success in its bargaining negotiations prompted the union to initiate a strike technique under which the utility company's employees were to work only 5 days a week and refuse to report on Saturdays and Sundays. The resulting weekend strikes were viewed by a majority of the Board⁷⁴ as unprotected activity in that they were based on the union's unilateral determination of work schedules in conflict with established and governmentally required continuous and uninterrupted transportation service. This, in the view of the majority, constituted a usurpation of the employer's right to determine schedules and hours of work which justified suspension of the strikers.

(d) Misconduct in concerted activities

Employees whose participation in an otherwise protected concerted activity is accompanied by serious misconduct may also forfeit the protection of the act. If an employer seeks to defend disciplinary action against an employee on the ground of such misconduct in connection with concerted activities, the Board must determine whether the nature of the misconduct justified the discipline and warrants the withholding of a remedial order in favor of the discriminatee.

As a general rule, misconduct confined to the use of unseemly language or name calling on the picket line "in a moment of animal exuberance" has been held no ground for denying an employee his statutory protection.⁷⁵ Conversely, strikers who resorted to violence and were arrested and convicted of assault have been held not entitled to a reinstatement order.⁷⁶

In one case, a majority of the Board held that employees who participated in a strike which was accompanied by acts of violence, destruction of property, and intimidation were not entitled to reinstatement even though they were not shown to have actually taken part in the misconduct.⁷⁷ The strikers involved were found to have welcomed, approved, and ratified the misconduct, and for that reason were held to have forfeited the act's protection. In the view of the majority, only employees who did not picket or otherwise lend affirmative aid to the strike had reinstatement rights.⁷⁸ The majority said:

The strikers cannot evade the duty they had to keep the strike activities within lawful bounds by professing obliviousness to the widespread violence, all committed in furtherance of the strike. Much of it was by identified or

⁷³ *Honolulu Rapid Transit Company*, 110 NLRB 1806.

⁷⁴ Member Murdock dissenting.

⁷⁵ See, for instance, *Longview Furniture Co.*, 110 NLRB 1734, citing *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 293.

⁷⁶ *Maurice Embroidery Works, Inc.*, 111 NLRB 1143.

⁷⁷ *B. V. D. Company, Inc.*, 110 NLRB 1412.

⁷⁸ Members Murdock and Peterson, dissenting, believed that strikers who were not personally guilty of misconduct were entitled to reinstatement. They further believed that to direct that they be reinstated would not have the effect of condoning striker excesses, and would be more conducive to industrial peace than to withhold remedial action.

unidentified strikers or pickets or by outsiders who came to the aid of the strikers either on the express invitation or with the tacit approval of the Union. Whether or not the strikers expressly authorized such conduct, it remains true that they invited and accepted the benefit of it and took no steps to discourage or repudiate it.⁷⁹ The fair inference is that at least those strikers who continued to picket during the violent strike welcomed, approved, and ratified such conduct.

In emphasizing that its decision did not hold "that strikers who are themselves blameless are responsible for the lawlessness of strangers," the majority said:

We are compelled to this conclusion because there is no evidence in the record that the strikers took any action at all—by admonishment, denunciation, or public pronouncement—to discourage the commission of violence or to disassociate themselves from it. We do not suggest, as the dissent states, that the strikers could have purged themselves only by abandoning their picketing. There were other avenues open to them by which they could have disavowed the misconduct. They chose none of them. We fail to see that the requirement that strikers keep their strike within legal bounds abridges their right to strike.

In another case, the Board had to determine whether the protection of the act could be invoked by employees who participated in a union-sponsored "Manpower Availability Conference" which had for its purpose to assist presently employed union members in securing other employment and, at the same time, to strengthen the union's bargaining position.⁸⁰ The trial examiner had concluded that the means employed to achieve the union's lawful objectives was unprotected because the potential damage resulting to the employer outweighed the worth of the benefits sought by the union. The Board rejected the test applied by the trial examiner. All members agreed that such weighing of potential benefit against potential damage would necessarily and improperly result in determining the status of concerted activities on the basis of a subjective value judgment. The majority opinion further pointed out that concerted activities for legitimate purposes are presumptively protected and that they lose their protected status "only when they contravene the policies of the act, or some other basic public policy." The fact that they are novel or may result in financial loss to the employer, according to the majority, is not controlling. Under this standard, the majority concluded, the Manpower Availability Conference was protected since in essence it was but a conditional threat that some employees would resign unless the union's stated wage demands, as to which an impasse had been reached in negotiations, were met. The majority rejected the conclusion of the trial examiner and the dissenting members that the

⁷⁹ Citing *Marshall Car Wheel and Foundry Co. of Marshall, Texas, Inc.*, 107 NLRB 314; *Marathon Electric Mfg. Corp.*, 106 NLRB 1171; Nineteenth Annual Report, pp. 86-88.

⁸⁰ *Boeing Airplane Co., Seattle Division*, 110 NLRB 147, Members Rodgers and Beeson dissenting.

activity here must be equated with that which had been condemned in the *Jefferson Standard Broadcasting* case.⁸¹ There, the *Boeing* decision pointed out, the union's direct attack on the employer's business was not related to any dispute with the employer and was calculated solely to injure his business, whereas the Conference was action clearly related to pending wage negotiations and had the legitimate purpose of broadening the employees' employment opportunities and lessening their dependence on the company for employment.⁸²

(e) Condonation of unprotected activities

It was again made clear, during the past year, that while an employer may discharge or otherwise discipline employees for engaging in unprotected activities, he may lose that right by condoning the employees' participation in such activities.⁸³ Thus, discrimination against strikers at the end of an unprotected strike was held unlawful in view of the fact that the employer, as late as 2 weeks before the end of the strike, had solicited the strikers to return to their prestrike jobs.⁸⁴

b. Rights of Economic Strikers

Employees who participate in lawful strikes generally are entitled to reinstatement by their employer. However, if the strike is for economic objectives and was not caused by unfair labor practices, the strikers may be permanently replaced. But this does not mean that an economic striker may be discharged before he has been replaced.⁸⁵ And the Board has frequently made it clear that the employer's right to replace economic strikers is defeated if the strike is prolonged by unfair labor practices.⁸⁶

In one case, the Board rejected the trial examiner's conclusion that an employer's asserted agreement to take back economic strikers "when we can" had conferred upon permanently replaced strikers a "preferential status in future hirings."⁸⁷ In the Board's view, failure to comply with such an agreement is not discriminatory as a matter of law. Permanently replaced strikers, according to the Board, "merely have the right not to be penalized for their concerted

⁸¹ *Jefferson Standard Broadcasting Co.*, 94 NLRB 1507, *affd. sub nom Local Union No 1229, IBEW v. N. L. R. B.*, 346 U. S. 464.

⁸² Members Rodgers and Beeson, dissenting, took the view that the conference device was unprotected because unlike a strike it was aimed at severing the employee-employer relation and the employer was not obliged to finance such injury to itself by retaining on its payroll those who fostered such a scheme.

⁸³ *California Cotton Cooperative*, 110 NLRB 1494

⁸⁴ *California Cotton Cooperative*, *supra*. Compare *Maurice Embroidery Works, Inc.*, 111 NLRB 1143; *Merok and Company, Inc.*, 110 NLRB 67, Member Murdock dissenting.

⁸⁵ See, e. g., *California Cotton Cooperative*, *supra*.

⁸⁶ See *Maurice Embroidery Works, Inc.*, *supra*; *Clinton Foods, Inc.*, 112 NLRB 239

⁸⁷ *Bartlett-Collins Company*, 110 NLRB 395, Chairman Farmer and Member Murdock not participating.

activity, and are not entitled to preferential status in hiring.” The Board concluded that where, as here, it is not shown that the refusal to rehire replaced economic strikers was discriminatorily motivated, no violation of section 8 (a) (3) may be found.

The right of replaced economic strikers to be considered for employment as vacancies occurred depended in one case on whether they had properly applied for such employment.⁸⁸ The Board here agreed with the trial examiner’s conclusion that the applications on which the strikers relied were in the nature of requests for reinstatement to their former jobs rather than applications for employment generally or employment applications of a continuing nature. The Board held that in the absence of a proper application of a continuing nature, the employer’s nondiscriminatory failure to consider replaced strikers for subsequent vacancies did not support a finding of a violation of section 8 (a) (3).⁸⁹

c. Rights of Employees in Case of Plant Removal or Shutdown

An employer who removes⁹⁰ or shuts down⁹¹ his plant because of union or other protected concerted activities of the employees violates section 8 (a) (3) and is liable for losses suffered by the employees because of the discrimination. But a complaint alleging that employees were discriminatorily locked out will be dismissed if the Board finds that the employer’s action was motivated entirely by economic considerations.⁹² During fiscal 1955, the Board also held again that where a member of an employer association is struck by the union which represents association employees jointly, the non-struck members may shut down their plants for defensive purposes.⁹³ In such a situation, no violation of section 8 (a) (3) will be found in the absence of evidence of antiunion motivation or evidence that the lockout was retaliatory.

(1) Remedial Provisions

In remedying the effects of the unlawful lockout in the *Andrews* case,⁹⁴ the Board took into consideration that the plant involved was

⁸⁸ *American Snuff Co.*, 109 NLRB 885.

⁸⁹ The Board considered the situation to be governed by the rule announced in *N. L. R. B. v. Pennwoven, Inc.*, 194 F. 2d 521 (C. A. 3), and *N. L. R. B. v. Childs Company*, 195 F. 2d 617 (C. A. 2).

⁹⁰ *Diaper Jean Mfg. Company*, 109 NLRB 1045, Member Peterson dissenting in part

⁹¹ *A. M. Andrews Company of Oregon*, 112 NLRB 626

⁹² *Diaper Jean Mfg. Company*, 109 NLRB 1045, Member Peterson dissenting in part; *Valley Steel Products Co.*, 111 NLRB 1338, Member Murdock dissenting.

⁹³ *Buffalo Linen Supply Co.*, 109 NLRB 447, Member Murdock dissenting; reversed *Truck Drivers Local 449 v. N. L. R. B.* (C. A. 2) 29 CCH Labor Cases ¶ 69,753, 37 LRRM 2546. Cf. *N. L. R. B. v. Davis Furniture Co.*, 197 F. 2d 453 (C. A. 9), discussed Eighteenth NLRB Annual Report pp 68-69.

⁹⁴ See footnote 91.

subsequently closed permanently for nondiscriminatory reasons. Back pay was therefore limited to the period between the shutdown and the final closing of the plant. The employer was directed to offer the employees reinstatement in the event that the operations which had been carried on at the closed plant should be resumed at the former or any new location. A majority of the Board, however, declined to direct also that the discriminatees be placed on a preferential hiring list at another plant of the employer. The majority noted that the closed plant had been a localized venture at a great distance from the main plant, that it was discontinued for economic considerations, and that the employees had no further expectation of employment with the employer.

In another case⁹⁵ where it was found that the employer discriminatorily discontinued maintenance operations, the Board's order provided for back pay and for reinstatement or preferential listing of the maintenance employees in any operation affording substantially equivalent employment for which they were qualified. These provisions, in the Board's view, sufficiently protected the employees' remedial rights and obviated the necessity of requiring the employer to restore the status quo and to give up operating methods it had found advantageous for nondiscriminatory reasons.⁹⁶

As in prior years the Board has had to deal with the special remedial problems which arise where changes in an employer's operations for discriminatory reasons are followed by a change in ownership.⁹⁷ In this respect the Board in the *Symms Grocer* case⁹⁸ announced its abandonment of the rule that a purchaser who acquires a business with knowledge of unfair labor practices on the part of the seller may, under certain circumstances, be responsible for remedying the unfair practices.⁹⁹

Applying the *Symms Grocer* rule, the Board in a later case¹ declined to direct its order both to the companies which committed the unfair labor practices and a corporation which subsequently carried on the business operated by the respondent companies. Here the Board pointed out that the successor corporation was not the *alter ego* of the latter. The corporation was formed, about a year after occurrence of the unfair labor practices, without any purpose of evading the act. Its plant had a new location, and a considerable amount of new capital had been brought into the business.

⁹⁵ *Adkins Transfer Company*, 109 NLRB 956.

⁹⁶ Compare *Diaper Jean Mfg. Co.*, 109 NLRB 1045, Member Peterson dissenting, where the back-pay order against several joint respondents was not supplemented with a reinstatement order because only one of them was still in business and the record did not show the nature of its current operation or whether it was presently in a position to offer reinstatement.

⁹⁷ See, e. g., *Diaper Jean Mfg. Co.*, *supra*.

⁹⁸ *Symms Grocer Company*, 109 NLRB 346.

⁹⁹ See *Alexander Milburn Company*, 78 NLRB 747.

¹ *Diaper Jean Mfg. Co.*, footnote 96, *supra*.

d. Particular Forms of Discrimination

Discrimination against employees in order to violate section 8 (a) (3) must affect the employee's "hire or tenure of employment or any term and condition of employment," and must have for its purpose "to encourage or discourage membership in any labor organization" in a manner not permitted by the union-security proviso of the section.

The act was held to have been violated in the foregoing sense by an employer who conditioned the reinstatement of individually interviewed strikers on their assurance that they would refrain from further striking.² The strikers were interviewed at a time when the striking union resisted the employer's demand for a 1-year no-strike agreement as a condition to the acceptance of the union's offer to have the strikers return to work. The Board held that the employer's conduct in requiring employees, as a condition of employment, (1) to give up adherence to their bargaining representative in the matter of their right to strike, and (2) to return after personal interview as individuals and not as a group, constituted unlawful discrimination as to the strikers who continued to adhere to the lawful bargaining position of their union.³

In another case, section 8 (a) (3) was held similarly violated when an employer insisted that employees, who desired to appeal from their suspension for rule infractions, process their grievances through a union other than their accredited bargaining representative.⁴ Failure to comply prevented the employees here from having their indefinite suspensions reduced in accordance with usual practice. Thus, the Board held, the employer's action resulted in discrimination in the tenure of employment of the suspended employees and therefore violated section 8 (a) (3).

(1) Disparate Treatment of Employees in Separately Represented Units

In one case,⁵ a majority of the Board held that the disparate treatment of employees in separate bargaining units, represented by different unions, did not constitute discrimination within the meaning of section 8 (a) (3). Here the employees in 1 of 2 units had been reimbursed for 1 day not worked during a plant shutdown, but no similar payment had been made to the employees in the second unit. The reason assigned by the employer for the disparate treatment was its failure to give advance notice of the impending shutdown to the favored unit's representative. In the view of a majority of the Board,

² *Lion Oil Co.*, 109 NLRB 680, set aside on other grounds 221 F. 2d 231 (C. A. 8).

³ Compare *Valley City Furniture Co.*, 110 NLRB 1589, where similar conduct was not held discriminatory because the strike there was found to be unprotected.

⁴ *Eastern Massachusetts Street Railway Co.*, 110 NLRB 1963, Member Beeson dissenting in part. The employer's violation of section 8 (a) (2) in this case is discussed at p. 75.

⁵ *Anheuser-Busch, Inc.*, 112 NLRB 686, Member Murdock dissenting on this point, Chairman Farmer dissenting on another point.

the rules laid down by the Supreme Court in the *Radio Officers' Union* and companion cases,⁶ precluded a finding that section 8 (a) (3) was violated (1) because there was no independent evidence that the employer's action was unlawfully motivated, or in fact that the employer had a reason other than the one stated, and (2) because the discrimination did not inherently encourage or discourage union membership and therefore did not give rise to the presumption that such encouragement or discouragement was intended. The majority said:

That the act was so designed as to afford groups of employees of an employer the utmost freedom in their choice of a bargaining representative by permitting them to select such representatives in separate bargaining units, indicates that the statutory scheme did not contemplate that disparate treatment among employees in different separate units *along unit lines* would, by itself, give rise to a finding of discrimination. To hold otherwise would create a wholly unrealistic requirement that would impose intolerable conditions on an employer who had concurrent bargaining relationships with separate bargaining agents representing separate units of employees in the same or other plants of the employer. As we view it, an untold variety of factors and circumstances may exist which from the very nature of the different units and from the differences in bargaining relationships would render any attempt at inferring discriminatory motivation both speculative and futile.

In our opinion, where, as here, the employer accords an economic benefit to the employees in a separate unit represented by its own bargaining agent without according like treatment to the employees in another unit represented by another bargaining agent, there is clearly no inherent unlawful intent.

(2) Preferential Hiring

The Board had occasion during the past year to point out again that section 8 (a) (3) is violated where an employer hires employees through a union so as to give preference to its members. Thus, the Board said in one case,⁷ "it is unlawful for an employer to hire 1 employee rather than another because the employee hired is a union member⁸ or for an employer, as between 2 union members, to hire 1 because he alone is sponsored by the Union." Such discrimination against an employee on the basis of union sponsorship, the Board added, establishes a violation of section 8 (a) (3) under the Supreme Court's decision in the *Radio Officers' Union* case.⁹

e. Discrimination Under Union-Security Agreements

A proviso to the general prohibition of section 8 (a) (3) against discrimination permits an employer and the majority representative

⁶ *Radio Officers' Union v N. L. R. B.*, 347 U. S. 17. See Nineteenth Annual Report, p. 178.

⁷ *Turner Construction Company*, 110 NLRB 1860. Member Murdock dissented from the finding of a violation on the evidence in the case.

⁸ Citing *Bickford Shoes, Inc.*, 109 NLRB 1346.

⁹ Cited footnote 6, above. Compare the cases dealing with illegal hiring agreements, pp. 87-89.

of his employees to enter into a union-security agreement requiring employees to acquire union membership within a specified 30-day grace period, and thereafter to maintain membership during the life of the agreement. A union cannot validly make such an agreement unless it has filed non-Communist affidavits and complied with the other filing requirements of section 9 of the Act.

(1) Validity of Union-Security Agreements

An employer who relies on a union-security agreement in defense of discrimination charges must show that the agreement is valid and that its terms conform to the statutory limitations.¹⁰

The Board announced during fiscal 1955 that where a union-security agreement is invalid on its face, parol evidence will not be accepted to establish the modification of the parties' written union-security agreement.¹¹ The Board here said:

We so rule because the obvious effect of permitting oral evidence in such circumstances would be to establish unlimited opportunity for avoiding responsible compliance with the Act. Moreover, a requirement that union-security clauses be modified in writing will not impose an undue burden on parties with a bona fide intent to change a written union-security provision.

A union-security agreement containing both valid and invalid clauses has been held invalid in its entirety where the clauses were related and inseparable parts of the parties' union-security arrangement.¹²

In one case, the Board rejected the trial examiner's conclusion that a preferential hiring agreement which amounted to a closed-shop arrangement was outside the ban of section 8 (a) (3) because preference was granted an employees' association as landlord of the plant involved rather than as the employees' bargaining agent.¹³ For, the Board here pointed out,

Where disparate treatment, such as preference in employment, is accorded, as here, on the basis of union membership, the employer's reason, be it business expedience or otherwise, for according such preference is irrelevant, as the preference itself is not within the employer's allowable freedom of action. The preference granted here is unlawful in that it granted the Association a type of job monopoly which Congress intended to withhold without regard to the employer's motive in granting the preference.

The Board went on to say:

Nowhere in the legislative history is there any indication that applicability of the statutory ban is dependent upon motive or on any other circumstance surrounding the granting of a closed shop or any other union-security arrangement falling outside the permissive scope of Section 8 (a) (3).

¹⁰ See *Construction and General Laborers Union, Local 320*, 96 NLRB 118

¹¹ *Jersey Contracting Corp.*, 112 NLRB 660.

¹² *Convvar, a Division of General Dynamics Corporation*, 111 NLRB 1055. The illegal clause is discussed at p. 89.

¹³ *Bickford Shoes, Inc.*, 109 NLRB 1346, Member Beeson dissenting.

(a) The 30-day grace period

The proviso of section 8 (a) (3) requires that employees subject to a union-security agreement be accorded 30 days from the date of the agreement or the date of their subsequent employment, whichever is later, in which to acquire membership in the contracting union.

The Board held in 1 case during fiscal 1955 that an employee who had been separated from the bargaining unit during the life of a union-security agreement and had resigned from the contracting union was entitled to 30 days' grace for rejoining the union after his reemployment in the unit.¹⁴ The employee, upon being rehired, the Board held, was in the position of an employee hired for the first time who had never been a member of the union. A contract provision requiring employees who are separated from the bargaining unit while members of the contracting union to resume paying membership dues immediately after reentering the unit was therefore held invalid, and the maintenance and enforcement of the provision was held to have constituted a violation of section 8 (a) (3) on the part of the contracting employer.

Another case involved the validity of a union-security clause which did not expressly provide a grace period for old employees who were not union members at the time the clause became effective.¹⁵ A majority of the Board was of the view that the omission of such an express provision should not be held to invalidate the entire union-security agreement under the circumstances. The majority pointed out that, while the 30-day grace requirement must be read into every union-security agreement, the failure to provide for it expressly does not necessarily invalidate the agreement. Collective-bargaining contracts, the majority continued, are "practical working agreements frequently drawn by laymen unschooled in the niceties of legal draftsmanship."¹⁶ Moreover, the majority noted, there were no employees in this case who were not members of the union when the union-security agreement became effective, so that there was no practical need for including an apparently superfluous provision in the contract.¹⁷

(b) Provisions in excess of permissible union security

Contract provisions which tend to insure union membership or support other than as permitted by the union-security proviso of section 8 (a) (3) are illegal and their enforcement by the contracting employer violates the antidiscrimination provisions of the section.

¹⁴ *Conwair, a Division of General Dynamics Corporation, supra.*

¹⁵ *Whyte Manufacturing Co.*, 109 NLRB 1125, Member Rodgers dissenting.

¹⁶ See *N. L. R. B. v. United Electrical Workers, Local 622 (UE)*, 203 F. 2d 673 (C. A. 3), from which the majority quoted.

¹⁷ To like effect is *Special Machine and Engineering Co.*, 109 NLRB 838, Member Rodgers dissenting on this point.

Violations of this type were again found where employers performed agreements requiring them to give preference in hiring to persons who were members of or had been cleared by the contracting union.¹⁸

The Board also had occasion to reaffirm its view that the act is violated by a provision in a collective-bargaining agreement which delegates to the contracting union complete control over seniority of the employees.¹⁹ Such a provision, according to the Board, has the tendency to unlawfully encourage union membership.

The union-security proviso of section 8 (a) (3) permits discrimination against employees only for nonpayment of dues and initiation fees. The Board has, therefore, held that the act is violated by an agreement requiring the payment of general union assessments, in addition to initiation fees and monthly union dues, as a condition of employment.²⁰ However, in the absence of a showing of any attempt or intent to enforce the unlawful provision, the Board found that retention of the provision in the contract constituted a violation of only section 8 (a) (1), but not also of section 8(a) (3).²¹

(2) Application of Union-Security Agreements

Union-security agreements may be enforced only for the purpose of compelling the payment of initiation fees and periodic dues uniformly required by the contracting union as a condition of union membership.²² If the employer has reasonable grounds for believing that the union seeks to enforce its agreement against an employee for reasons other than his failure to tender his periodic dues or initiation fee, discrimination against the employee is unlawful. In view of these limitations, an employer was held to have violated the act by enforcing union-security provisions so as to require employees to forego their right to change representatives and to continue the incumbent contracting union as their bargaining agent.²³

Several cases where employees complained of improper application of otherwise valid union-security agreements during the past year in-

¹⁸ See, e. g., *Daugherty Co.*, 112 NLRB 986; *The Babcock & Wilcox Co.*, 110 NLRB 2116; *Bickford Shoes, Inc.*, 109 NLRB 1346; *Golden Valley Electric Association, Inc.*, 109 NLRB 397. Compare *Maxon Construction Co.*, 112 NLRB 444 (Intermediate Report).

¹⁹ *North East Texas Motor Lines, Inc.*, 109 NLRB 1147. See also *Munneapolis Star and Tribune Co.*, 109 NLRB 727; Member Murdock, dissenting, believed that the seniority clause here was not *per se* violative of the act.

²⁰ *Convair, a Division of General Dynamics Corporation*, 111 NLRB 1055. Compare *United Brotherhood of Carpenters, Local 2181 (J. C. Boespflug Co.)*, 109 NLRB 874, where the Board held that a union unlawfully conditioned continued employment not only on the payment of dues and initiation fees, but also on a minimum of 12 months' membership or proof of property ownership in Alaska where the employer's business was located.

²¹ See *Convair*, footnote 20, above.

²² "Membership" for union-security purposes means not only bare membership, but also membership in good standing. *Radio Officers' Union, AFL v. N. L. R. B.* (and companion cases), 347 U. S. 17; Nineteenth Annual Report, p. 118.

²³ *Whyte Manufacturing Company*, 109 NLRB 1125.

volved questions as to (1) the adequacy of the employee's tender of his union dues, (2) whether the delinquency on which the employee's discipline was based involved "dues" within the meaning of section 8 (a) (3), and (3) whether at the time of discrimination the employer, in fact, had cause to believe that the union's request was prompted by reasons other than dues arrears.

(a) Sufficiency of tender of dues

The Board during fiscal 1955 held that discrimination against a delinquent union member is unlawful if at any time before the discrimination the employee has made a proper tender of his arrears.²⁴ Overruling the *Chisholm-Ryder* case²⁵ insofar as inconsistent, the Board announced that—

a full and unqualified tender made anytime prior to actual discharge, and without regard as to when the request for discharge may have been made, is a proper tender and a subsequent discharge based upon the request is unlawful

The complaining employee in this case, having made the maximum tender demanded after the union requested her discharge, was held protected against subsequent discharge by the employer.

In another case,²⁶ the Board reaffirmed the rule that an employee's failure to tender periodic union dues does not justify discrimination against him if it is shown that payment would not have been accepted except upon the concurrent tender of assessments.²⁷ Here, the union's established policy not to accept dues unless accompanied by strike fund assessments was held controlling in determining that a tender of dues alone would have been futile. The Board further held that employees whose dues the union misapplied by crediting them to assessments were not required to have the misapplication rectified and then to continue to tender their dues. The Board pointed out that the misapplication of the employees' dues further indicated the existence of the union's unlawful policy and the consequent futility of a renewed tender of dues by the employees.

(b) "Dues"

One case involved the question whether a general quarterly "defense fund assessment," levied in addition to monthly dues, constituted "periodic dues" payment of which could be compelled under the union-security clause of a collective-bargaining agreement.²⁸ The Board found that the additional charge was clearly intended to be a general assessment rather than an increase in membership dues. A majority

²⁴ *Aluminum Workers Local 135, AFL (Metal Ware Corp)*, 112 NLRB 619. The employer in this case was not charged with having violated section 8 (a) (3).

²⁵ *Chisholm-Ryder Company*, 94 NLRB 503 (1951)

²⁶ *Peerless Tool and Engineering Co*, 111 NLRB 853

²⁷ See *Eclipse Lumber Co, Inc.*, 95 NLRB 464, 467, enforced 199 F 2d 684 (C A. 9)

²⁸ *Anaconda Copper Mining Co.*, 110 NLRB 1925

of the Board²⁹ further concluded that, being in the nature of an assessment, the additional payment *per se* was excluded from the statutory term "periodic dues." The majority rejected the view that that term applies to general assessments which, like this one, are periodic and uniformly levied to defray the union's general financial obligations. According to the majority, the use in the union-security proviso of the descriptive adjective "periodic" does not mean "that all periodic union demands upon employees for money constitute dues."

The majority opinion said further:

We do not hold, of course, that this Union, or any other, may not increase the periodic dues which all its members, covered by proper union-security contracts, can be compelled to pay in order to keep their jobs. All that the membership need do is express their desires concerning dues in unmistakable terms. In this case, they expressly voted not to increase the dues.

(c) Employer's duty to ascertain nature of employee's delinquency

Discrimination against employees in the performance of a union-security agreement violates section 8 (a) (3) if the employer had reasonable grounds for believing that the union's request for disciplinary action was not based on the employee's dues delinquency. The Board held, during the past year, that an employer could not lawfully coerce an employee into paying, in addition to his regular monthly dues, an amount which the employee claimed was an assessment and which the union claimed was dues.³⁰ A majority of the Board, having found that the quarterly assessments involved did not come within the statutory term "periodic dues,"³¹ made it clear that the employer, after choosing to rely on the union's interpretation without inquiring into the basis of it, had to accept the risk that the union's interpretation was legally incorrect. Under these circumstances, the majority held, the employer had reasonable grounds for believing that the union requested the delinquent employee's discharge for reasons other than his failure to pay dues.

In another case, where the employer was similarly found to have unlawfully suspended an employee at the request of the union, the Board took into consideration that the employer deducted the union dues of its employees and that the company official who effected suspension had no reason to believe that the employee was delinquent in dues.³²

In one case, however, where a union was found to have requested the discharge of an employee, not because of his admitted dues delinquency, but for his rival union activity, the Board dismissed the discrimination charges against the employer in the absence of evidence.

²⁹ Member Murdock dissenting

³⁰ *Anaconda Copper Mining Co.*, *supra*, Member Murdock dissenting.

³¹ See p. 90.

³² *Chun King Sales, Inc.*, 110 NLRB 1151.

that the latter had reasonable grounds for believing that the employee's delinquency was not the reason for the union's discharge request.³³

4. Refusal To Bargain in Good Faith

Under section 8 (a) (5) it is an unfair labor practice for an employer to refuse to bargain in good faith about wages, hours, and other conditions of employment with the representative which a majority of the employees in an appropriate unit have selected as their bargaining agent.

a. Majority Status of Representative

In order to sustain refusal-to-bargain charges, the complaining union must be shown to have had majority status in an appropriate bargaining unit at the time of the refusal. If the refusal occurred within a certain time after the complaining union's certification or contractual recognition, the union's majority status ordinarily will be presumed to have continued throughout the crucial period.³⁴ On the other hand, in situations where the presumption is not operative, the employer may challenge the union's majority status, provided he does so in good faith.³⁵ The employer may then insist on an election and need not accept majority proof in the form of union authorization cards. However, the Board during fiscal 1955 reaffirmed the rule that if insistence on an election and rejection of the union's offer of other evidence is not in good faith, but is a device for evasion of the statutory bargaining duty, a violation of section 8 (a) (5) will be found if the union actually had majority status.³⁶

While a section 8 (a) (5) proceeding may thus serve to establish the majority status of a union which has been denied recognition, a majority of the Board in the *Aiello* case³⁷ imposed a limitation on the right of a union to have its bargaining rights determined in such a proceeding. The majority announced that where the complaining union previously lost a Board election in which it participated with knowledge of antecedent unfair labor practices on the part of the employer, the union will not be allowed to assert the same conduct in an unfair labor practice proceeding for the purpose of a redetermination of its bargaining rights. The majority said:

³³ *Special Machine and Engineering Co.*, 109 NLRB 838. The Board, Chairman Farmer and Member Murdock dissenting, found the union in violation of section 8 (b) (2) and ordered it to reimburse the employee for his lost wages. See also *The Great Atlantic & Pacific Tea Company (Pittsburgh Bakery)*, 110 NLRB 918.

³⁴ See p. 121.

³⁵ See Nineteenth Annual Report, p. 96.

³⁶ *A. L. Gilbert Co.*, 110 NLRB 2067, Members Murdock and Peterson concurring and dissenting in part. Compare *Leiter Mfg. Co.*, 112 NLRB 843.

³⁷ *Aiello Dairy Farms*, 110 NLRB 1365, Member Peterson dissenting. The earlier *Davidson Company* case, 94 NLRB 142, was overruled insofar as inconsistent, on the ground stated by Member Murdock in his dissenting opinion there.

Had the Union earlier filed its charge of refusal to bargain, the Board under its long standing practice would not have conducted the representation election until the charges were disposed of. Nor would the Board have accepted a waiver of such a charge as sufficient reason for permitting the election to proceed. A reason for this is that although either a representation proceeding or an unfair labor practice proceeding alone might be, in the light of the particular circumstances, the procedure appropriate for establishment of the Union's status, both cannot at once be appropriate because they are based on fundamentally different premises. Thus for the Board to proceed upon a representation petition requires the Board to find that a question of representation exists, to be resolved by an election. On the other hand, a charge of unlawful refusal to bargain under Section 8 (a) (5) of the Act must allege in effect that there is no question of representation and that the union involved is in fact the exclusive representative, with whom the employer is legally required to bargain. The bases of the two proceedings are thus mutually inconsistent. [Footnote omitted.]

The Board also expressed the view that it should not be compelled to diffuse its energy and public funds in what it considered to be useless and repetitive proceedings. Nor, according to the majority, does court approval of the former practice of entertaining section 8 (a) (5) proceedings under circumstances such as were here involved, preclude the Board from now requiring a labor organization to make a timely selection of inconsistent remedies in the interest of sound administration.

The *Aiello* rule was applied in a later case where the complaining union likewise sought to establish its bargaining rights in a section 8 (a) (5) proceeding after having participated in an election with knowledge of pre-election unfair labor practices.³⁸ However, since the representation proceeding was still pending, the Board set the election aside because of the employer's intervening conduct, in accordance with the *A & P* nonwaiver rule.³⁹

On the other hand, the *Aiello* rule was held not to apply where a union filed unfair labor practice charges after an election it had won, but before certification.⁴⁰ The charges here were based on the employer's refusal of the union's postelection request for recognition and on other unlawful conduct which dissipated the union's majority status. The Board noted that as soon as the union was aware of the facts it elected to file charges and to withdraw its pending representation petition.

(1) Presumption of Majority Status

The employer's duty to recognize a bargaining agent whose majority status has been established is not automatically suspended whenever there is evidence that the representative lost its majority support. Thus, the Board has consistently held that the employer must continue to bargain where its own unfair labor practices caused

³⁸ *Franchester Corp.*, 110 NLRB 1391.

³⁹ *The Great Atlantic and Pacific Tea Co.*, 101 NLRB 1118; see pp. 65-66.

⁴⁰ *Alexander Mfg. Co.*, 110 NLRB 1457.

the loss of majority.⁴¹ And in the case of a Board certification, or the existence of a contract, the representative's majority status ordinarily is presumed to continue.

(a) The 1-year certification rule

The Board has adhered to the rule that absent "unusual circumstances" an employer must bargain with the certified representative of his employees for a reasonable time, normally at least 1 year.⁴²

In one case, a majority of the Board held that this rule required the employer to bargain with the complaining union regarding the renewal of its contract which expired during the certification year.⁴³ The majority rejected the view that the union's request for extending the new contract beyond the certification year relieved the employer from its duty to bargain further, particularly because a majority of the employees in the bargaining unit had notified the employer that they did not wish to be represented by the union after the expiration of the current contract. The majority pointed out that the certified union was under no obligation to limit its bargaining proposal to a contract expiring not later than the anniversary of its certification. The term of the new contract, the majority observed, was a bargainable matter. Consequently, if the employer had a good-faith doubt as to whether the union's majority would continue beyond the period of certification, and was unwilling to make a new contract to extend beyond the certification year, it was the employer's statutory duty at least to indicate its willingness to make a contract for a term coextensive with the remainder of the certification year. According to the majority, this view is consonant with that expressed in the earlier *Hinde & Dauch*⁴⁴ and *Vulcan Steel*⁴⁵ cases. There, the employer's good-faith doubt regarding the union's majority during the certification year was held to be a legitimate ground for a proposal to contract only to the end of the certification year. In those cases, the majority noted, the employer was willing to bargain with the complaining union during the unexpired portion of its certification year, whereas here the employer refused to do so. Finally, the majority held that the *Ludlow Typograph* rule,⁴⁶ invoked by the dissenting member, was inapplicable because it was made in a representation case.⁴⁷

⁴¹ See, e. g., *Ideal Roller and Mfg Co*, 109 NLRB 282.

⁴² The rule received Supreme Court approval during the past year in *Ray Brooks v. N. L. R. B.*, 348 U. S. 96. The Supreme Court's decision is discussed at p 121.

⁴³ *American Steel Foundries, Cast Armor Division*, 112 NLRB 531; Member Rodgers dissenting.

⁴⁴ *Hinde & Dauch Paper Co.*, 104 NLRB 847

⁴⁵ *Vulcan Steel Tank Corp.*, 106 NLRB 1278.

⁴⁶ *Ludlow Typograph Co.*, 108 NLRB 1463, which held that a representation question may be raised during the certification year where the contract made by the certified union and the employer expires during the certification year.

⁴⁷ Member Rodgers, dissenting, took the view that in this case the employer also was entitled to raise the question of the union's repudiation by the employees.

The Board also held during the past year that the loss of majority status by a union during its certification year, whether caused by turnover of employees in the bargaining unit⁴⁸ or by repudiation by employees who objected to the certified unit,⁴⁹ did not constitute unusual circumstances which relieved the employer from its bargaining obligation.

(b) Effect of contract

In one case⁵⁰ the Board held that an employer violated section 8 (a) (5) by withdrawing recognition from a union upon receipt of revocations of checkoff authorizations from a majority of the employees in the bargaining unit.⁵¹ At the time the employer terminated bargaining relations, the union's certification year had expired but its current contract still had about 1 year to run. The Board pointed out that under applicable contract bar rules a representation petition, whether filed by the employer or a rival union, would not have been entertained at the time, because the subsisting contract barred the raising of a valid question of representation. Thus, the employer was under a continuing obligation to bargain with the union. "Otherwise," the Board said, "we should have the anomalous result of an employer being permitted unilaterally to redetermine his employees' bargaining representative at a time when the Board would refuse to make such a determination because the time is inappropriate for such action."

In an earlier case, the Board similarly applied contract bar rules in determining that the employer was obligated to bargain with a certified unaffiliated union even though some of its members and officers had transferred to an affiliated union which requested recognition.⁵² The Board held that the employer here did not violate section 8 (a) (5) by refusing to honor the latter's request. There having been no true schism in the certified union, which continued to function, its unexpired contract was held to bar the affiliated union's recognition request from raising a valid question of representation. The *Harris-Woodson* doctrine⁵³ was held inapplicable here because the new affiliated union was not the *alter ego* of the certified union and was in the same position as any union which during the life of a valid bargaining contract succeeds in diverting to itself a majority of the employees in the contract unit.

⁴⁸ *Sam'l Bingham's Son Mfg Co.*, 111 NLRB 508, see also *Santa Clara Lemon Assn.*, 112 NLRB 93.

⁴⁹ *The Baker and Taylor Co.*, 109 NLRB 245

⁵⁰ *Hexton Furniture Co.*, 111 NLRB 342.

⁵¹ No exception had been taken to the trial examiner's conclusion that the cancellation notices were intended as repudiation of the union. The Board pointed out, however, that ordinarily such cancellations are not the equivalent of withdrawals from the union.

⁵² *Sears Roebuck and Co.*, 110 NLRB 226

⁵³ *Harris-Woodson Co., Inc.*, 77 NLRB 819, amended 85 NLRB 1215, enforced 179 F. 2d 720 (C. A. 4)

b. Appropriateness of the Unit

The Board during fiscal 1955 reaffirmed the general rule that, in defending against refusal-to-bargain charges, an employer is not permitted to relitigate the appropriateness of the bargaining unit previously determined in a representation proceeding, except if there is evidence of changes in the facts considered, or new evidence not available to the employer in the representation proceeding.⁵⁴ This rule, the Board held, is applicable both where the bargaining unit has been determined on record of a hearing and where the parties have stipulated the determinative facts for the purpose of a consent election.⁵⁵ The Board, therefore, declined to determine the appropriateness of a stipulated unit where the respondent employer did not contend that it had any facts not in existence at the time of the stipulation, or that the stipulated unit was so arbitrary that its approval by the regional director was an abuse of his discretion.

c. Subjects for Bargaining

The subjects as to which an employer must bargain with the majority representative of his employees are specified in section 9 (a) and include "rates of pay, wages, hours of employment, or other conditions of employment."

(1) Stock-Purchase Plan

In one novel case⁵⁶ the Board held that an employer's stock-purchase plan for employees was a matter for compulsory bargaining, and that the unilateral adoption of the plan and the employer's refusal of the union's request to bargain with respect to it violated section 8 (a) (5). The plan was voluntary and was open to all regular employees within certain age limits who had at least 1 year's service. Member employees had to authorize monthly payroll deductions of not less than \$5 and not over 5 percent of their earnings for the month. Employer contributions were to amount to 50 percent of the monthly member-employee contributions plus an annual contribution which depended upon the ratio of profits to invested capital. Except for certain reserves, the accumulated funds were to be used by the trustee under the plan for the purchase of shares of the employer's common stock. The plan provided a formula for distribution to employee members upon termination of service or withdrawal from the plan. Member-interests were not assignable.

⁵⁴ *The Baker and Taylor Co.*, 109 NLRB 245; see also *Esquire, Inc. (Coronet Instructional Films Div.)*, 109 NLRB 530, enforced 222 F. 2d 253 (C. A. 7).

⁵⁵ *Ibid.*

⁵⁶ *Richfield Oil Corp.*, 110 NLRB 356; Member Beeson dissenting; enforced C. A., D. C., January 16, 1956, 56 ALC 164, 29 CCH Labor Cases ¶ 69,690, 37 LRRM 2327.

The majority of the Board concluded that benefits to employees from a plan such as this constitute "wages" for the purpose of the act, since that term has been construed to include "all emoluments of value which may accrue to employees because of their employment relationship." According to the majority, the employer's contributions to the plan clearly resulted in benefits to employee members which constituted an "emolument of value" and were part of the compensation for labor and differed from weekly wages only in form and time of payment. Moreover, the majority concluded, the stock purchase plan here also must be considered to be a "condition of employment" in the statutory sense regardless of its optional nature. Finally, the majority rejected the employer's contention that compulsory bargaining on such a plan would conflict with the act's policies in that (1) it would compel the employer to bargain about business ownership and control, and (2) it would afford the union a seat on both sides of the bargaining table. As to (1), it was pointed out that all that was involved was an incidental effect bargaining on the plan may have upon aspects of business ownership and control, an effect not substantially different from that which may also result from bargaining on such judicially recognized subjects of compulsory bargaining as retirement and pension plans, group health and insurance programs, merit wage increases, and profit-sharing plans. As to (2), the majority noted that under the act the union is entitled to represent the employees, including stockholders, only in their capacity as employees.

(2) Plant Removal

The employer's duty to bargain concerning the effect on the tenure of employees of a contemplated removal of the employer's plant to a new location was affirmed during fiscal 1955. In one case,⁵⁷ the employer had advised the union of its contemplated move. However, no opportunity was afforded the union to discuss the transfer of employees to the new location, although the employer made job offers to individual employees. The fact that the employer was under no duty to grant "first preference" to employees at the old location for jobs at the new location was held not to have justified the employer's refusal to discuss the matter with the union.

In another case,⁵⁸ the employer was held to have similarly violated section 8 (a) (5) by failing to advise the complaining union of a projected plant removal, and by failing to bargain as to the effect of the removal on the tenure of the employees involved. Section 8 (a) (5) was held to have been further violated because the employer's operation at the new location was a "runaway shop" and was a device for avoiding the employer's bargaining obligation.

⁵⁷ *Bickford Shoes, Inc*, 109 NLRB 1346, Member Beeson dissenting.

⁵⁸ *Diaper Jean Mfg. Co.*, 109 NLRB 1045.

d. Violation of Duty To Bargain

An employer violates his statutory duty to bargain if he fails to negotiate with the representative of his employees in good faith as that term is defined in section 8 (d),⁵⁹ and if he engages in conduct which is inconsistent with the concept of collective bargaining.

(1) Refusal To Furnish Information

The scope of an employer's duty to supply information in its possession for the purpose of carrying on bargaining negotiations has continued to require Board determination.

As to detailed wage information, the Board in *Boston Herald*⁶⁰ reaffirmed the now well-established rule that "an employer is required to furnish the union representing its employees with the name and earnings of each employee in the appropriate unit in order to make collective bargaining effective." It also was again made clear that in requesting such information the union need not show its precise relevancy to specific bargaining issues. Noting that relevancy is not readily apparent in advance, the Board reiterated that, as long as the requested information relates to wages or fringe benefits, it is related to the bargaining process and the union is entitled to receive it.⁶¹

Moreover, such information must be supplied within a reasonably prompt time, and it must cover all, not merely some, of the employees in the bargaining unit.⁶²

In *Boston Herald*, the Board specifically rejected the employer's contention that the foregoing principles did not apply because the requested information was not necessary to the bargaining which was primarily concerned with minimum wage rates. The Board pointed out that, even if the individual wage rates the employer refused to furnish did not bear directly on the contract issue, they were nevertheless useful in that they might disclose factors in the employer's wage structure which could affect the union's approach to the minimum wage issue and its bargaining on wages generally.⁶³ As to the employer's assertion of hardship, the Board held, as it had held in a prior case against the same employer,⁶⁴ that a possible objection by some employees to the disclosure of their individual wages, and the chances of "piracy" of key personnel by competing employers, were not factors which could be taken into consideration in the face of the expressed purposes of the act.

⁵⁹ See, e g., *Bewley Mills*, 111 NLRB 830; *San Angelo Standard, Inc.*, 110 NLRB 1091
⁶⁰ *Boston Herald-Traveler Corp.*, 110 NLRB 2097, enforced 223 F. 2d 58 (C. A. 1), see p. 133

⁶¹ The Board quoted from Chairman Farmer's concurring opinion in *Whitin Machine Works*, 108 NLRB 1537.

⁶² *Utica Observer-Dispatch, Inc.*, 111 NLRB 58.

⁶³ To the same effect *Utica Observer-Dispatch, Inc.*, *supra*.

⁶⁴ *Boston Herald-Traveler Corp.*, 102 NLRB 627, enforced 210 F. 2d 134 (C. A. 1).

The question of the relevancy of the employees' wishes regarding wage disclosure also had to be considered in a case where the employer did not honor the union's request until after it had questioned the employees individually as to whether the data should be released to the union.⁶⁵ The action was held to be a violation of the employer's bargaining duty, the Board pointing out that the right of a bargaining agent to wage data is an unconditional one and cannot be made to depend on the consent of individual employees or anyone else.⁶⁶

In one case, the Board further held that the complaining union was entitled to individual wage data whether requested for the purpose of pending negotiations of a general wage adjustment or in order to facilitate the administration of the current collective-bargaining agreement.⁶⁷ Here it was pointed out that the employer's duty to supply necessary information is not limited to the period of contract negotiations, but continues after a contract has been executed. According to the Board, the union's need for current and authoritative information in connection with administering its contract is as real as when contract negotiations are in progress.

However, in one case an employer was held not required to furnish data as to a general merit increase and other wages for the sole purpose of processing rating grievances under a contractual merit system.⁶⁸ The Board pointed out that the union was entitled to pertinent rating review information but could not insist on such additional information as would, in effect, return the entire agreed merit system to the bargaining table.

In one case, the Board held that a union may request that an employer who seeks to justify the refusal of a wage demand upon an economic basis substantiate his position by reasonable proof.⁶⁹ Failure of the employer to do so was held a violation of section 8 (a) (5).⁷⁰

(2) Bypassing the Employees' Representative

The employer's statutory duty to bargain exclusively with the majority representative of the employees is violated where the employer deals with the employees directly or with a representative other than the accredited representative. Thus, it was held that an employer could not lawfully recognize as the representative of one of its

⁶⁵ *Utica Observer-Dispatch, Inc., supra.*

⁶⁶ Compare *F. W. Woolworth Co.*, 109 NLRB 196, where a majority of the Board found that the questioning of 2 out of 70 employees in the bargaining unit as to whether they wished to have their wages disclosed to the union did not violate the act under the circumstances of the case

⁶⁷ *F. W. Woolworth Co., supra*, Members Murdock and Peterson dissenting on another point, see footnote 66, above

⁶⁸ *Avco Mfg. Corp. (Lycoming Division)*, 111 NLRB 729

⁶⁹ *Truitt Mfg. Co.*, 110 NLRB 856.

⁷⁰ The denial by the Fourth Circuit of enforcement of the Board's order in this case is now pending before the Supreme Court.

divisions 1 of 11 local unions which, acting jointly, represented all the company's employees in a companywide unit.⁷¹

In the matter of unilateral action and disregard of the employees' representative, the Board during fiscal 1955 reiterated its view that the "vice in such unilateral action is that it undermines the authority of the bargaining representative and indicates a lack of good faith in entering into or pursuing bargaining negotiations."⁷² However, unilateral action is not under all circumstances an indication of a failure to bargain in good faith.⁷³ In one case,⁷⁴ a reduction in overtime, which the employer in good faith believed was proper under the terms of its contract with the complaining union, was held not to furnish a basis for an unfair labor practice finding.⁷⁵ The Board here restated its position that the question of the correct interpretation by the parties to a collective-bargaining contract ordinarily is not a matter for Board determination. The union's recourse, according to the Board, was to attempt settlement of the overtime question by negotiations or to seek judicial approval of its construction of the contract. The Board, it was pointed out, "is not the proper forum for parties seeking to remedy an alleged breach of contract or to obtain specific enforcement of its terms."⁷⁶

(3) Conditions on Bargaining

Section 8 (a) (5) may be violated where an employer refuses to execute a collective-bargaining agreement except upon a stated condition. Thus, in one case,⁷⁷ the employer's refusal to sign a contract with the complaining union unless it was countersigned by at least one employee was held unlawful. But in another case,⁷⁸ a majority of the Board held that section 8 (a) (5) was not violated by the employer's insistence during contract negotiations that the effectiveness of any new agreement which it might execute be conditioned on the outcome of a pending declaratory judgment suit involving the question of the automatic renewal of the parties' earlier contract. The majority here noted that the employer had instituted the suit because of a genuine doubt regarding the automatic renewal question,

⁷¹ *Eastern Massachusetts Street Railway Co.*, 110 NLRB 1963, Member Beeson dissenting. The section 8 (a) (2) aspects of the case are noted at p. 75.

⁷² *McDonnell Aircraft Corporation*, 109 NLRB 930, 934. And see, e. g., *Dinion Coil Co., Inc.*, 110 NLRB 196; *Valley City Furniture Co.*, 110 NLRB 1589.

⁷³ See, e. g., *Boeing Airplane Co. (Seattle Division)*, 110 NLRB 147, where the Board sustained the trial examiner's application of the rule that absent any evidence of bad faith, it is not an unfair labor practice for an employer to effect pay increases unilaterally after they have been proposed to but rejected by the union during bargaining negotiations.

⁷⁴ *United Telephone Co of the West*, 112 NLRB 779.

⁷⁵ The Board rejected the trial examiner's finding that the employer here attempted to modify the contract in violation of section 8 (d).

⁷⁶ Compare the trial examiner's findings in *Yaquina Bay Mills, Inc.*, 109 NLRB 439, Member Murdock dissenting.

⁷⁷ *Stylecraft Furniture Co.*, 111 NLRB 930.

⁷⁸ *Ferguson-Steere Motor Co.*, 111 NLRB 1076.

and that its subsequent conduct did not disclose any purpose to delay or impede bargaining with the union.

A request that the bargaining representative withdraw pending unfair practice charges as a condition to the signing of a contract ordinarily is held to violate the act.⁷⁹ However, a mere proposal at one stage of bargaining negotiations "that all litigation be terminated" was held not to violate section 8 (a) (5) in the absence of a sufficient showing that the employer later insisted on the withdrawal of pending charges.⁸⁰

B. Unfair Labor Practices of Unions

Section 8 (b) of the act specifically proscribes as unfair labor practices six separate types of conduct by unions or their agents. The more important cases decided during fiscal 1955 under subsections (1), (2), (3), and (4) of section 8 (b) are discussed below. No cases came to the Board involving 8 (b) (5) which forbids excessive and discriminatory union fees, or 8 (b) (6) which prohibits so-called "feather-bedding" practices.

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.

The cases in which unions were found to have violated this section during the past year in some instances again involved acts of violence and threats of force or violence against employees for noncooperation in the union's activities or for rival union activities.⁸¹ Other violations found were in the nature of threats against nonconforming employees concerning their job security or employment benefits and opportunities.⁸²

⁷⁹ See, e. g., *Lion Oil Co.*, 109 NLRB 680.

⁸⁰ *Blackstone Mills, Inc.*, 109 NLRB 772. Compare *Yaquina Bay Mills, Inc.*, *supra*, Member Murdock dissenting, where the complaining union's belief that the employer conditioned further bargaining on the withdrawal of charges was found by the trial examiner to have been mistaken.

⁸¹ See, e. g., *UMW District 50, Local 12824 (Eagle Mfg. Corp.)*, 112 NLRB 74; *Reisner and Local 135, International Brotherhood of Teamsters (Midwest Transfer Co.)*, 112 NLRB 17; and *Local 169, Industrial Division, International Brotherhood of Teamsters (Rheem Mfg. Co.)*, 111 NLRB 460

⁸² See, e. g., *International Association of Bridge, Structural & Ornamental Iron Workers, Local 84 (Buie Building Materials Co.)*, 112 NLRB 1059; *Rupp Equipment Co.*, 112 NLRB 1315, Chairman Farmer and Member Murdock dissenting in part; *Local 169, Industrial Division, International Brotherhood of Teamsters (Rheem Mfg. Co.)*, 111 NLRB 460, and *Amalgamated Local 286, International Union, United Automobile Workers (H. K. Porter Co.)*, 110 NLRB 371.

The retention in a collective-bargaining agreement of an unenforced illegal union-security clause has consistently been viewed as restraining employees within the meaning of section 8 (b) (1) (A). Thus, a contract provision requiring the payment of general union assessments,⁸³ which are beyond the limits of the union-security proviso of section 8 (a) (3), was found to act as an unlawful restraint upon employees to refrain from union activities. The effect of such a provision, the Board found, is to threaten loss of employment by an employee who fails to pay union assessments.⁸⁴

A violation of both section 8 (b) (1) (A) and 8 (b) (2) was found in one case⁸⁵ where the union (1) maintained a contract requiring the employer to contribute to a "security fund" which was administered so as to restrict benefits to employees who were members in good standing, and (2) prevented an employee from participating in the fund on the ground of his asserted loss of membership in good standing. Section 8 (b) (1) (A) was found to have been further violated when the union caused the security fund to cancel on its records the participation rights of certain employees who were likewise alleged to have lost their good standing in the union.

In another case,⁸⁶ a union which had a lawful union-security agreement was held to have violated section 8 (b) (1) (A) by posting a notice advising employees that failure to pay all dues and delinquency assessments or fines by a fixed date "will result in being removed from the job." The Board held that the notice imposed an unlawful condition on continued employment since assessments and fines are not "periodic dues," payment of which may be required under a union-security agreement.

Section 8 (b) (1) (A) was held similarly violated by a union which sought to compel members to pay strike fund assessments by threatening that it would not process grievances for delinquent members.⁸⁷ Here, the Board rejected the union's contention that its action was protected by the proviso of section 8 (b) (1) (A) which reserves a union's right to prescribe membership rules. The Board pointed out that this threat was not the equivalent of the imposition of fines⁸⁸ or the expulsion from membership, which have been held lawful means of enforcing compliance with *internal* union rules. In the Board's view, "a threat not to represent an employee in the processing of his grievances is clearly not limited to internal union administra-

⁸³ Assessments are not to be confused with initiation fees and periodic dues.

⁸⁴ *Convar, a Division of General Dynamics Corp.*, 111 NLRB 1055, *Local 257, Brotherhood of Painters (William Doig & Son)*, 109 NLRB 821

⁸⁵ *Local 140, Bedding, Curtain & Drapery Workers Union, United Furniture Workers of America (Englander Co.)*, 109 NLRB 326

⁸⁶ *Bakery & Confectionery Workers, Local 12 (The Great Atlantic & Pacific Tea Company (Pittsburgh Bakery))*, 110 NLRB 918.

⁸⁷ *Peerless Tool and Engineering Co.*, 111 NLRB 853.

⁸⁸ See, for instance, *Minneapolis Star and Tribune Co.*, 109 NLRB 727

tion.” The Board observed that a union which has exclusive bargaining rights under section 9 has a statutory duty to represent all employees in the bargaining unit equally and must, therefore, accept and process the grievances of all employees in the unit impartially and without discrimination. The Board concluded that the union’s duty in this respect, and the employees’ corresponding rights, “arise from the fact that the employees are in the bargaining unit, irrespective of union membership or the existence of a union security contract.”

2. Causing or Attempting To Cause Illegal Discrimination

Section 8 (b) (2) is directed against union conduct which causes, or attempts to cause, an employer to discriminate against employees within the meaning of section 8 (a) (3).

During fiscal 1955, 60 cases involving section 8 (b) (2) were litigated before the Board. The more important issues decided are discussed below.⁸⁹

a. Causing Unlawful Discrimination

The Board had occasion during the past year to point out that, in order to violate section 8 (b) (2), discrimination in employment caused by a union must encourage or discourage union membership within the meaning of section 8 (a) (3). In one case,⁹⁰ the Board held that this test was not met because the complaining employees had been discriminated against for reasons unrelated to union membership or the performance of union obligations. The employees involved were apprentices who were discharged after being erroneously referred to a construction job on which only a limited number of apprentices could be employed under an agreement between the contractor and the union. As found by the trial examiner, the apprentice clause of the contract was legal and did not require the company to limit the number of apprentices on the basis of union membership. Thus, neither the union which caused the discrimination, nor the employer which effected it, could be held to have violated the act.

But in another case,⁹¹ the Board made it clear that under the Supreme Court’s decision in the *Radio Officers* case,⁹² discharge of an employee for failure to perform an obligation of union membership may be found to be discriminatory under section 8 (b) (2) and 8 (a) (3) even though the employee was a union member at the time. The union’s contention here that it did not violate section 8 (b) (2) by

⁸⁹ See also the discussion of cases under section 8 (a) (3) (*supra*, pp. 86-91) involving employer discrimination caused by unions.

⁹⁰ *Daugherty Company, Inc.*, 112 NLRB 986.

⁹¹ *International Brotherhood of Teamsters, Local 179 (DePrizio Construction Co.)*, 110 NLRB 287, Members Murdock and Peterson dissenting on another point.

⁹² *Radio Officers’ Union v. N. L. R. B.*, 347 U. S. 17. See discussion of the *Radio Officers* and companion cases at pp. 117-118 of the Nineteenth Annual Report.

causing the discharge of a member who had accepted a wage below the established union scale was therefore rejected.

(1) "Causing"

The question whether section 8 (b) (2) has been violated requires at times a determination as to whether the alleged discrimination was "caused" by the respondent union.

In one case,⁹³ the contention was made that a union's attempt to secure hiring preference for its members was not unlawful because it exerted pressure not directly on the immediate employer but only indirectly through another employer. The union in this case halted work on a construction project in order to force the general contractor to induce a subcontractor to assign installation work to the union's members and to discharge members of another union who were engaged on the job. A majority of the Board held that the indirect pressure brought by the union constituted an illegal attempt to cause the subcontractor to discriminate against employees. The majority pointed out that the union took advantage of the business relationship between the general contractor and its subcontractor which placed the former in a position to influence the latter's personnel policies. Under these circumstances, in the view of the majority, the economic pressure brought by the union to induce the subcontractor to discriminate against employees was unlawful even though it was indirect. "The test," the majority concluded, "is not whether the pressure is direct or indirect, but whether it is intended to cause a violation of section 8 (a) (3) and whether it [tends] to bring about that result."⁹⁴

In another case,⁹⁵ no merit was found in the argument that a union can be held to have caused or attempted to cause discrimination only on the basis of "direct or expressed threats of retaliation" against an employer. It is enough, it was found, "that the union's conduct reveals an intent to arouse the employer's fear that the hire or reemployment of an applicant will result in economic pressure against him."⁹⁶

"Cause" within section 8 (b) (2) was likewise found in a case where an employer rejected an acceptable job replacement after the union proposed another employee who had preference under its job

⁹³ *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 234 (Carrier Corporation)*, 112 NLRB 1385, Member Murdock dissenting.

⁹⁴ Member Murdock took the view that the situation here arose from a jurisdictional dispute and, to that extent, was cognizable in sections 10 (k) and 8 (b) (4) (D) proceeding rather than a proceeding under section 8 (b) (2). As to the indirect pressure on the general contractor and its object, Member Murdock was of the view that secondary boycott provisions of section 8 (b) (4) (A) were involved. He said further that, even assuming section 8 (b) (2) to be involved, the union's action could not be held to constitute "cause" within the meaning of that section.

⁹⁵ *Chief Freight Lines Co.*, 111 NLRB 22.

⁹⁶ Member Murdock dissented from a finding of a violation because of his belief that the evidence was insufficient to show that the union's conduct was the cause of the employer's action. Member Rodgers dissented as to the date of the violation.

rotation policy.⁹⁷ The fact that there had been neither threats nor promises on the part of the union and that there was no unlawful hiring arrangement, was held not controlling. But, in another case, the absence of evidence of a pertinent union policy led the Board to dismiss section 8 (b) (2) charges alleging that the respondent union caused the employer to suspend members who owned automobiles not manufactured by the employer.⁹⁸ The Board found that the employees here were suspended in order to terminate unauthorized work stoppages of other union employees who refused to work with employees who owned makes of cars other than those manufactured by the company. Union stewards had approved the work stoppage and the employer's reaction to it. However, the Board found that the union itself had no policy giving rise to a union obligation concerning cars members might buy and it had taken no action leading to the work stoppage and the suspensions. Therefore, the Board held, the union could not be held to have "caused" discrimination within section 8 (b) (2). Nor was the employer found to have interfered with any protected rights of the employees.

b. Discriminatory Practices

As heretofore, the Board has held that the enforcement by a union of an agreement or arrangement whereby preference in hiring must be given to the union's members violates section 8 (b) (2).⁹⁹ The Board during the past year also had occasion to make it clear that the illegality of such an arrangement does not depend upon motive or any other attending circumstance.¹ Thus, contrary to the trial examiner's conclusion, the discriminatory hiring agreement in the *Bickford* case was held not justified by the fact that the union, as landlord, controlled the leasing of the employer's plant premises.

In one case,² the respondent union, which was found to have violated section 8 (b) (2), required the contractor on a project in Alaska to keep in his employ only workmen who were members of the union and legal residents of the Territory. In referring workmen under its hiring agreement with the contractor, the union gave preference first to members with 12 months' standing, and, secondly, to members who owned real estate in Alaska. Moreover, the union insisted on the discharge of employees who did not satisfy the stated qualifications.

⁹⁷ *Turner Construction Co.*, 110 NLRB 1860; Member Murdock believed that the evidence did not support the finding of a violation of section 8 (b) (2) and 8 (a) (3).

⁹⁸ *Studebaker Corporation*, 110 NLRB 1307.

⁹⁹ See, e. g., *Grove-Hendrickson*, 109 NLRB 209; *International Brotherhood of Teamsters, Local 182 (Lane Construction Corp.)*, 111 NLRB 952; *Local 420, Plumbers and Pipefitters (J. J. White Inc.)*, 111 NLRB 1126; *J. W. Rylands Co.*, 111 NLRB 1296; *United Brotherhood of Carpenters, Local 517 (Gil Wyner Construction Co.)*, 112 NLRB 714.

¹ *Bickford Shoes, Inc.*, 109 NLRB 1346.

² *United Brotherhood of Carpenters, Local 1281 (J. C. Boespflug Co.)*, 109 NLRB 874.

One union was found to have violated section 8 (b) (2) by (1) enforcing contractual provisions requiring employer contributions to a "security fund" in which only union members in good standing could participate, and (2) actually depriving an employee of benefits under the fund because of alleged loss of membership standing.³

c. Discrimination Under Union-Security Agreements

The limitations of section 8 (a) (3) and 8 (b) (2) permit discrimination against employees who are subject to a valid union-security agreement only for the purpose of compelling the payment of periodic union dues and initiation fees.⁴ If the contracting union causes, or attempts to cause, discrimination for other reasons, it violates section 8 (b) (2). Thus, a union cannot lawfully insist on the payment of charges which are not "periodic dues" or "initiation fees," such as fines and assessments.⁵ The limited purpose of permissible union security likewise precludes a union from making an employee's rival union activity the basis of a request for discrimination.⁶

(1) Effect of Dues Tender by Employee

Once an employee makes proper tender of union dues, payment of which may be compelled under a union-security agreement, the union violates section 8 (b) (2) if it refuses the tender and then causes, or attempts to cause, the employee's discharge for nonpayment.⁷ Regarding the timeliness of such tender, the Board held that an unqualified tender made at any time before actual discharge is timely without regard to when the request for discharge may have been made.⁸ The Board overruled the *Chisholm-Ryder* case⁹ to the extent that the decision there is inconsistent.

Requests for the discharge of employees allegedly delinquent in dues have been held violative of section 8 (b) (2) where it was found that acceptance of the employee's unqualified tender of regular dues was improperly denied or conditioned. Thus, the union in one case¹⁰ was held to have unlawfully caused the discharge of an employee whose tender of back dues payments after an illness was refused be-

³ *Local 140, Furniture Workers of America, CIO (Englander Co.)*, 109 NLRB 326

⁴ See *Anaconda Copper Mining Co.*, 110 NLRB 1925.

⁵ See, e. g., *Anaconda Copper Mining Co.*, *supra*. The finding of a Board majority that the periodic assessments here were not "dues" for union-security purposes is discussed at pp. 90-91.

⁶ *Chun King Sales, Inc.*, 110 NLRB 1151; *Special Machine and Engineering Co.*, 109 NLRB 838, Chairman Farmer and Member Murdock dissenting separately from the finding of a violation under the circumstances of this case.

⁷ See, e. g., *Biscuit and Cracker Workers Local 405, AFL (National Biscuit Co.)*, 109 NLRB 985; *Peerless Tool and Engineering Co.*, 111 NLRB 853.

⁸ *Aluminum Workers Local 135, AFL (Metal Ware Corp.)*, 112 NLRB 619.

⁹ *Chisholm-Ryder Co.*, 94 NLRB 508.

¹⁰ *Biscuit and Cracker Workers Local 405*, see footnote 7, above

cause the employee insisted that he was entitled to sick benefits. And a delinquent employee whose back dues were returned because not "acceptable except at union meetings" was held not subject to discharge because of the later nonpayment of a reinstatement fee which had not been assessed at the time of tender.¹¹ The Board pointed out that nonacceptance of the employee's dues tender was unrelated to the payment of a reinstatement fee and, therefore, did not justify the union's discharge request. A refusal to accept an employee's back dues because he did not also tender dues claimed for a period when no union-security agreement was in effect was likewise held to have precluded the request for the employee's discharge from being lawful.¹² In another case the Board again held that where a union has a policy of not accepting regular dues unless accompanied by other charges, such as assessments, a timely tender of dues is excused.¹³ As in earlier similar cases, the Board observed that the existence of such a policy would make tender of dues only a futile gesture which the employee is not required to make to protect himself against discharge.

3. Refusal To Bargain

Section 8 (b) (3), the act's counterpart to section 8 (a) (5),¹⁴ prohibits a union from refusing to bargain in good faith with an employer if it is the proper representative of his employees.

The only case to come to the Board under section 8 (b) (3) during fiscal 1955 involved the effect of a union's noncompliance with section 8 (d) (3).¹⁵ The precise issue presented was whether strike action, taken during the existence of a collective-bargaining agreement for the purpose of compelling modification of contract terms, was lawful although the striking union did not serve notice of the dispute upon the Federal Mediation and Conciliation Service.¹⁶ A majority of the Board held that the notice requirement of section 8 (d) (3) is mandatory and that the union violated its statutory bargaining duty both by failing to give notice in accordance with section

¹¹ *Aluminum Workers Local 135, AFL*, 111 NLRB 411, see also 112 NLRB 619.

¹² *Local 140, Furniture Workers of America, CIO (Englander Co.)*, 109 NLRB 326

¹³ *Peerless Tool and Engineering Co., supra*

¹⁴ See pp 92-101.

¹⁵ *Retail Clerks Local 1179, AFL (J. C. Penney Co.)*, 109 NLRB 754

¹⁶ Section 8 (d) provides that—

"where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

* * * * *

"(3) notifies the Federal Mediation and Conciliation Service within 30 days after such notice of the existence of a dispute, . . . provided no agreement has been reached by that time."

8 (d) (3) and by engaging in a strike without first giving such notice.¹⁷

The majority rejected the contention that section 8 (d) (3) merely offers an optional device to which a party seeking contract modification may resort in order to increase the chances of success in bargaining. This view was held clearly refuted both by the unambiguous language of the section and by its legislative history. It was pointed out that:

As the legislative history bears out, the purpose of requiring notice to the Mediation Service is to provide for governmental mediation in the event the notice of intention to change the contract served upon the other party should fail to produce a mutual settlement of the labor dispute within a 30-day period. In that event, it is assumed, and experience has shown, correctly, that participation by the Federal Mediation and Conciliation Service will enhance the probability of a peaceful settlement of the dispute. This requirement that the parties to a labor dispute invite the assistance of a special service of the Federal Government is no doubt collateral to the negotiations by the principal parties. However, it is no less an integral part of the scheme evolved by Congress for achieving a higher degree of stability in collective bargaining.

The majority further held that the union's violation of its bargaining duty by failure to meet the requirements of section 8 (d) (3) was not abated by the fact that it had complied with the requirement of section 8 (d) (4) that strike action be withheld for at least 60 days after notice of a party's desire to modify a contract.¹⁸ The fact that the union here withheld strike action for more than 60 days following notice to the company, according to the Board, in no way relieved it of the statutory duty to notify the Mediation Service.

4. Secondary Strikes and Boycotts

The act's prohibitions against secondary boycotts are contained in section 8 (b) (4) (A) and (B).¹⁹ The section also prohibits strike action against one employer for the purpose of forcing another employer to recognize or bargain with a labor organization which has not been certified by the Board.²⁰

a. Assertion of Jurisdiction in Boycott Cases

The Board announced during the past year that it will continue to assert jurisdiction in secondary boycott situations under the rule

¹⁷ Member Murdock dissented because of his view (see *Lion Oil Company*, 109 NLRB 680, *supra*, p. 77) that section 8 (d) applies only to the period around the expiration of a contract.

¹⁸ See the discussion of the *Lion Oil* case at pp. 77-78.

¹⁹ Subsection (A) also prohibits strike action intended to force an employer or self-employed person to join any labor or employer organization.

²⁰ Subsection B.

of the *Jamestown*²¹ and *Lincoln Beer Distributors*²² cases, and will take into consideration not only the operations of the primary employer but also those of any secondary employers to the extent that they are affected by the conduct involved.²³ Regarding operations of secondary employers, the Board expressly adopted the view expressed by Member Peterson in his dissenting opinion in the *Lincoln* case to the effect that the entire operation of the secondary employer at the location affected must be considered, rather than only the particular business between the primary and secondary employers.²⁴

b. "Secondary Employer" Status

In two cases during the past year, the Board was faced with the contention that the employer who complained of secondary boycott action was not in fact a neutral employer but had such close business relations with the primary employer as to make him the latter's "ally." In each case the contention was rejected.

In 1 case,²⁵ the respondent union during its dispute with the complaining typewriter company picketed 2 independent typewriter companies which provided services the primary employer was obligated to furnish under its guarantee and maintenance contracts. While it was shown that arrangements had been made for the reimbursement of the struck employer's customers for service charges made by the independent companies, a majority of the Board²⁶ found that there was insufficient evidence to establish the existence of an "alliance" between the two independents and the primary employer. The majority held that, a *prima facie* case of a violation of section 8 (b) (4) (A) having been made out by the General Counsel, it was the respondent union's burden to establish its affirmative defense that the independent companies here were allies of the typewriter company and, therefore, were outside the protection of section 8 (b) (4) (A).

In another case,²⁷ the Board adopted the trial examiner's conclu-

²¹ *Truck Drivers Local Union No. 649 (Jamestown Builders Exchange, Inc.)*, 93 NLRB 386

²² *Local Union No. 830, Brewery and Beer Distributor Drivers (Lincoln Beer Distributors)*, 106 NLRB 405.

²³ *International Brotherhood of Teamsters, General Drivers Local 554 (McAllister Transfer, Inc.)*, 110 NLRB 1769. Member Murdock believed that jurisdiction should be asserted on a different basis and therefore did not pass on the issue decided by the majority.

²⁴ See also the companion case on *Reilly Cartage Company*, 110 NLRB 1742, which involved consolidated complaints under sections 8 (a) (1) and 8 (b) (4) (A) and (B). The employer who alleged 8 (b) (4) violations on the part of the union in turn was charged by the latter with having violated section 8 (a) (1). Jurisdiction over the 8 (b) (4) situation was asserted under the rule of the *McAllister* case. Taking cognizance also of the complaint against the employer whose operations by themselves did not satisfy jurisdictional minima, the Board noted that both cases before it grew out of the same basic labor dispute. Under these circumstances the Board was of the view that equity and the desirability of a full and complete record required assertion of jurisdiction in both of the cases.

²⁵ *Business Machine Conference Board, Local 459, IUE (Royal Typewriter Co.)*, 111 NLRB 317.

²⁶ Member Peterson dissenting.

²⁷ *Hawai Teamsters Local 996 (Waialua Dairy)*, 111 NLRB 1220.

sion that the milk producer and the milk distributor involved could not be regarded as "allies" for section 8 (b) (4) (A) purposes merely because a contract bound the distributor to purchase the producer's entire output, and, in turn, bound the producer not to dispose of its livestock.

The Board held in one case²⁸ that it was not a violation of section 8 (b) (4) (A) for a union which had no dispute with an employer to induce that employer's employees to respect a picket line established by another union which had a primary dispute with the employer. "Congress," the Board said, "was not concerned to protect primary employers against pressures by disinterested unions, but rather to protect disinterested employers against direct pressures by any union."

c. Common Situs Picketing

Cases under the act's secondary-boycott provisions continue to present the problem of the legality of union action at a location which, at least temporarily, is the common business situs of the employer with whom the union has a dispute and also of a neutral employer.

(1) The Common Situs Must Harbor the Primary Dispute

As noted in one case,²⁹ the difficulty in common situs situations lies in determining whether the union's activity is permissible primary action, or prohibited secondary action. The Board again made it clear that in all cases of common situs picketing, which in any way affects employees of a secondary employer, the picketing can be regarded as primary only if the secondary employer "is harboring the situs of [the] dispute between [the] union and [the] primary employer."³⁰ In other words, before common situs picketing can be regarded as primary at all, the employees immediately involved in the union's primary dispute must be working at the common situs. This fundamental requirement, the Board held, was not met in the *Otis Massey* case. Here, the primary employer's employees who worked at the picketed construction site alongside employees of neutral employers were not those involved in the dispute. The latter group was employed at another location, the primary employer's warehouse. The Board concluded that the situs of the dispute thus was the primary employer's warehouse, and that the union "could adequately publicize that dispute by limiting its picketing activities to that location." The Board rejected the union's contention that picketing the construction site was lawful because picket signs used clearly identified

²⁸ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 106 (Columbia-Southern Chemical Corp.)*, 110 NLRB 206.

²⁹ *General Drivers Local 968, IBT (Otis Massey Co.)*, 109 NLRB 275, enforcement denied 225 F. 2d 205 (C. A. 5, August 2, 1955), certiorari denied December 5, 1955, 350 U. S. 914

³⁰ See *Moore Dry Dock Co.*, 92 NLRB 547.

the primary employer against whom action was taken. It was made clear that compliance with other requirements of the *Moore Dry Dock* rule does not validate the extension of primary picketing to secondary premises where the latter are not "harboring" the dispute. In the Board's view, the presence of employees directly involved in the dispute at the time of common situs picketing "is perhaps the most fundamental requirement in achieving a fair balance between the right of a union to publicize its labor dispute and the right of neutral employers to be free from controversies not their own."

Picketing was again held secondary where the respondent union selected as the place of action the junction of a public highway and a private road leading to a construction area within which employees of the primary employer were working.³¹ The road was used not only by employees of the primary employer but also by employees of other subcontractors and the owner of the project. The determining factor in finding a violation of section 8 (b) (4) (A) here was that the picketing union failed to seek permission to picket inside the construction area at the actual situs of the primary dispute, *viz*, the place where the primary employer's workmen were at work, but instead chose to picket an approach used also by employees of the secondary employers.

And section 8 (b) (4) (A) was held violated also when a union which represented a broadcasting company's musicians picketed two arenas from which sports events were broadcast over the company's facilities.³² The musicians to whom the union's dispute with the company related were employed at the company's studios and were at no time present at the sports stadia. Thus, the Board held, the situs of the union's dispute was the company's studios which could be and were readily picketed.

A similar conclusion was reached in the *National Trucking Co.* case.³³ Here, the respondent union picketed the vehicles of the disputing trucking concern near the premises of an automobile manufacturer where they regularly picked up new cars. The Board rejected the contention that the picketing was only intended to reach the employees of the primary employer, the trucking concern, and thus was primary. It was pointed out that the respondent union also picketed the trucker's own premises and that the drivers passed through that picket line twice on each of their 40 daily trips to the manufacturer's plant.

The Board in *National Trucking* also rejected the union's contention that the picketing of the pickup trucks at the manufacturer's premises became primary after the complaining employer transferred

³¹ *Plumbers and Pipefitters Local 106 (Columbia-Southern Chemical Corp.)*, *supra*

³² *Associated Musicians of Greater New York, Local 802 (Gotham Broadcasting Corporation)*, 110 NLRB 2166.

³³ *Truck Drivers Local 728, IBT (National Trucking Co.)*, 111 NLRB 483

the pickup operation to another trucker. The Board pointed out that the substituted trucker was an *alter ego* of the complaining employer rather than an independent employer. Thus, it was noted that the two truckers operated under a close contractual relationship, and that the new drivers substituted directly for those of the complaining employer and spent a large portion of their working hours at the latter's premises.

(a) *Washington Coca-Cola* rule clarified

In the *Pittsburgh Plate Glass* case³⁴ the Board held that the *Washington Coca-Cola* doctrine³⁵ is applicable in common situs picketing cases only if the premises of the secondary employer do not harbor the primary dispute. The Board rejected the contention that all picketing by the respondent union of construction projects where Pittsburgh made installations was unlawful *per se* because Pittsburgh, the primary employer, had a permanent and extensive business establishment within the area where the union could publicize its dispute effectively. This factor (see subsection (2), below), the Board held, is not controlling where, as in *Pittsburgh*, the premises of the secondary employer harbor the primary dispute.

(2) Effectiveness of Picketing Premises of Primary Employer

In the *Pittsburgh* case,³⁶ it was further pointed out that the picketing of the construction site there was permissible not only because it harbored the primary dispute but for the additional reason that the union had a right to picket effectively. This, the Board observed, was the doctrine of the *Washington Coca-Cola* case. It was noted that in that case picketing of the primary employer's premises was effective "both from the standpoint of the general public and the particular employees involved in the labor dispute," because the employer's picketed main plant was centrally located and was entered and left at least four times each day by the drivers the picketing union represented.³⁷ In *Pittsburgh*, on the other hand, it was found that limitation of action to the primary employer's premises might unduly circumscribe the union's right to effective picketing. In this case, the employer's plant was located in a wholesale and industrial area at considerable distance from the urban center. The plant was picketed only a small part of the time of the strike, and, as noted particularly

³⁴ *Brotherhood of Painters, Local 193 (Pittsburgh Plate Glass Co.)*, 110 NLRB 455.

³⁵ *Washington Coca-Cola Bottling Works, Inc.*, 107 NLRB 299; Nineteenth Annual Report, p. 109.

³⁶ *Brotherhood of Painters, Local 193 (Pittsburg Plate Glass Co.)*, see footnote 10, above.

³⁷ The *Washington Coca-Cola* rule was affirmed during the past year in *Local 391, Teamsters (Thurston Motor Lines)*, 110 NLRB 748, *Local 612, Teamsters (Goodyear Tire & Rubber Co. of Alabama)*, 112 NLRB 30, and *Sales Drivers Local 859, IBT (Associated General Contractors of America)*, 110 NLRB 2192.

by the Board, the employees concerned were at the plant at the most twice a day, if at all.

(3) Limitation of Picketing to Primary Employer

During the past year, the Board repeatedly made it clear that common situs picketing, though permissible under the above-noted rules, violates section 8 (b) (4) if the picket signs used fail to indicate clearly that action is limited to the primary employer, or if picketing is conducted in a manner which manifests an intent to extend the dispute to secondary employers.

In the *Pittsburgh* case³⁸ publication of the union's dispute at 1 of 2 construction sites was held not to have met this test. The picket signs proclaimed that certain work "On This Job" was unfair to the union. About the same time, the primary employer's main plant was picketed with a sign stating that the "company" was unfair to the union. This, according to the Board, left doubt as to whether the picketing at the construction site was limited to the primary employer, or carried over to employees of the general contractor and other subcontractors on the job.

In one case,³⁹ a majority of the Board⁴⁰ further pointed out that the proper limitation of common situs picketing cannot be determined solely on the basis of picket sign legends but must be made to depend on the full context of the surrounding events. Thus, the illegality of the picketing of a construction site with signs calling the "job . . . unfair"—thereby showing that all employers on the job were involved—was held not cured by the later substitution of the name of a particular subcontractor for the words "This Job." Noting that the initial unlimited picketing had had the apparent approval of the president of the local building trades council, the majority said:

Such change, in the light of the prior picketing and the employees' apparent understanding as to the scope of that picketing, was clearly insufficient to apprise the employees that the picketing no longer extended to the neutrals in aid of Respondents' dispute with the primary employer. The burden was on the Respondent, which was responsible for initiating the unlawful picketing, to disengage the neutrals, by unmistakable and unambiguous measures, from the scope of its resumed picketing activities.

In another case,⁴¹ the Board similarly found that common situs picketing with signs referring only to the primary employer as the target was nevertheless unlawful because the picketing was carried on under circumstances which revealed the union's purpose to disrupt the operations of secondary employers, and indicated that the disruption

³⁸ See footnote 34, above.

³⁹ *Brotherhood of Painters, Local 1730 (Painting and Decorating Contractors of America)*, 109 NLRB 1163.

⁴⁰ Members Murdock and Peterson dissenting.

⁴¹ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 106 (Columbia-Southern Chemical Corp.)*, 110 NLRB 206.

was not merely an unavoidable incident. Here, union representatives had variously threatened that the entire job would be shut down if the primary disputes were not settled.⁴²

d. "Hot Cargo" Agreements

The Board during fiscal 1955 reexamined the question of the legality of so-called "hot cargo" clauses in collective-bargaining agreements.⁴³ Such clauses ordinarily provide that the contracting union and its members may refuse to handle goods designated as "unfair," and that such a refusal is not to be deemed a violation of the union's contract or cause for discharge. In the *McAllister* case, where the union sought to enforce a "hot cargo" agreement by direct appeal to employees, a majority of Board⁴⁴ found that it violated the secondary boycott ban. Members Rodgers and Beeson took the view that "hot cargo" clauses are contrary to public policy. According to their view, such an agreement could not be held to immunize conduct which, but for the agreement, necessarily would constitute unlawful secondary-boycott action; nor does section 8 (b) (4) (A) provide for an effective waiver by the employer of the protection of that section. Chairman Farmer in the *McAllister* case believed that the union was not protected by the contract because the employees acted contrary to the employer's explicit instructions to handle struck freight, having been affirmatively induced to do so by the contracting union. Members Murdock and Peterson, adhering to the doctrine of the *Conway's Express*⁴⁵ and *Pittsburgh Plate Glass*⁴⁶ cases, were of the view that the employer had not in fact repudiated its "hot cargo" agreement, and that the situation, therefore, could not be distinguished from that in *Conway* or *Pittsburgh*.

In the *Reilly Cartage*⁴⁷ case, the finding of a violation was predicated on the views expressed by Members Rodgers and Beeson in the *McAllister* case, and on Chairman Farmer's view that there was no "hot cargo" agreement in effect which might have protected the union's conduct. Members Murdock and Peterson, dissenting, believed that the action involved was primary rather than secondary and, thus, was outside the purview of section 8 (b) (4) (A).

⁴² To the same effect *General Teamsters, Local 249, IBT (Crump, Inc)*, 112 NLRB 311, Member Murdock concurring, Member Rodgers dissenting.

⁴³ *International Brotherhood of Teamsters, General Drivers Local 554 (McAllister Transfer, Inc.)*, 110 NLRB 1769, and *Reilly Cartage Co.*, 110 NLRB 1742.

⁴⁴ Chairman Farmer concurred in finding a violation, and Members Murdock and Peterson dissented.

⁴⁵ *Raboun, d/b/a Conway's Express*, 87 NLRB 972, enforced 195 F. 2d 906 (C A 2)

⁴⁶ *Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 135, AFL (Pittsburgh Plate Glass Co)*, 105 NLRB 740.

⁴⁷ See footnote 43, above

5. Strikes for Recognition Against Certification

Section 8 (b) (4) (C) proscribes direct or indirect action to force an employer to recognize and deal with a particular union if another union has been certified by the Board as the employees' bargaining representative.

a. Certified "Labor Organization" Defined

The only case under section 8 (b) (4) (C) decided during fiscal 1955 presented the question whether an individual certified by the Board as bargaining representative is a "labor organization" within the meaning of the section.⁴⁸ The trial examiner's affirmative answer to the question was adopted by the Board. The trial examiner had concluded that a contrary construction of section 8 (b) (4) (C) would be inconsistent with the clearly expressed congressional purpose to protect Board certifications from attacks by strikes and boycotts and to protect employers against being compelled by labor organizations to disregard their statutory obligation to bargain with a duly certified bargaining agent. The fact that other sections of the act differentiate between "individuals" and "labor organizations," according to the trial examiner, is not controlling, because each section of the act must be construed in the light of the purpose to be achieved by the particular section.

b. "Organizational" Picketing

The trial examiner also rejected the union's contention that its picketing, having had an organizational purpose, was not within the ban of section 8 (b) (4) (C). The determining factor, the trial examiner held, was that the union's conduct induced employees, whether of the complaining company or of other employers doing business with the company, to refuse to perform services for their employer for a prohibited objective. The union's purpose to force the employer to recognize it, in the trial examiner's view, was not refuted by the legend of the picket signs that "collective bargaining will be requested when authorized by law." The trial examiner pointed out that a demand for recognition was implicit in the circumstances and the manner in which the union's picketing activities occurred.

6. Jurisdictional Disputes

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."

⁴⁸ *Bonnaz, etc., Local 66, ILGWU (Gemso, Inc.)*, 111 NLRB 82.

An unfair labor practice charge under this section, however, 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 to adjust their dispute after notice of a filing of charges with the Board. 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. 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." If there is no compliance, a complaint alleging a violation of section 8 (b) (4) (D) may issue.

a. Disputes Under Section 10 (k)

In section 10 (k) proceedings, the Board decides first whether the asserted dispute is one involving the assignment of work and is therefore properly before it.

In a number of cases, the Board during fiscal 1955 again took cognizance of and determined disputes over the assignment of work by employers to their own employees rather than to members of the disputing union.⁴⁹ In each case, the Board found that the disputing union had no claim to the work under any contract, or Board certification or order.

In one case,⁵⁰ the respondent union had demanded that the employer hire its members for the starting and stopping of air compressors, a simple operation that had been assigned to the employer's laborers working nearest the compressors. After the employer agreed to hire one union member to operate air compressors, the union made further demands requesting overtime for its members and the hiring of an additional operator. Finally, the union reverted to its original request that one operator for each compressor be hired. The Board held that, regardless of the employer's temporary acquiescence, a dispute continued to exist because of the union's renewed insistence that the employer utilize a union member on a full-time basis for an operation which had occupied one of the employer's laborers less than one-half hour a day. The Board concluded (1) that it had jurisdiction over the dispute, and (2) that the union had no lawful claim to the disputed work.

⁴⁹ See e g, *National Association of Broadcast Engineers, CIO (American Broadcasting-Paramount Theatres, Inc)*, 110 NLRB 1233; *Local 182, International Brotherhood of Teamsters (Pilot Freight Carriers, Inc.)*, 110 NLRB 1357, *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 449, AFL (Refrigeration Equipment Co.)*, 112 NLRB 608

⁵⁰ *Local 450, Operating Engineers (Industrial Painters and Sand Blasters)*, 112 NLRB 437, remanded for further hearing 113 NLRB 66.

In another case,⁵¹ the Board rejected the respondent union's contention that the asserted dispute could not properly be determined in a section 10 (k) proceeding because it arose from the breach by the complaining installation contractor of an alleged agreement to retain control over the assignment of the disputed work. The contractor here had assigned the work involved to a subcontractor who employed members of a rival of the respondent union. Asserting jurisdiction over the dispute, the Board noted that the only way the alleged breach of contract could have been remedied to the respondent's satisfaction was by assigning the disputed work to its members rather than to other employees.

In 1 case,⁵² the Board determined a dispute which, essentially, was a disagreement between 2 unions as to which of the 2 bargaining units represented by them appropriately included certain work tasks. The Board here reaffirmed its earlier finding in a representation proceeding that (1) the work involved did not belong in the disputing union's unit; (2) any contractual rights it may have had were waived by acquiescence in the assignment of the work to another union; and (3) any geographical limitations in that union's contract were not controlling in view of the employer's past practice to assign the work in the disputed locality to that union.

(1) Claims Based on Illegal Contracts

The Board during the past year reiterated its policy not to determine a work assignment dispute on the basis of a contract which contains illegal union-security provisions.⁵³ In one case⁵⁴ the disputing union was held not entitled to rely on a contract which obligated the complaining employer to employ and use only members of the contracting union "on all work coming under [its] jurisdiction." The Board noted that employees doing work within the union's jurisdiction were thus unlawfully required to be union members without the benefit of the 30-day grace period which is mandatory under section 8 (a) (3). And in another case,⁵⁵ the disputing union was likewise held precluded from establishing its work claims by a contract containing provisions which were but an integral part of a discriminatory scheme for effecting a monopoly over the type of work within the union's asserted jurisdiction. Here, the union's contract obligated refrigeration con-

⁵¹ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 177, AFL (Carrier Corp.)*, 111 NLRB 940.

⁵² *National Association of Broadcast Engineers, CIO (American Broadcasting-Paramount Theatres, Inc)*, 110 NLRB 1233

⁵³ See *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 428, et al (Philadelphia Association)*, 108 NLRB 186 Nineteenth Annual Report, pp 113, 114

⁵⁴ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 177, AFL (Carrier Corp.)*, 111 NLRB 940.

⁵⁵ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 449, AFL (Refrigeration Equipment Co)*, 112 NLRB 608.

tractors to accept only "complete-job-service contracts," and not to contract for only part of a particular installation job. The refrigeration contractors were further required to employ only members of the union for at least part of the work over which the union claimed jurisdiction. The Board noted that this provision, being illegal *per se* because of the union-security limitations of section 8 (a) (3), removed the contract as a basis for the union's claim in the section 10 (k) proceeding.⁵⁶

b. Existence of Dispute

In several cases, the Board held that it was not precluded from determining the work claim of a respondent union because the work involved had been completed.⁵⁷ As in earlier cases, it was pointed out that completion of disputed work does not render the issues in a section 10 (k) proceeding moot where it is apparent that (1) completion was made possible only by the complaining employer's acquiescence in the disputing union's demands, and (2) the underlying jurisdictional dispute has not been resolved.

(1) Adjustment

Assertions in several cases that no section 10 (k) determination was required because of prior adjustment of the dispute were similarly held without merit. Thus, a mere request for the intervention of the National Joint Board for the Settlement of Jurisdictional Disputes in the Building Industry was held not an agreement "upon methods for the voluntary adjustment of the dispute" for the purpose of section 10 (k).⁵⁸ Here, no decision or final award was made by the Joint Board and the disputing union refused to abide by interim instructions. Moreover, there was no showing that all parties involved, including the complaining employer, were signatories to the Joint Board plan.⁵⁹ And in one case,⁶⁰ the Board held that the respondent union's

⁵⁶ Compare *National Association of Broadcast Engineers, CIO (American Broadcasting-Paramount Theatres, Inc.)*, 110 NLRB 1233, where the Board declined to consider the disputing union's contention that the union to which the disputed work had been assigned had an illegal union-security agreement with the employer. The Board pointed out that the issue raised was not properly before it (citing *Bechtel Corp.*, 108 NLRB 823), and was irrelevant to the present issue as to which bargaining unit included the work in question.

⁵⁷ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 32 (Cliff Schel Plumbing and Heating Co.)*, 109 NLRB 783; *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 177, AFL (Carrier Corp.)*, 111 NLRB 940. Cf. *District Council of the United Brotherhood of Carpenters of St. Louis (Arcraft Venetian Blind Mfg. Co.)*, 110 NLRB 2162.

⁵⁸ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 420, AFL (Hake)*, 109 NLRB 854.

⁵⁹ See also *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 177 (Carrier Corp.)*, 111 NLRB 940; *Sheet Metal Workers, Local 49 (Farnsworth & Chambers Co.)*, 111 NLRB 1307.

⁶⁰ *District Council of the United Brotherhood of Carpenters of St. Louis (Arcraft Venetian Blind Mfg. Co.)*, *supra*.

asserted disclaimer of the disputed work on a particular job was not an effective adjustment within the meaning of section 10 (k). The union here continued to claim general jurisdiction over the type of installation work involved and maintained its right to assert that jurisdiction under custom and practice in the area.

c. Scope of Determination

The Board made it clear during the past year that a broad section 10 (k) determination, such as was made in the *Philadelphia Association* case,⁶¹ is warranted only where the record discloses, as it did in that case, that disputes similar to those immediately involved may recur elsewhere.⁶² The Board, therefore, denied a request for a determination covering an entire multistate operating division of the employer because only a single dispute was before the Board involving a union with jurisdiction over only a small portion of a single State.

d. Compliance With Determination of Dispute

Section 10 (k) provides that if the Board's determination of a dispute is complied with, the section 8 (b) (4) (D) charges which gave rise to the determination must be dismissed. Conversely, in the event of noncompliance a section 8 (b) (4) (D) complaint may be issued by the General Counsel.

Regarding section 8 (b) (4) (D) complaints, the Board made it clear during the past year that after issuance of the Board's section 10 (k) determination, (1) in order to issue a complaint the General Counsel must administratively determine noncompliance with the Board's section 10 (k) determination; and (2) that, in order for the Board to consider the merits of the 8 (b) (4) (D) allegations of the complaint, the General Counsel must discharge his burden of proving the union's noncompliance by sufficient evidence.⁶³

(1) Noncompliance With Notice Provisions of Determination

It is the Board's present practice to require in its 10 (k) determinations that the respondent union notify the regional director within 10 days, in writing, as to what steps it has taken to comply with the determination. In two cases, *Bechtel* and *Hake*,⁶⁴ the question was in-

⁶¹ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 428 AFL (Philadelphia Association)*, 108 NLRB 186, Nineteenth Annual Report, p 114.

⁶² *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 177 (Carrier Corp.)*, 111 NLRB 940.

⁶³ *Local 595, Iron Workers (Bechtel Corp.)*, 112 NLRB 812, Member Murdock dissenting, *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 428 (Hake)*, 112 NLRB 1097.

⁶⁴ See preceding footnote.

(D)?
volved whether failure to give the required notice constitutes non-compliance which justifies prosecution of an unfair labor practice proceeding under section 8 (b) (4) (A). Answering the question in the affirmative, a majority of the Board pointed out in the first place that, under present practice, notice to the Regional Director is a mandatory affirmative requirement, and not merely a permissive provision as it was under the determination in the earlier *Westinghouse* case.⁶⁵ In the majority's view, the giving of the required notice is an indispensable part of compliance with a determination because of the basic purpose of section 10 (k) to bring about resolution of a jurisdictional dispute by effective voluntary action. In order to find compliance, according to the Board, there must be at least a manifested good-faith intent to abide by the Board's determination. Lack of such intent, it was pointed out, may be indicated not only by affirmative conduct on the part of the respondent union, but by the failure to observe all the provisions of the Board's determination as well. "We do not think it too much," the Board said, "to expect that a union having a good-faith intent to accept and abide by a 10 (k) determination will comply without hesitation with a formal requirement of notice to the regional director."

In the *Bechtel* case, the Board also held that the union's post-complaint declaration that it would refrain from the 8 (b) (4) (D) conduct with which it was charged could neither affect the earlier noncompliance which gave rise to the issuance of the complaint nor render the unfair labor practice issues in the case moot.

In the *Hake* case, noncompliance with the Board's 10 (k) determination likewise resulted in the issuance of a section 8 (b) (4) (D) complaint. Here, the respondent union failed to furnish the regional director the required notice and did not respond to his offer of assistance in the matter of effectuating compliance. Moreover, the union engaged in compulsive strike activity in support of its efforts to obtain the assignment of work to which it was not entitled according to the Board's determination. In addition, counsel for one of the respondents had openly declared its decision not to comply with the determination unless affirmed in an unfair labor practice order or court decree.

⁶⁵ *Los Angeles Building Trades Council (Westinghouse)*, 94 NLRB 415, Sixteenth Annual Report, p. 232.

Supreme Court Rulings

The validity of a Board order was involved in only one case decided by the Supreme Court during fiscal 1955. In other cases, where the Board participated as *amicus curiae*, the Court was concerned with the limits of Federal-State jurisdiction in labor relations matters.

1. Duty To Bargain With Certified Union

In its *Ray Brooks*¹ decision, the Supreme Court unanimously approved the Board's "1-year certification rule." Under this rule, the Board requires an employer, absent "unusual circumstances," to bargain with the certified representative of his employees for a reasonable time, usually at least a year, even where the representative lost its majority status without fault on the part of the employer.² The Court also approved as "within the allowable area of the Board's discretion" the "Board's view that the year period should run from the date of certification rather than the date of election."

In *Brooks*, application of the rule had led the Board to hold that the employer could not legally justify his refusal to bargain with the complaining union on the ground that, after the union's designation in an election and 1 day before the Board issued a certification of the union, 9 out of 13 employees in the bargaining unit had repudiated the union in writing. Affirming the Ninth Circuit's enforcement of the Board's bargaining order, the Supreme Court said:

The underlying purpose of [the act] is industrial peace. To allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to that end, it is inimical to it. Congress has devised a formal mode for selection and rejection of bargaining agents and has fixed the spacing of elections, with a view of furthering industrial stability and with due regard to administrative prudence.

The Court also stated that an employer who is in doubt about his duty to continue bargaining with a certified union may petition the Board for relief, but he must continue to bargain in good faith "until the Board has given some indication that his claim has merit." The Court further observed that facts which may empower the Board to

¹ *Ray Brooks v. N. L. R. B.*, 348 U. S. 96.

² Application of the rule under the amended act was approved by the Second, Fifth, and Ninth Circuits. The Sixth Circuit held the rule invalid.

consider a certification no longer operative do not justify employer self-help or judicial intervention.

2. Scope of Federal Jurisdiction Over Labor Relations

During fiscal 1955, the Board again had occasion to participate as *amicus curiae* in Supreme Court litigation concerning the extent to which Federal law has preempted the field of labor relations and thereby precludes State action. In two cases—*Anheuser-Busch, Inc.*,³ and *American Tobacco Co.*⁴—State courts had enjoined labor activities under circumstances not involved in cases previously considered by the Court. One case—*Richman Brothers Co.*⁵—required decision regarding the power of a Federal court to enjoin State court action relative to matters within the scope of the National Labor Relations Act at the instance of a private party.

a. State Injunction Against Conduct Regulated by LMRA

In *Anheuser-Busch*, the Supreme Court held that the courts of Missouri were without authority to enjoin strike action which resulted from an interunion dispute and which, according to the employer's State court complaint, (1) violated both the State's secondary boycott laws and section 8 (b) (4) (A), (B), and (D) of the National Labor Relations Act,⁶ and (2) was in conflict with State laws against conspiracies in restraint of trade. Before filing the State court complaint, the employer had filed unfair labor practice charges under section 8 (b) (4) (D) of the national act. The Board found, however, that no jurisdictional dispute existed within the meaning of that section. According to the Supreme Court, the Missouri courts could not, under these circumstances, predicate the exercise of their powers on the assumption that the Board had ruled that there was no unfair labor practice under the national act. As to the employer's 8 (b) (4) (D) charges, the only charges before the Board, the Court pointed out that all the Board determined was that there was no violation of that section. This determination, in the Court's view, could not be construed as a holding that there was also no violation of section 8 (b) (4) (A) and (B) such as the employer alleged in its State court complaint. Moreover, the Court said, even if it had been clear that no violation of any of the national act's unfair labor practice provisions were involved, the State court was nevertheless not free to issue an injunction. For, the Court observed,

³ *Weber, et al v. Anheuser-Busch, Inc.*, 348 U. S 468.

⁴ *General Drivers, Warehousemen and Helpers Local No. 89 v. American Tobacco Co., Inc.*, 348 U S 978.

⁵ *Amalgamated Clothing Workers of America et al. v. Richman Brothers Co.*, 348 U. S 511.

⁶ Also cited as the Labor Management Relations Act.

a finding that the conduct was outside the prohibitions of section 8 of the national act left undetermined the further question whether the conduct came within the protection of section 7 as a concerted activity for the purpose of mutual aid or protection.

The Court also rejected the contention that the Missouri court's injunction was proper because it vindicated a State law which was not concerned with labor relations. The Court made it clear that under the rules of the *Garner* and *Capital Service* cases,⁷ the exact category of "public policy" violated by the conduct enjoined is not a decisive factor. "Controlling and therefore superseding Federal power cannot be curtailed by the State even though the ground of intervention be different than that on which federal supremacy has been exercised," the Court said.

Referring to its ruling in the *Anheuser-Busch* case, the Supreme Court in *American Tobacco Company*⁸ likewise held that an injunction issued by a Kentucky court against certain picketing activities was an invasion of an area reserved to Federal authority by the National Labor Relations Act. The State court injunction had the effect of requiring members of the picketing union, who were employed by certain common and contract carriers, to cross a picket line established by their union at the premises of one of the carriers' customers. Collective agreements between the carriers and the picketing union expressly permitted the carriers' drivers to respect picket lines of their union. The Board in its brief argued that the labor activity involved was covered by the National Labor Relations Act and that the State court injunction either infringed on a federally protected right or invaded an area of labor relations which Congress had undertaken to regulate. The law of Kentucky, the Board argued, which requires common carriers to serve the public without discrimination, afforded no basis for infringement of that right or invasion of the federally preempted field.

b. Injunction Against Resort to State Court

In the *Richman Brothers* case,⁹ the United States District Court for Northern Ohio had denied a union's request to enjoin an employer, with which it had a dispute, from seeking State court relief against picketing activities. The union asserted that the employer's complaint in effect alleged a violation of the National Labor Relations Act and was therefore not cognizable by a State court. The United States District Court held itself without jurisdiction to grant relief because of the provisions of section 2283 of title 28 of the United States Code

⁷ *Garner v. Teamsters Union*, 346 U. S. 485; *Capital Service, Inc. v. N. L. R. B.*, 347 U. S. 501. See Nineteenth Annual Report, pp 115-117

⁸ See footnote 4.

⁹ *Amalgamated Clothing Workers v. Richman Brothers Co*, *supra*.

which prohibits Federal injunctions against State court proceedings. The exceptions to the prohibition, according to the district court, did not apply. The district court was upheld by the Sixth Circuit Court of Appeals,¹⁰ and a divided Supreme Court¹¹ in turn affirmed the lower courts.

The Board participated in the litigation of the issue in the Supreme Court urging that the granting of the union's request was essential to safeguard Federal jurisdiction in matters covered by the national act. The Board also argued that both Federal legislation and the Supreme Court's holding in the *Capital Service* case¹² must be construed as sanctioning Federal court intervention in a situation such as the present one, regardless of whether relief is sought by a private party or by the Board. The majority of the Supreme Court, however, took the view that 28 U. S. C., section 2283, precludes Federal courts from granting the request of a private party to enjoin an attempt to secure relief through State proceedings even though the labor activity in question is outside State authority.

¹⁰ 211 F. 2d 449.

¹¹ Chief Justice Warren, and Justices Black and Douglas dissenting

¹² *Capital Service, Inc. v. N. L. R. B.*, 347 U. S. 501; Nineteenth Annual Report, pp. 115-116.

Enforcement Litigation

In the course of the Board's enforcement litigation during fiscal 1955, the courts of appeals reviewed orders in 99 cases.¹

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

1. Effect of Change in Board Policy

The Board's view that its orders are entitled to enforcement notwithstanding an intervening change in Board policy received court of appeals consideration in several cases, both before and after the Supreme Court's apparent approval of the proposition in the *Ray Brooks* case.² The rule, according to the statement of the Sixth Circuit Court of Appeals in the *Armco*³ case, is that

a change in the policy of the Board does not require its application to the disposition of cases theretofore decided by it and cannot be availed of by a respondent against whom an order has been entered prior to the adoption of such policy.⁴

The respondent employer in the *Armco* case insisted that the Board's bargaining order should not be enforced because of a subsequent Board ruling⁵ to the effect that a union which has lost an election may not subsequently seek to establish its majority status in a section 8 (a) (5) proceeding based on alleged unfair labor practices known to the union prior to the election. In another case where the Fifth Circuit granted enforcement without opinion, the respondent, an electric cooperative, had challenged the validity of the Board's order on the ground that following its issuance the Board adopted new jurisdictional standards under which it would not now assert jurisdiction over the employer's operations.⁶ The Board here called the court's attention to the action of the Supreme Court in *Brooks*⁷ which it

¹ This does not include 11 cases which were summarily enforced because of respondent's failure to take exception to the intermediate report. For statistical breakdown of court actions on these cases, see Table 19, Appendix A.

² *Ray Brooks v. N. L. R. B.*, 348 U. S. 96, discussed at p. 121.

³ *N. L. R. B. v. Armco Drainage & Metal Products, Inc.*, 220 F. 2d 573. The Board's order in this case was modified on other grounds.

⁴ The court here cited *N. L. R. B. v. Red Rock Co.*, 187 F. 2d 76, 78 (C. A. 5). The court also referred to *Ray Brooks v. N. L. R. B.*, 348 U. S. 96, 104, footnote 16.

⁵ *Avello Dairy Farms*, 110 NLRB 1365. This case is discussed at pp. 92-93 of this report.

⁶ *N. L. R. B. v. Southern Pine Electric Cooperative*, 218 F. 2d 824.

⁷ Footnote 2, above.

considered in accord with the Fifth Circuit's own decision in the earlier *Red Rock* case.⁸

Prior to the *Brooks* decision, the Sixth Circuit similarly declined to vacate an enforcement decree⁹ on the ground that the Board had changed its jurisdictional policies and would not now assert jurisdiction over the petitioning employer who operated a terminal building and leased office space and terminal facilities to interstate businesses.¹⁰ In another case,¹¹ also antedating *Brooks*, the Ninth Circuit held it irrelevant to the enforcement of the Board's bargaining order that the election rule (*Bonwit Teller*)¹² on which it depended in part, had been superseded by a new rule (*Peerless Plywood*).¹³

2. The Scope of the Protection of Section 7

Enforcement litigation has continued to present the courts with questions regarding the limits of the protection of employee rights by section 7. The cases required determinations as to whether employee activities (1) exceeded specific statutory limitation, or (2) were otherwise illegal and therefore not protected.

a. Prohibition of Strikes During Unexpired Contract—Section 8 (d) (4)

In the *Lion Oil Co.* case,¹⁴ the Board had held that certain strikers violated section 8 (d) and lost the act's protection by participating in a strike before the expiration of a collective-bargaining agreement. The Board's finding¹⁵ was predicated on the following: (1) Section 8 (d) is intended to outlaw strikes for contract modification at any time before the contract's expiration date, and the specified 60-day waiting period provided by the section is the minimum, not maximum, period during which strike action must be withheld;¹⁶ and (2)

⁸ *N. L. R. B. v. Red Rock Co.*, 187 F. 2d 76 (C. A. 5), certiorari denied 341 U. S. 950. But see the pre-*Brooks National Gas* case (*N. L. R. B. v. National Gas Co.*, 215 F. 2d 160) where the Eighth Circuit declined to apply the *Red Rock* principle of the nonavailability of a change in the Board's jurisdictional policies as a defense to enforcement. The court noted that, following the *National Gas* decision, the Board not only promulgated new self-limiting rules but in another case (*Brooks Wood Products*, 107 NLRB 237) expressly rejected the view that the commerce facts in *National Gas* satisfied the then prevailing jurisdictional criteria. Under these circumstances the court felt that it was its "duty to apply the law in its present form, and not as it existed at the time of the decision and order [of the Board]" Compare the court's reiteration of this statement in *N. L. R. B. v. Continental Baking Co.*, 221 F. 2d 427.

⁹ *N. L. R. B. v. Dixie Terminal Co.*, 210 F. 2d 538, certiorari denied 347 U. S. 1015.

¹⁰ *N. L. R. B. v. Dixie Terminal Co.*, October 21, 1954, certiorari denied 348 U. S. 952.

¹¹ *Foreman & Clark, Inc. v. N. L. R. B.*, 215 F. 2d 396; certiorari denied 348 U. S. 887.

¹² *Bonwit Teller, Inc.*, 96 NLRB 608.

¹³ *Peerless Plywood Co.*, 107 NLRB 427. See pp. 59-61.

¹⁴ 109 NLRB 680. See pp. 77-78.

¹⁵ One member concurred in the finding of a violation but disagreed in part with the majority's construction of section 8 (d). One member dissented from the majority's conclusions in their entirety.

¹⁶ The Board in this case reconsidered the contrary view originally expressed in *United Packinghouse Workers (Wilson & Co.)*, 89 NLRB 310, and adopted, to this extent, the construction of the Eighth Circuit in the *Wilson* case (210 F. 2d 325, reversing 105 NLRB 823).

the phrase "expiration date" in section 8 (d) (4) refers not only to the terminal date of the contract, but also to the date when by its own terms it is subject to modification. Upon review, the Eighth Circuit rejected the meaning attributed by the Board to the term "expiration date."¹⁷ In the court's view, that term must be held to mean "termination" date, and all strikes for modification before the contract's actual termination are unlawful. Concluding that the contract had not been "terminated" within the meaning of section 8 (d) at the time of the strike, the court held that the participants in the strike lost their protected status, and that any discrimination because of their strike participation, therefore, did not violate section 8 (a) (3).¹⁸

b. Unfair Labor Practice Strikes Are Not Subject to the Limitations of Section 8 (d)

The Second and Seventh Circuit Courts of Appeals upheld the Board's conclusion that the section 8 (d) limitations on strikes are addressed only to strikes for contract modification and do not restrict employees in their right to strike in protest against unfair labor practices.¹⁹ The Second Circuit in *Mastro Plastics* pointed out that the scope of the section 8 (d) limitation depends upon its relation to the purpose of section 8 (d) as a whole. That purpose, according to the court, is to establish peaceful procedures for the termination or modification of existing collective agreements, and to that end, lockouts and strikes are prohibited during a specified period.²⁰ The court concluded that the prohibition concerns strikes which interfere with the statutory method for bargaining as to existing contracts. Being tied to the prescribed bargaining method, the court went on, the prohibition does not include unfair labor practice strikes "which are still protected activities because they are unconnected with the use of the method." A contrary construction, the court noted, would attribute to Congress an unexpressed intent

not merely to provide for an orderly way to terminate or modify existing collective bargaining agreements but the intent both to give an employer, by taking advantage of the method, an opportunity to indulge in unfair labor practices which employees would, perhaps, find it too hazardous to resist quickly and effectively by means of a strike, and to require employees, who used the method, to do so on pain of giving the employer just such an opportunity.

¹⁷ *Lion Oil Company v N. L. R. B.*, 221 F. 2d 231, certiorari granted, 76 S. Ct. 471.

¹⁸ In *United Electrical Workers Local 1113 v N. L. R. B.*, 223 F. 2d 338 (discussed at pp. 131-132, below), the District of Columbia Circuit held that a union which struck for contract demands without observing the requirements of section 8 (d) could not assert that the employer's subsequent termination of the existing contract violated section 8 (a) (5) because the employer also had not complied with section 8 (d). One party to a contract, the court said, may not flatly refuse to comply with section 8 (d) and "at the same time demand for himself all the benefits of the Section."

¹⁹ *N. L. R. B. v. Mastro Plastics Corp.*, 214 F. 2d 462 (C. A. 2); *N. L. R. B. v. Wagner Iron Works*, 220 F. 2d 126 (C. A. 7). The issue is now pending before the Supreme Court on *Mastro Plastics'* and *Wagner's* petitions for certiorari, 348 U. S. 910; 350 U. S. 981.

²⁰ See the *Lion Oil* case, pp. 77-78.

It would discriminate, in respect to the right to resist unfair labor practices by striking, between employees working under a collective bargaining contract and those who were not and between unions who were satisfied with such existing contracts and those who were not. And it would penalize the latter for attempting lawfully to remedy their condition by peaceful bargaining.

Citing the *Mastro* case, the Seventh Circuit in *Wagner* likewise held that the prohibition in section 8 (d) (4) against strikes during a specified "cooling off" period is intended to implement the congressional intent to provide "an orderly method" for contract modification or termination and has no application to a strike caused by an employer's unfair labor practices.

c. Unfair Labor Practice Strikes Not Barred by No-Strike Clause

In both *Mastro Plastics* and *Wagner*, the courts also agreed with the Board's view that unfair labor practice strikers were not deprived of the act's protection because of a contractual undertaking of their union not to strike during the term of the contract. Both courts pointed out that a no-strike clause must be read, not in isolation, but in the contractual context to which it relates. Each court held that the clause invoked by the employer was not a general strike waiver but contemplated only strikes growing out of contract disputes or the normal relations of the parties. In the language of the Second Circuit whose conclusion in *Mastro* was quoted with approval by the Seventh Circuit in *Wagner*,

The right of employees to strike in resistance to unfair labor practices by the employer is a fundamental one which the statute recognizes and no contractual waiver of that right is to be inferred from general provisions in a collective bargaining contract which do not make it clear that strikes caused by the employer's unfair labor practices were included in the prohibition

d. Protest Against Supposed Unlawful Discharge

The Board's conclusion in one case that the section 7 protection extended to a walkout of employees who erroneously, but in good faith, believed that a fellow employee had been discharged for union activities, was upheld by the Ninth Circuit.²¹ Noting that in the absence of unfair labor practices the strike here was an economic one and subjected strikers to replacement, the court held that the employer nevertheless violated the act when he discharged strikers who had not been replaced.

e. Right To Refrain From Supporting Union Policies

In one case,²² where enforcement of the Board's order was denied, the Second Circuit was of the view that the employees' section 7 right

²¹ *N. L. R. B. v. J. E. McCatron, et al. d/b/a Price Valley Lumber Co.*, 216 F. 2d 212 (C. A. 9), modified in other respects; certiorari denied 348 U. S. 943

²² *N. L. R. B. v. Furrers Joint Council*, 224 F. 2d 78.

to refrain from union activities does not include the right to violate union policies incorporated in valid provisions of the union's collective-bargaining agreement. In agreement with a dissenting Board Member, the court held that the protection of section 8 (b) (1) (A) against union coercion was not available to employees who had ignored their union's spread-the-work policy which had been implemented with a contractual prohibition against overtime work. According to the court, the fact that the union had resorted to violence, while not to be condoned, was not controlling as long as no violation of rights guaranteed by section 7 was involved.

3. Employer Unfair Labor Practices

a. Interference With Organizing Activities

The more important cases where the Board had found unlawful interference within the meaning of section 8 (a) (1) involved (1) the employer's right to exclude nonemployee organizers from the plant premises, and (2) the legality of privately conducted polls in which employers sought to ascertain the employees' organizational preferences.

(1) Exclusion of Nonemployee Organizers

The Sixth Circuit enforced a Board order directing an employer to rescind its rule against the distribution of literature by union representatives on the Company's parking lot.²³ The order required the employer to permit distribution under such reasonable regulations as will not deny union representatives access to the employees for that purpose. The case thus presented the question of the extent to which nonemployee organizers must be granted access to such areas as parking lots for the purpose of literature distribution. The court held that the Board properly applied the principles of decisions circumscribing the duty of employers to permit such distribution by employees.²⁴ The Board had urged that in the case of nonemployee organizing activities, as in the case of such activities by employees, a proper balance must be struck between the employer's right to control the use of his property and the employees' right to effective communication of organizational information. It was pointed out to the court that, in this case, the employer's prohibition against literature distribution was invalid because access to the employees entirely off the employer's premises was unreasonably difficult under the circumstances, and that the benefit to the employees in permitting access on the parking lot outweighed any prejudice to the employer.

²³ *N. L. R. B. v. Ranco, Inc.*, 222 F. 2d 543

²⁴ See *N. L. R. B. v. LeTourneau Company*, 324 U. S. 793, 797, 798, *N. L. R. B. v. Monarch Machine Tool Co.*, 210 F. 2d 183, 184-187 (C. A. 6), certiorari denied, 347 U. S. 967, *N. L. R. B. v. Lake Superior Lumber Corp.*, 167 F. 2d 147, 150 (C. A. 6).

The Fifth²⁵ and Tenth²⁶ Circuits, on the other hand, denied enforcement of orders in which the Board had similarly enjoined the respective employers to permit nonemployee union organizers to distribute literature on private parking lots and adjacent areas. The Board here had likewise found that the employer's rule improperly curtailed employees' organizational freedom and violated section 8 (a) (1).²⁷ The differing views of the courts are now on review before the Supreme Court on writs of certiorari.

(2) Employer Polls

Two cases, 1 in the Eighth²⁸ and 1 in the Ninth²⁹ Circuit, involved the question whether an employer violates section 8 (a) (1) if he seeks to ascertain the employees' desire for union representation in a private poll. Enforcement was denied in both cases because of the court's disagreement with the theory, prevalent when the order issued, that such polls are unlawful *per se*.³⁰ Noting that the Board itself later abandoned the *per se* doctrine in the *Blue Flash* case,³¹ the court in each case held that the polling of employees on their union sentiments violates the noninterference mandate of the act only if a coercive effect can reasonably be inferred from the circumstances and context in which the polling occurred.³²

b. Discrimination Against Employees

The proportionately large number of cases under the nondiscrimination provisions of section 8 (a) (3) presented primarily evidentiary questions. Among the other issues litigated were (1) the legality of economic lockouts—particularly the right of members of an employer group to shut down operations to protect themselves against piecemeal strikes by the joint bargaining agent; and (2) the rights of employees who "participate" in strikes attended by unlawful conduct.

(1) Lockout Reaction to "Whipsawing"

Two orders reviewed by the Eighth Circuit³³ were based on the finding that employees in a multiemployer bargaining unit had been unlawfully locked out by some members of the employer group because

²⁵ *N. L. R. B. v. The Babcock and Wilcox Company*, 222 F. 2d 316.

²⁶ *N. L. R. B. v. Seamprufe, Inc.*, 222 F. 2d 858.

²⁷ See also *N. L. R. B. v. Monsanto Chemical Company*, 225 F. 2d 16 (C. A. 9), denying enforcement in 108 NLRB 1110.

²⁸ *N. L. R. B. v. Protein Blenders, Inc.*, 215 F. 2d 749.

²⁹ *N. L. R. B. v. Roberts Brothers*, 225 F. 2d 58.

³⁰ See *Standard-Coosa-Thatcher Co.*, 85 NLRB 1358, Fifteenth Annual Report (1950) pp. 94-96.

³¹ *Blue Flash Express, Inc.*, 109 NLRB 591, discussed at pp. 67-70.

³² Compare *A. L. Gilbert Company*, 110 NLRB 2067 (p. 69, above), where the Board quoted from *Protein Blenders* in connection with its holding that the tests for determining unlawfulness are the same for both polling and interrogation.

³³ *N. L. R. B. v. Spalding Avery Lumber Company*, 220 F. 2d 673; *N. L. R. B. v. Continental Baking Co.*, 221 F. 2d 427.

the bargaining agent of the unit had called a strike of employees of other members of the group. In seeking enforcement, the Board made clear its present view³⁴ that the lockout of employees by members of a multiemployer bargaining group is permissible where a strike against one of them by the employees' representative in the multiemployer unit carries with it an implied threat against the other members of the group. However, the Board further pointed out that the lockouts here did not satisfy this test because in neither case was there a joint economic interest to be protected by the respondent employers. Thus, multiemployer bargaining had been abandoned in *Spalding Avery*, and the strike objective in *Continental Baking* was strictly limited to the struck association member, so that the nonstruck members had no reason to fear that the strike would be extended to them. The court approved the Board's current views regarding lockouts, noting that they were in harmony with the decisions of the Seventh and Ninth Circuits in the *Morand Bros.*³⁵ and *Davis Furniture*³⁶ cases. However, enforcement was denied because the court did not believe that the evidence in either *Spalding Avery* or *Continental Baking* supported the Board's finding that there were no joint economic interests which justified the lockout.

(2) Nondiscriminatory Lockout

In one case,³⁷ the District of Columbia Circuit upheld the Board's dismissal of discrimination charges arising from the shutdown of a plant after a strike of the first of the three shifts with which the company operated. The court agreed that the lockout was not motivated by discriminatory reasons but by the uncertainty as to the strike's duration and the economic unsoundness of operating the plant with the second and third shifts alone.

(3) Discharge of "Participants" in Unprotected Activities

In the *United Electrical Workers* case,³⁸ the court also sustained the Board's view that a group of employees, though not physically present in the employer's plant at the time of an unlawful walkout, were under the circumstances "participants" in the strike and were not protected against discharge by section 8 (a) (3). In this connection the court said:

These employees were all members of the Union. The strike was called by the Union at a meeting which every member was entitled to attend, and the strike action received the complete support of every member present. Each of these

³⁴ See *Buffalo Linen Supply Co.*, 109 NLRB 447, discussed at pp. 83. Compare the Board's earlier views discussed in the Sixteenth Annual Report (1951), pp. 176-178; Seventeenth Annual Report (1952), pp. 154-157.

³⁵ *Morand Brothers Beverage Co. v. N. L. R. B.*, 190 F. 2d 576, 204 F. 2d 529

³⁶ *Leonard, d/b/a Davis Furniture Co. v. N. L. R. B.*, 197 F. 2d 435, 205 F. 2d 355

³⁷ *United Electrical Workers, Local 1113 v. N. L. R. B.*, 223 F. 2d 338.

³⁸ See footnote 37, above.

employees received the Company's letter . . . informing him that "participants" in the strike would be considered to have forfeited any rights as employees. No employee took any steps to indicate that he was not a participant. He had a right to claim and to establish that he was a nonparticipant. By choosing to remain silent and taking no steps to disavow the action of their agent, despite the invitation from the Company to take such steps, these employees were found by the Board to have acquiesced in, ratified, and become parties to their agent's action. . . . We find no merit in UE's argument that the Board's decision on this phase of the case rested upon an inference of guilt from union membership.

In another case,³⁹ involving a strike which resulted in serious property hazard, the Fifth Circuit rejected the employer's contention that all strikers subjected themselves to discharge regardless of whether or not their individual cessation of work contributed to the hazard. Quoting from an earlier decision of another circuit,⁴⁰ the Fifth Circuit pointed out that union members who participate in a strike are responsible for unlawful acts only "upon clear proof of actual participation in . . . authorization or ratification of such act." The court held that the individual misconduct of the strikers was a material issue to be determined by the Board on remand. The court rejected the Board's view that the employer had condoned all strike misconduct, so that no determination as to each striker's right to reinstatement was necessary.

c. Refusal To Bargain

The cases under section 8 (a) (5) of the act presented questions regarding (1) the employer's duty to comply with union requests for information to facilitate bargaining negotiations, (2) the duty to bargain during a union's certification year, and (3) the effect of designation cards after an invalid consent election.

(1) Duty To Furnish Wage Information

In three cases where enforcement was granted successively by the Fourth,⁴¹ Fifth,⁴² and First Circuits,⁴³ the central issue was the duty of an employer to supply the employees' bargaining agent with wage information linking the name of each employee in the bargaining unit with the remuneration he received.

In *Whitin Machine*, the Board had stated its view that in order to be entitled to specific wage information "it is sufficient that the information sought . . . is related to the issues involved in collective

³⁹ *N. L. R. B. v. Marshall Car Wheel and Foundry Co.*, 218 F. 2d 409.

⁴⁰ *N. L. R. B. v. Ohio Calcium Co.*, 133 F. 2d 721, 726 (C. A. 6).

⁴¹ *N. L. R. B. v. Whitin Machine Works*, 217 F. 2d 593, certiorari denied 349 U. S. 905.

⁴² *N. L. R. B. v. The Item Company*, 220 F. 2d 956.

⁴³ *Boston Herald-Traveler Corp. v. N. L. R. B.*, 223 F. 2d 58.

bargaining and that no specific need as to a particular issue must be shown." The Fourth Circuit, expressing agreement with this conclusion, rejected the employer's contention that it was not required to supply certain data because information it had already furnished was sufficient for dealing with the existing wage controversy. The court pointed out that a bargaining agent is entitled to any information which will enable it to properly and understandingly perform its duties in the general course of bargaining and, therefore, may not be limited to information which is pertinent to a particular existing controversy. The court here also made it clear that the union's right to the requested information was primarily a matter for determination by the Board.

Approving the *Whitin Machine* rationale, the Fifth Circuit in *The Item* case held that the Board properly ordered the employer to furnish the complaining union the wage rate of each employee in the bargaining unit, as well as the amount of any merit increase received by individually named employees.

The First Circuit in *Boston Herald* expressly joined in the Fourth and Fifth Circuits' approval of the Board's *Whitin* rule. The order under review in *Boston Herald* also directed compliance with a union's request for wage information identifying the employees receiving the various wage rates. The employer resisted enforcement on the ground that the information had not been found by the Board to be specifically relevant to pending negotiations and that the Board's *Whitin* rule which dispensed with the necessity to show such specific relevance was unwarranted. While noting that the information involved would satisfy accepted relevance tests, the court emphasized the validity of the *Whitin* "concept of the presumptive relevance of individualized wage data to collective agreement negotiations," as well as the utility of the concept in implementing the bargaining mandate of the act. In support of the doctrine of presumptive relevance, the court quoted in full the reasoning of the Board's Chairman in his concurring opinion in the *Whitin* case.

In *The Item* case it was also contended that (1) the union had waived its right to certain information, and (2) the employer should not be required to supply "confidential" wage data. As to (1), the court held that the union's consent to unilateral grants of merit increases by the employer was not a "clear and unmistakable" waiver of the union's right to merit-increase information. To construe the asserted grant of unilateral authority as conferring on the employer the right to withhold merit-increase information, in the court's view, "might foster discrimination against union adherents . . . and thereby promote that industrial strife and unrest which the act seeks to avoid." Regarding the employer's objection to the furnishing of wage

data on behalf of particular employees,⁴⁴ the court noted the absence of a showing that the requested information was conveniently and accurately available to the union through its membership, or that it was unduly burdensome for the employer to furnish the information. And in response to the employer's claimed confidential privilege, the Fifth Circuit quoted the Supreme Court's observation in *Ray Brooks*⁴⁵ that to "allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to [industrial peace], it is inimical to it."

(2) Refusal To Bargain With Certified Union

Enforcing a bargaining order, the Second Circuit in one case sustained the underlying conclusion that the employer first unlawfully refused to bargain with the complaining union 4 months after certification, and then insisted in bad faith on limiting the term of any contract to the remainder of the union's certification year, finally withdrawing recognition from the union immediately upon the expiration of the certification year.⁴⁶

Regarding the employer's initial refusal to bargain, the court approved the Board's finding that the filing of representation petitions by the employer and a rival union was not a "special circumstance" which under established Board rule justified a refusal to bargain during the certification year. The Board had pointed out that, under its rule, an employer's duty to bargain with a certified union is not suspended by the filing of representation petitions unless the Board acts on the petitions by issuing a notice of hearing, thereby indicating that a formal investigation is warranted. The court noted that subsequent to the enforcement petition in the *Heide* case the Supreme Court sanctioned the Board's 1-year rule in its *Ray Brooks*⁴⁷ decision.

As to the employer's contract demands and ultimate refusal to bargain, the court agreed that the employer did not act in good faith and therefore violated section 8 (a) (5) when insisting on a contract limited to the certification year, and withdrawing recognition from the union at the end of the year because of alleged doubt as to the union's majority. In the court's view, the employer's conduct indicated that he had no good-faith "intention of honoring the complaining union's certification but was merely attempting to delay reaching any agreement during the certification year, in the belief that at the end of the year it could terminate recognition." The court also upheld the Board's conclusion that having violated section 8 (a) (5)

⁴⁴ A similar contention was made in *Boston Herald* in addition to the argument that disclosure of wages of individual employees might lead to pirating by competitors.

⁴⁵ *Ray Brooks v. N. L. R. B.*, 348 U. S. 96, 103.

⁴⁶ *N. L. R. B. v. Henry Heide*, 219 F. 2d 46.

⁴⁷ *Ray Brooks v. N. L. R. B.*, *supra*, p. 121.

during the certification year, and with an unfair practice proceeding based on the violation pending, the employer could not lawfully refuse to bargain after the end of the year until the majority issue had been decided by the Board.

(3) Authorization Cards as Proof of Majority

In another case,⁴⁸ the Second Circuit sustained the Board's finding that section 8 (a) (5) was violated by an employer who refused to recognize a union on the strength of authorization cards and then brought about the union's loss of the consent election to which it had agreed. The Board had held that the employer's interference prevented the consent election from canceling the employees' original choice, and that their authorization cards were sufficient to establish the union's majority status at the time of the employer's refusal to bargain. The Board had also held that the employer could not defend its refusal to bargain on the ground that the results of the consent election were certified by the regional director after the union withdrew its objections in order to file unfair labor practice charges. It was pointed out to the court that since the regional director had no occasion to rule on the union's objections he could not withhold certification. Had he done so, the Board further pointed out, he would have prejudged the unfair labor practice charges before the Board on which the validity of the election depended.

4. Union Unfair Labor Practices

The more important issues determined by the courts of appeals in cases under section 8 (b) concerned the scope of the prohibitions of subsection (1) (A) against restraint or coercion of employees, the prohibitions of subsection (2) against discrimination, and the secondary boycott prohibitions of subsection (4).

a. Restraint Under Section 8 (b) (1) (A)

One case before the Second Circuit presented the question whether violent reprisals by union officials against members who had breached contractual provisions restricting overtime work were within the purview of section 8 (b) (1) (A).⁴⁹ Contrary to the view taken by a Board majority,⁵⁰ the court concluded that defiance of a union policy embodied in a contract which bound the employees was not an exercise of the employees' statutory right to refrain from union activities. Consequently, the court held, the union's reprisals, though wrongful, did not violate section 8 (b) (1) (A). The court observed that section 8 (b) (1) (A) does not confer on the Board general police power

⁴⁸ *N. L. R. B. v. Stow Manufacturing Co.*, 217 F. 2d 900.

⁴⁹ *N. L. R. B. v. Furriers Joint Council*, 224 F. 2d 78.

⁵⁰ See 108 NLRB 1506

covering all acts of union violence and contemplates only violence directed against the exercise of rights protected by section 7.

b. The Union-Rules Proviso of Section 8 (b) (1) (A)

The validity of the Board's orders in two cases⁵¹ depended in part on the proper construction and application of the union-rules proviso to section 8 (b) (1) (A) which preserves the right of a labor organization "to prescribe its own rules with respect to the acquisition or retention of membership therein."

In the *Operating Engineers* case,⁵² the court enforced an order which was predicated on the respondent union's policy to obtain retention preference for its own members during layoffs, to the disadvantage of members of subordinate locals regardless of the latter's service seniority. Rejecting the union's contention that its action was within the scope of the 8 (b) (1) (A) proviso, the court cited *Philadelphia Iron Works*,⁵³ where the Third Circuit had held that the proviso "does not authorize the union to extend the effective scope of [membership] rules so that they determine the right of a member to the acquisition or retention of a job."

In the *Communications Workers* case,⁵⁴ the Second Circuit⁵⁵ upheld the Board's finding that the respondent union unlawfully caused the discharge of an employee who had ceased to pay union dues after resigning from the union. The union, which had a valid maintenance-of-membership contract, defended its action on the ground that its constitution, properly construed, did not permit voluntary resignation of members. The union further asserted that the proviso to section 8 (b) (1) (A) not only protected its rule against resignations, but also precluded review by the Board or the courts of the union's interpretation of its own constitution. Rejecting both contentions, the court held that, the union's constitution and bylaws being silent on the subject of resignations, the proviso was inapplicable.

c. Discrimination Under Section 8 (b) (2)

In the *Communications Workers* case,⁵⁶ the Second Circuit also held that section 8 (b) (2) made it unlawful for the union to request the discharge of a dues-delinquent member who had resigned from the union during the 9-day interval between the expiration of the union's old maintenance-of-membership agreement and the execution of a new, similar agreement. As to the maintenance-of-membership agree-

⁵¹ *Communications Workers of America, CIO v. N. L. R. B.*, 215 F. 2d 835 (C. A. 2); Board opinion at 106 NLRB 1322. *N. L. R. B. v. International Union of Operating Engineers, Local 101*, 216 F. 2d 161 (C. A. 8).

⁵² See preceding footnote.

⁵³ *N. L. R. B. v. Philadelphia Iron Works, Inc.*, 211 F. 2d 937.

⁵⁴ Footnote 51, above.

⁵⁵ Judge Clark dissenting.

⁵⁶ See footnote 51.

ment in effect at the time of the employee's default, the court agreed that the union's right to request the delinquent's discharge expired with the agreement. Nor, according to the court, did the employee become subject to the new agreement, as urged by the union, because that agreement was not executed until after the employee's resignation. The court rejected the argument that the union's constitutional provision for expulsion of delinquents only after 90 days, which prevented an early discharge request, forestalled the employee's resignation during the 9-day period before the adoption of the new agreement.

In another case,⁵⁷ the Eighth Circuit sustained the Board's finding that the respondent union unlawfully caused an employer to whom it furnished workmen to forego its seniority policy and to give effect to the union's "trade rule." This rule required that in a permanent lay-off members of subordinate locals were to be laid off before the union's own members, regardless of seniority on a particular job. The union's action, in the court's view, violated section 8 (b) (2) because under the Supreme Court's decision in the *Radio Officers* case⁵⁸ a union may not apply its rules against its own members⁵⁹ so as to cause job discrimination by employers. In defense, the union had asserted that it did not *cause* the complaining employees to be discharged, but merely advised the company—as it was privileged to do under section 8 (c)—as to its seniority rule. The court, however, agreed with the Board's conclusion that the union's responsibility for the discharges was clear under the circumstances. The court noted that the union and its affiliates were the source of the company's labor supply wherever it operated and thus had the potential economic power to deprive the employer of its labor market. Insofar as the respondent union invoked the free-speech privilege of section 8 (c), the court cited the Supreme Court's holding in the *Electrical Workers* case⁶⁰ that section 8 (c) only protects noncoercive speech "in furtherance of a lawful object." Here, the court pointed out, the union having caused an employer to violate section 8 (a) (3) of the act, it clearly could not seek the protection of section 8 (c).

In one case, the Tenth Circuit reaffirmed the principle that a union which seeks to enforce demands that an employer hire only its members violates section 8 (b) (2) even though the demand relates to future hiring and is not intended to require dismissal of employees presently

⁵⁷ *N. L. R. B. v. International Union of Operating Engineers, Local No. 101*, *supra*

⁵⁸ *Radio Officers' Union v. N. L. R. B.*, 347 U. S. 17, 40-42.

⁵⁹ The court noted that the discharged members of the subordinate local were fully qualified for membership in the respondent union, that the latter controlled the affairs of its sublocal, and that under the *Radio Officers* rule the respondent's action must be held not only to have encouraged membership in itself but also to have encouraged its members to retain their membership.

⁶⁰ *International Brotherhood of Electrical Workers v. N. L. R. B.*, 341 U. S. 694.

employed.⁶¹ According to the court, section 8 (b) (2) “proscribes union attempts to cause discrimination based on union membership, not only against specific employees, but also against potential employees.

d. The Prohibition Against Secondary Boycotts

The cases under section 8 (b) (4) litigated in the courts of appeals during fiscal 1955 were primarily concerned with the tests applied by the Board in determining whether “common situs” picketing violated the prohibition against secondary boycotts. One case involved the question whether a picketed employer was in fact a “primary” rather than “secondary” employer for the purpose of the protection of section 8 (b) (4) (A).

(1) Common Situs Picketing

In several cases involving picketing at the common business situs of a “primary” employer and “secondary” employers, the courts of appeals approved the criteria established by the Board in *Moore Dry Dock*⁶² for drawing the line between permissible primary action and prohibited secondary action.

The Tenth Circuit in two cases⁶³ sustained the Board’s finding that union action at a construction site violated section 8 (b) (4) because it was not clearly limited to the primary employer.

In *Local No. 55*, the union picketed a construction site in connection with its efforts to obtain recognition as bargaining agent by the owner and general contractor on the project. Picketing was carried on, while employees of subcontractors were at work, with signs reading: “Working Conditions On This Job Unfair.” The court held that, in view of the failure of the picket sign to make clear that the picketing was directed solely against the general contractor and in view of other conduct, it was reasonable to infer that the union’s purpose was to cause employees of subcontractors to cease work, and to prevent contractors from completing their work as a means of compelling the general contractor to recognize the union. The court specifically noted the Board’s *Moore Dry Dock* rules with which the union’s conduct conflicted, observing that those rules had been approved as a sound interpretation of the act.⁶⁴

In *Denver Building*, the Tenth Circuit upheld a finding that section 8 (b) (4) (A) was similarly violated by a union during a dispute with a nonunion contractor on a construction project. Here, the

⁶¹ *N. L. R. B. v. Local Union No. 55, United Brotherhood of Carpenters*, 218 F. 2d 226.
⁶² *Moore Dry Dock Co.*, 92 NLRB 547.

⁶³ *N. L. R. B. v. Local Union No. 55, and Carpenters District Council of Denver*, 218 F. 2d 226; *N. L. R. B. v. Denver Building Council*, 219 F. 2d 870.

⁶⁴ The court cited *N. L. R. B. v. Service Trade Chauffeurs*, 191 F. 2d 65, 68 (C. A. 2); Eighteenth Annual Report, p. 75; *N. L. R. B. v. Chauffeurs, Teamsters, etc., Local Union No. 135*, 212 F. 2d 216, 219 (C. A. 7); Nineteenth Annual Report, p. 135.

union picketed the main gate to the owner's property which was the common entrance for employees of the disputing contractor and the employees of the owner and of neutral contractors on the project. The court noted that, while the union used picket signs naming only the primary nonunion contractor as unfair, it did not appropriately limit picketing to his employees. Thus, no permission was sought to picket the nonunion contractor's immediate work site inside the gate. Nor did the union picket the job sites outside the fence where only the primary contractor's employees would have been affected. The Board had concluded that the union thus had made no good-faith effort to comply with two of the *Moore Dry Dock* requirements in common situs situations: (1) that pickets must be stationed at a location "reasonably close" to the actual situs of the dispute, here the primary employer's job sites; and (2) that adequate precautions must be taken to make clear that the primary employer is the picketing union's only target.

In another case,⁶⁵ the Fourth Circuit likewise approved the Board's *Moore Dry Dock* standards for determining the legality of common situs picketing under section 8 (b) (4) (A). However, the court disagreed with the Board's conclusion that the picketing fully met those standards and that dismissal of the complaint was warranted. The respondent union had picketed construction jobs of a nonunion contractor with signs stating that "This job is being picketed for the purpose of organization," and urging that "Construction workers organize for security." Contrary to the Board, the court was of the view that the union's picket signs and conduct did not spell out an intention to reach only the general contractor. Rather, the court held, the situation here was similar to the one in the *Local 55* case,⁶⁶ and the picketing was unlawful under the rule of that case.

Another aspect of common situs picketing was involved in the *Washington Coca Cola* case,⁶⁷ where the District of Columbia Circuit held that the Board properly found a violation of the act's secondary boycott provisions. Here the union, in furtherance of its dispute with a bottling company, picketed the company's trucks at the retail stores where they were making deliveries, with "on-strike" signs, and also picketed in front of the store entrances, used jointly by employees and the public, with signs addressed to "friends." The union contended that the "on-strike" picketing was legitimate primary activity in that it was restricted to the trucks which were the situs of the primary labor dispute,⁶⁸ and that the "friends" picketing was not an appeal to employees but merely to the public and thus was not within

⁶⁵ *John A. Piezonki, d/b/a Stover Steel Service v. N. L. R. B.*, 219 F.2d 879

⁶⁶ See p. 138.

⁶⁷ *Brewery and Beverage Drivers Local Union No. 67 v. N. L. R. B.*, 220 F.2d 380

⁶⁸ See *Schultz Refrigerated Service*, 87 NLRB 502, *Moore Dry Dock Co.*, 92 NLRB 547.

the ban of section 8 (b) (4) (A). The Board rejected the first contention⁶⁹ on the ground that, since the primary employer had a separate place of business in the area of the labor dispute where the union's primary pressure could and was being exerted, there was no warrant under the act for extending it to the premises of neutral employers.⁷⁰ The Board rejected the second contention on the ground that the evidence showed that the "friends" picketing was in fact intended to and did induce and encourage the employees of neutral employers to cease work for an object proscribed by section 8 (b) (4) (A).

(2) "Secondary Employer" Status

In the *Denver Building Council* case,⁷¹ the respondent union asserted that its picketing of a construction project where nonunion labor was employed was primary action and did not violate section 8 (b) (4) (A). The union argued that the owner of the picketed project was not a "neutral" because under the terms of a cost-plus contract for work to be performed, he was either the immediate employer of the nonunion labor on the job, or an "ally" of the cost-plus contractor. The court rejected the union's contentions. As to the existence of an independent-contractor relationship between the project owner and the contractor, the Board had pointed out that (1) the cost-plus arrangement of the parties' contract was a feature which is common to independent-contractor relationships, and (2) the extent of the owner's control over the contracted work and its right to terminate the contract were not such as to preclude the existence of such a relationship. The Board had further held that the owner could not be regarded as an "ally" of the contractor merely because the contract provided for reimbursement of the contractor for wage increases during the life of the contract. The Board had found, and the court noted, that this reimbursable labor item accounted for only a small part of the contract costs, and that reimbursable wage increases frequently were made by the contractor without advance notice to the owner.

5. Remedial Orders

Enforcement of the Board's remedial orders for the most part turned on the validity of their evidentiary basis, but one case involved the question of the effect of self-employment on the computation of back pay.

⁶⁹ See pp. 112-114 for the Board's recent clarification of the rules on which its *Washington Coca Cola* decision is based.

⁷⁰ In one case, *N. L. R. B. v. International Brotherhood of Teamsters, Local 182*, 219 F. 2d 394 (C. A. 2), the court rejected a contention that the picketing of a truck after it crossed a picket line became the situs of union's primary dispute. The truck here, which belonged to a lumber company, had made a delivery to a struck customer, and was then followed by roving pickets who caused the employees of another customer to refuse to unload it. The union's action was held to be secondary and violative of section 8 (b) (4) (A) and (B).

⁷¹ See p. 138, footnote 63.

a. Back Pay for Period of Self-Employment

In the *Cashman Auto* case⁷² enforcement of a supplemental order fixing the amount of back pay due 2 discriminatorily discharged employees was resisted by the employer on the ground that the 2 employees had forfeited their right to back pay by self-employment. The employer contended that the employees had removed themselves from the labor market and thus had assumed the risk of losing wages they might otherwise have earned. Rejecting the contention, the court approved the Board's computation of back pay on the basis of what the employees' wages would have been but for the discrimination, less one-half the earnings of their business venture during the back-pay period. The court pointed out that the situation was not one which called for exercise of the Board's discretion to deny back pay because of any failure of the discriminatees to seek or accept available employment suited to their abilities and skills. The court noted that the two employees continued to search for employment, while at the same time engaging in a business of their own because of their financial needs. According to the court, "[t]here is no essential incompatibility between operating a business of one's own while at the same time seeking employment," and "the principle of mitigation of damages does not require success; it only requires an honest good faith effort." Such an effort had been made here, the court concluded.

6. Representation Procedures

In several cases arising under the bargaining mandate of section 8 (a) (5), enforcement of the Board's order was resisted because of the asserted invalidity of the proceedings in which the complaining union's majority status had been determined.

a. Determination of the Bargaining Unit

In the cases where employers attacked the Board's unit determination, the courts again made it clear that the appropriateness of bargaining units is a matter for the Board, whose determination will not be disturbed by the courts unless it is clearly arbitrary or capricious.⁷³ It was pointed out again that the only general standard established by Congress is that the unit selected by the Board "assure to employees the fullest freedom in exercising their statutory rights."⁷⁴ In the *Esquire* case,⁷⁵ where the employer contended that under established

⁷² *N. L. R. B. v. Cashman Auto Co.*, 223 F. 2d 832. For enforcement of the Board's original order see 200 F. 2d 412 (C. A. 1).

⁷³ *Foreman & Clark, Inc. v. N. L. R. B.*, 215 F. 2d 396 (C. A. 9); *N. L. R. B. v. West Texas Utilities Co.*, 214 F. 2d 732 (C. A. 5); *N. L. R. B. v. Esquire, Inc.*, 222 F. 2d 253 (C. A. 7).

⁷⁴ See the *Esquire* case, *supra*, at 256-257; compare *West Texas, supra*, at 734.

⁷⁵ See footnote 73.

Board rules certain employees should have been included in the bargaining unit, the Seventh Circuit observed that

The Board's function in defining an appropriate bargaining unit cannot be reduced to findings of fact and conclusions of law. So many factors can influence the choice and individual situations are so varying that it would be impossible for even the Board to formulate rules that could be rigidly applied in all situations.

In view of these considerations, the court concluded, the Board should not be confined to general rules in regard to unit determinations.

b. Voting Eligibility of Strikers

In one case, the employer defended its refusal to bargain with the complaining union on the ground that the union's majority status had been improperly certified on the basis of an election in which strikers guilty of misconduct were permitted to vote.⁷⁶ The employer invoked the provision of section 9 (c) (3) that "[E]mployees on strike who are not entitled to reinstatement shall not be eligible to vote." A majority of the court, resorting to the section's legislative history, concluded that Congress intended to make ineligible only strikers "whose reinstatement rights had already been destroyed by the employer's action [in discharging them] and who were for that compelling reason ineligible for reinstatement at the time of the election."

c. Voting Eligibility of Seasonal Employees

In another case, the Fifth Circuit held that it was within the Board's discretion under section 9 to direct an election in a bargaining unit in which both seasonal and permanent employees were to vote.⁷⁷ The Board had followed its practice of including in the same bargaining unit year-round and seasonal employees who perform the same work under identical terms and conditions, and to permit them to vote⁷⁸ in appropriately timed elections. While elections in seasonal industries with predominantly seasonal personnel are customarily held at the peak of the season, an immediate election was found appropriate here because the permanent personnel constituted a representative segment of the bargaining unit.

d. Invalid Ballots

In one case, the Fifth Circuit rejected an employer's contention that the Board erroneously failed to count blank ballots cast in an election as votes against the union which sought bargaining rights.⁷⁹ The

⁷⁶ *Union Manufacturing Co. v. N. L. R. B.*, 221 F. 2d 532 (C. A., D. C.).

⁷⁷ *N. L. R. B. v. Bar-Brook Manufacturing Co., Inc.*, 220 F. 2d 832.

⁷⁸ Note the Board's present policy to grant *all* employees included in the bargaining unit the privilege of voting in the election *Sears Roebuck & Company*, 112 NLRB 559, p. 52.

⁷⁹ *N. L. R. B. v. Vulcan Furniture Mfg. Corp.*, 214 F. 2d 369

court observed that "an unmarked or other noncommittal ballot is not a vote," and that eligible voters who cast such ballots and decline to indicate their preferences are in the same position as eligible employees who fail to exercise their voting rights. Such employees, according to the court, must be considered as having assented to the will of the majority of those who voted.

e. Invalidation of Elections

The Board's broad discretion in establishing procedures for the determination of bargaining representatives has been uniformly held by the courts of appeals to include the power to set aside an election if, in the Board's opinion, it did not afford the employees a fair and free choice.⁸⁰ Invalidation of the election was held justified in *Capital Transit* because of the employer's preelection letter to its employees which the court agreed created an atmosphere incompatible with freedom of choice;⁸¹ and in the *Osbrink* case because the election had been preceded by the employer's offer of inducements to vote against unionization and the discharge of an employee for union activity.

In *Foreman & Clark*, the court likewise upheld the Board's conclusion that the election could not stand in view of the employer's last-minute electioneering speeches. The Board had found that, while the speeches were not coercive in their content, they prevented a free expression of the employees' choice because of their timing.⁸² The court rejected the employer's contention that in setting aside the election because of noncoercive speeches the Board impinged upon the employer's freedom of speech.

In *Bar-Brook*, where the Board denied the employer's request to set aside an election, the court made it clear that a party which objects to an election has the burden of showing adequate reasons for invalidating the election. The court agreed that the employer had not sustained this burden by showing that the complaining union engaged in violent conduct during a strike which occurred at least 2 months before the election. This conduct, according to the court, was too

⁸⁰ *N. L. R. B. v. Capital Transit Co.*, 221 F. 2d 864 (C. A., D. C.), remanded on other grounds; *N. L. R. B. v. R. H. Osbrink*, 218 F. 2d 341 (C. A. 9); *Foreman & Clark, Inc. v. N. L. R. B.*, 215 F. 2d 396 (C. A. 9); *N. L. R. B. v. Bar-Brook Manufacturing Co., Inc.*, 220 F. 2d 832 (C. A. 5).

⁸¹ The court also held that since the election was not a "valid election" within the meaning of section 9 (c) (3), the Board could properly order a new election to be held before the expiration of 12 months

⁸² In the underlying representation proceeding the Board had found that by addressing its employees on company time and premises, without affording the union an opportunity to speak under comparable circumstances, the employer violated the then current *Bonwit Teller* "equal opportunity" rule (96 NLRB 608, enforced 197 F. 2d 640 (C. A. 2), certiorari denied 345 U. S. 905). While this rule was later superseded by the *Peerless Plywood* "24-hour rule" (*Peerless Plywood Co.*, 107 NLRB 427), the Board made it clear that the Board's action in setting aside the election was also justified under the *Peerless* doctrine which condemns electioneering speeches during the 24-hour period immediately preceding an election.

remote in time and not causally connected with the election. The court also held that the Board had properly refused to determine in the representation proceeding whether the alleged conduct constituted an unfair labor practice. Citing judicial precedent, the Board had pointed out that (1) conduct in order to warrant invalidation of an election need not violate the act's unfair labor practice provisions; and (2) in any event, the employer's section 8 (b) (1) (A) charges based on the same conduct had been finally dismissed by the Board's General Counsel and that the Board, in view of section 3 (d), was without authority to review the General Counsel's action.

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."

A. District Court Litigation

Injunctions under the mandatory provisions of section 10 (l) were requested in 59 cases during fiscal 1955. Forty-five of these cases involved secondary action believed to violate the provisions of subsection (A), and in some instances also subsection (B), of section 8 (b) (4). Seven cases involved primary action allegedly initiated in disregard of a Board certification in violation of section 8 (b) (4) (C). Two cases involved action believed to violate both subsections (A)

¹ These subsections 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.

and (D), and one involved subsections (A), (B), and (D). Four requests for temporary relief were based on alleged violations of the jurisdictional dispute provisions of subsection (D) alone.

Injunctive relief under section 10 (j) was requested in only one case, against a labor organization. The case was dismissed when the charge upon which it was based was withdrawn.

1. Injunctions Under Section 10 (l)

Of the 59 cases in which mandatory applications for temporary relief were made, relief was granted in 20 cases and denied in 8 cases.² In 28 cases, either the case was settled or the alleged illegal activity ceased pending Board decision. Three cases were pending at the close of fiscal 1955.

a. Injunctions Against Secondary Boycotts

Injunctive relief again was granted in several cases against picketing activities at construction sites, which had the apparent purpose of bringing about cessation of work by employees of secondary employers in aid of the picketing unions' primary disputes with contractors on the project or with material men.³

In one case,⁴ the United States District Court for Western Missouri enjoined members of a building trades council from picketing and strike activities on a construction project, because there was reasonable cause to believe that the object of the picketing was to compel the withdrawal from the job of subcontractors who employed labor not affiliated with the picketing union. The district court noted that, under the Board's *Moore Dry Dock* rule, the picketing by one union was legal only to the extent that it was clearly limited to the contractor involved in the primary dispute,⁵ and that the union violated the rule by using some picket signs, or banners, which failed to identify the primary subcontractor and could be interpreted as referring to the principal contractor on the project. The strike action of 2 other building trades council members was enjoined because at least 1 of the union's objects apparently was to bring about the termination of the same subcontract by the contractor.⁶

² Among the 20 cases are included 2 in which temporary restraining orders were issued, 1 in which both a restraining order and temporary injunction were issued, and 1 in which a restraining order was issued but later dissolved. The 8 cases of denial of injunctive relief include 1 in which a temporary restraining order was originally issued.

³ Compare the Board and court decisions dealing with "common situs picketing" discussed at pp. 110-114, and pp. 138-140.

⁴ *Sperry v. Building Trades Council of Kansas City (United Contractors Council)*, 131 F. Supp. 36 (D. C., W. Mo.)

⁵ For application of the *Moore Dry Dock* rule (92 NLRB 547, 549) by the Board and courts see pp. 110-114, and pp. 138-140.

⁶ Injunctive relief against the trades council was denied because, in the court's view, the action of the council's affiliates had been taken on their own initiative.

A probable violation of section 8 (b) (4) (A) was likewise found, and an injunction granted, where it was shown that a union, during a dispute with a ready-mix concrete firm, had the firm's trucks followed by pickets to construction sites where concrete was to be delivered.⁷ The district court found as a fact that, whenever the pickets failed to prevent acceptance of concrete deliveries, they picketed the construction site while the delivery truck was present.

The District Court for Eastern Missouri, in view of the probable existence of a section 8 (b) (4) (A) violation, similarly enjoined picketing of a construction job performed for, but without any employees of, the employer with which the respondent union had a primary dispute.⁸

In the *National Trucking* case,⁹ injunctive relief was sought against picketing at the premises of an automobile manufacturer by a drivers' union during its dispute with the hauling firm which had contracted for the pickup of new cars at the manufacturer's plant. The District Court for Northern Georgia denied relief, taking the view that the picketing with which the union was charged was lawful under the *Service Trade* case¹⁰ where the Second Circuit approved the Board's *Moore Dry Dock* tests¹¹ for determining the legality of picketing away from the primary employer's premises.¹² However, a new application for a 10 (1) injunction was later granted by the court against picketing by the union which exceeded that held lawful in the *Service Trade* case. In the second case, the court's decree enjoined the union from (1) displaying its picket sign when no employees of the trucker were present in connection with their normal pickup duties, (2) displaying the picket sign so that it could be read during the absence of such employees, and (3) engaging in conduct indicating that picketing was taking place during the absence of the trucker's employees.

In one case,¹³ the District Court for Northern New York enjoined picketing activities of a truck drivers' union which had given rise to section 8 (b) (4) (A), (B), and (D) charges. The union, which

⁷ *Getreu v. Sales Drivers' Local 859, IBT (Associated General Contractors)*, August 16, 1954 (D. C., N. Ga.), 34 LRRM 2750. The Board subsequently held that this conduct was violative of section 8 (b) (4) (A) *Sales Drivers Local 859, IBT*, 110 NLRB 2192

⁸ *Hicks v. Warehouse & Distribution Workers, Local 688, IBT (Metal Goods Corp.)*, November 19, 1954 (D. C., E. Mo.).

Injunctive relief in similar situations was also granted in *Elliott v. Local 47, Teamsters (Texas Industries)*, August 25, 1954 (D. C., N. Texas), and *Penello v. Baltimore Building Trades Council (Dominion Contractors)*, October 25, 1954 (D. C., Md.) In *Getreu v. Local 597, Iron Workers (Bushnell Steel Co)*, September 1, 1954 (D. C., S. Fla.), the respondent union consented to the entry of a decree.

⁹ For the Board's action on the complaints in this case, see p. 111

¹⁰ *N. L. R. B. v. Service Trade Chauffeurs, etc (Howland Dry Goods)*, 191 F. 2d 65, 199 F. 2d 709 (C. A. 2), enforcing 85 NLRB 1037. See Seventeenth Annual Report, pp. 243-244, Eighteenth Annual Report, p. 75.

¹¹ 92 NLRB 547.

¹² See the Board's contrary conclusions in its subsequent adjudication of the 8 (b) (4) (A) and (B), complaint here, 111 NLRB 483, pp. 111-112

¹³ *Ramsey v. Local 182, Teamsters (Pilot Freight Carriers)*, August 27, 1954 (D. C., N. N. Y.), 34 LRRM 2771, 26 CCH Labor Cases ¶ 68,650, 54 ALC 1503.

had no Board certification, was found to have requested a common carrier by motor vehicle to assign to its members certain work which was being assigned to drivers represented by other locals of the same parent union. The union apparently sought to enforce its demands for the assignment of this work and recognition as bargaining agent for the employees performing it by picketing the carrier and also its customers in an attempt to induce the latter to discontinue their business relations with the carrier. Since section 8 (b) (4) (D) prohibits even primary picketing in support of a jurisdictional dispute, all picketing was enjoined.

Injunctive relief was granted by the District Courts for Eastern Pennsylvania and Southern New York in two cases where the respondent union had been charged with acts which violated the secondary-boycott provisions of section 8 (b) (4), and interfered with the distribution of news and other publications. In one case,¹⁴ the union which had a dispute with a publishing company was enjoined from continuing strikes and picketing activities against customers of the publisher for the purpose of forcing them to cease doing business with the publishers. In the second case,¹⁵ the injunction was directed against conduct by which the respondent union had interfered with the appearance of a new weekly publication in New York City. The union here demanded that the publisher hire its members directly for the printing and distribution of the weekly, and supported its demand (1) by picketing the printing firm the publisher had engaged, and (2) by inducing the union's members employed by news distributors not to handle the new publication.

Other secondary boycott situations where injunctions were granted involved picketing and related conduct for the purpose of inducing a warehouse to cease storing products for an unorganized employer¹⁶ and for the purpose of preventing the shipment of ore to a mining company with which the respondent union had no dispute.¹⁷ In another case,¹⁸ similar conduct was enjoined which was intended to cause retail store buyers, who were members of the respondent union, not to purchase the meat products of the disputing primary employer.

¹⁴ *Schauffer v. Philadelphia Newspaper and Magazine Chauffeurs and Handlers, Local 628, IBT (American News Co.)*, July 6, 1954 (D. C., E. Pa.), 34 LRRM 2637.

¹⁵ *Jaffee v. Newspaper and Mail Deliverers Union (N. Y. Sunday Graphic)*, May 27, 1955 (restraining order) and June 9, 1955 (injunction) (D. C., So. N. Y.)

¹⁶ *Evans v. Chauffeurs Local 135, Teamsters (Marsh Foodliners)*, May 3, 1955 (D. C., S. Ind.).

¹⁷ *McMahon v. United Mine Workers, District 50 (Marion Machine Works)*, July 21, 1954 (D. C., E. Ill.), 34 LRRM 2774, 26 CCH Labor Cases ¶ 68,651, 54 ALC 1505. (The Board found a violation in 112 NLRB 348.)

¹⁸ *McMahon v. Amalgamated Meat Cutters, Local 88 (Swift)*, July 30, 1954 (D. C., E. Mo.); see also *Alpert v. Local 575, United Packinghouse Workers (Boston Wholesale Meat Dealers Assn.)*, June 4, 1955 (temporary restraining order) (D. C., Mass.) For secondary boycott situations where the union consented to the entry of an injunctive decree see *Cosentino v. Union de Trabajadores de Muelles No. 24922, AFL (San Juan Mercantile Corp.)*, July 16, 1954 (D. C., P. R.), and *Evans v. Local 108 Plumbers and Pipefitters (Sears Roebuck & Co.)*, May 10, 1955 (D. C., So. Ohio).

The Board's requests for injunctions based on secondary-boycott charges were denied in two cases on the ground that the asserted conduct had ceased and there was no apparent danger of its resumption.¹⁹ One petition under section 10 (1) was dismissed because of the court's finding that only one employee had been induced to cease work, so that there was no "concerted" refusal to work within the meaning of section 8 (b) (4).²⁰ Two denials of injunctive relief were based on the court's view that the union's action was protected by a "hot cargo" contract.²¹

b. Injunctions Against Strikes in Disregard of Board Certifications

In several cases, injunctions were issued against unions charged with violating section 8 (b) (4) (C) by bringing pressure on employers for recognition at a time when another union was the employees' representative under a Board certification. In one case, the United States District Court for Puerto Rico found that the evidence on its face indicated activities by the respondent union and its officials which justified the requested relief.²² The evidence showed that the respondent criticized the collective-bargaining agreement between the employers and the incumbent union, and attempted to force the contracting employers either to amend the agreement or to make a new agreement with the respondent.

The court in another case enjoined a union from picketing the premises of either the complaining employer or other employers, while the former's trucks were present, for the apparent purpose of obtaining bargaining rights in the face of the Board's certification of another union.²³ The court rejected as unsupported the respondent union's assertion that the purpose of its action was to protest against the discharge of certain employees. The court also held that the union could not justify its conduct under section 9 (a), which permits employees who are represented by a bargaining agent to present grievances individually and to seek adjustments consistent with any

¹⁹ *McMahon v District Council of Carpenters (Artecraft Venetian Blind Co)*, October 26, 1954 (D C, E Mo), 35 LRRM 2067, 26 CCH Labor Cases ¶ 68,785, 54 ALC 1827; *Graham v Seattle District Council of Carpenters (Cisco)*, December 29, 1954 (D. C., W. Wash) In the first case the court retained the matter on its docket with leave to the regional director to renew his application for an injunction if violations recurred

²⁰ *Yager v Local 1976 Carpenters (Sand Door and Plywood Co.)*, November 22, 1954 (D. C., So Calif).

²¹ *Ellhott v Lodge 850, Machinists (American Iron & Machine Works)*, October 26, 1954 (D C, W Okla); *Graham v. Woodworkers Local 7-140, CIO (Furchau Bros. Logging Co.)*, June 10, 1955 (D. C., Ore.). For Board decisions involving "hot cargo" contracts, see p 114

²² *Cosentino v. ILA, District Council of Ports of Puerto Rico (Puerto Rico Steamship Assn)*, 126 F Supp. 420 (D C., P. R) The court denied the union's motion to dismiss the case on the ground that the national act ceased to be applicable to Puerto Rico following adoption of the Organic Act of Puerto Rico

²³ *Yager v. Meat & Provision Drivers Local 626, IBT (Lewis Food)*, October 13, 1954 (D C, So Calif), 35 LRRM 2172, 26 CCH Labor Cases ¶ 68,751, 54 ALC 1828.

existing collective-bargaining agreement. The court concluded that no "grievances" within the meaning of section 9 (a) existed and that, in any event, the respondent union's demands were inconsistent with the incumbent union's contract.

An injunction based on a probable violation of section 8 (b) (4) (C) was obtained in one case where a union had picketed a factory for the ostensible purpose of organizing the factory employees.²⁴ The court found that, notwithstanding the legend on the picket signs used, the union's actual purpose was to compel its recognition by the company as bargaining representative in disregard of a Board certification of another union. The court noted that before the certification of its rival, the respondent union had requested the employer to "sign up or else"; that immediately afterwards, the union began to picket the factory premises, both at the employee and freight entrances; that the picketing had been continuous since then; and that the pickets made oral appeals to truckdrivers not to make deliveries to the factory.

One union was enjoined from carrying on picketing activities for the purpose of obtaining bargaining status at new retail stores opened by the complaining employer in an area covered by the Board's certification of another union.²⁵

Injunctive relief on the basis of section 8 (b) (4) (C) charges was denied in two cases. The relief in one case²⁶ was requested because the respondent union picketed a bakery plant for the purpose of inducing a strike and thereby force the employer to bargain with the picketing union although another union had been certified. The District Court for Southern New York noted that the picket signs appealed to the public not to buy the bakery's products because the bakery's employees were not members of the picketing union and that there was no evidence that any employee had ceased work because of the picketing. The court held that the evidence was insufficient to show that the union sought to induce work stoppages, and therefore precluded the issuance of an injunction, even though the union's ultimate objective may have been to bring about its recognition by the bakery.²⁷

In the other case,²⁸ the District Court for Eastern Washington denied injunctive relief under section 8 (b) (4) (C) because, in its

²⁴ *Douds v. Kmt Goods Workers Local 155, ILGWU (James Knitting Mills)*, November 9, 1954 (D. C., E. N. Y.), 35 LRRM 2165; 27 CCH Labor cases ¶ 68,802, 54 ALC 1831.

²⁵ *Madden v. Retail Clerks International Association, AFL, and Local 1460 (Jewel Food Stores)*, September 14, 1954 (D. C., N. Ind.), 35 LRRM 2221, 26 CCH Labor Cases ¶ 68,674, 54 ALC 1687. For another injunction against 8 (b) (4) (C) conduct see *Getreu v. Local 25, Bakery and Confectionery Workers, AFL (King's Bakery)*, June 28, 1955 (D. C., E. Tenn.)

²⁶ *Douds v. Local 50, Bakery & Confectionery Workers, AFL (Arnold Bakers)*, 127 F. Supp. 554 (D. C., So. N. Y.)

²⁷ For court of appeals affluance of the district court's ruling see p 153 below.

²⁸ *Graham v. Local 524 Teamsters (Mack's Markets)*, June 21, 1955 (D. C., E. Wash.), 36 LRRM 2304, 28 CCH Labor Cases ¶ 69,339, 55 ALC 954.

view, the Board's certification of an employer-association unit did not cover the employees of the charging employer which had not joined the association until after being struck by the respondent union.

c. Jurisdictional Dispute Situations

In addition to 1 injunction which was upheld by the Court of Appeals for the Third Circuit and is discussed below,²⁹ district court relief was granted in 3 cases against activities believed to be violative of the jurisdictional dispute provisions of section 8 (b) (4) (D).³⁰ In one of these cases the court later dissolved its temporary restraining order.³¹

In one case,³² immediate relief was denied because the court believed that there was no impending danger that the respondent union would resume the conduct specified in the 8 (b) (4) (D) charge. However, the case was retained on the court's docket, pending Board adjudication of the charge, with leave to the regional director to renew his application for an injunction should the union resume the conduct.

2. Contempt of Injunction Decree

The Board's request for adjudication that a union was in both civil and criminal contempt of a section 8 (b) (4) (D) injunction was granted in one case by the District Court for Eastern Pennsylvania.³³ The court found that the union and its officers had violated the prohibitions of its decree³⁴ against encouraging employees to leave their jobs in order to force their employer to assign certain work to the respondent union's members rather than to members of a rival union. Because of their criminal contempt, a fine of \$1,000 against the union and fines of \$200 against each of its officials were assessed. The Board was awarded costs incurred in prosecuting the civil contempt proceeding.

B. Court of Appeals Litigation

Injunction litigation in the court of appeals during fiscal 1955 involved the review of denials of relief, in one case under section 10 (j)

²⁹ *Schauffler v. United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry, Local 420 (Hake)*, 218 F. 2d 476 (C A 3).

³⁰ *Borchart v. United Association, Plumbers and Pipefitters Local 449 (Refrigeration Equipment Co.)*, August 13, 1954 (D. C., W. Pa.); *Ramsey v Local 182, Teamsters (Pilot Freight Carriers)*, August 27, 1954 (D. C., N. N. Y.), 34 LRRM 2771, 26 CCH Labor Cases ¶ 68,650, 54 ALC 1503; *Douds v. Local 825D Operating Engineers (Arundel Corp.)*, May 6, 1955 (D. C., So. N. Y.).

³¹ *Douds v Local 825D Operating Engineers*, May 17, 1955 (D. C., So. N. Y.).

³² *McMahon v District Council of Carpenters of St. Louis (Aircraft Venetian Blind Mfg. Co.)*, October 26, 1954 (D. C., E. Mo.), 35 LRRM 2067, 26 CCH Labor Cases ¶ 68,785, 54 ALC 1827.

³³ *Schauffler v Plumbers and Pipefitters Local 420 (Hake)*, April 20, 1955 (D. C., E. Pa.), 28 CCH Labor Cases ¶ 69,189, 55 ALC 751.

³⁴ For affirmance of the decree by the Third Circuit Court of Appeals see p. 152.

and in another case under section 10 (1) ; review of the granting of an injunction under section 10 (1) ; and review of the adjudication of a union in civil and criminal contempt for violation of a section 10 (1) decree.

1. Injunction Under Section 10 (j) Against Refusal To Bargain

In the *Pacific Telephone* case,³⁵ the Ninth Circuit Court of Appeals held that the Board's request for an injunction pending adjudication of a refusal-to-bargain complaint was improperly denied by the District Court for Northern California.³⁶ The employer had withdrawn recognition of the union as representative of employees in units designated by the Board as appropriate for bargaining and for which the union had been certified as the bargaining agent. The employer thereafter entered into an agreement with another union to consolidate one of these units with a unit represented by it. It explained that its action was prompted by its doubt of the continued appropriateness of the units specified in the Board certification. It contended on appeal that (1) its disregard of the Board's unit determination was warranted by the intervening lapse of time, and (2) it was within the district court's discretion either to grant or deny relief. The court of appeals held, however, that lapse of time does not warrant an employer's disregard of a unit previously found appropriate by the Board, and that an employer must adhere to the prior unit finding until that finding is reversed by the Board itself.

Rejecting the argument that it was within the district court's discretion to deny the requested relief, the court of appeals, noting the limitation on the discretionary power of a court to deny statutory relief in the public interest, held that the irreparable harm the certified union might suffer by the loss of membership to the union favored by the employer entitled the Board to the injunctive relief sought.

2. Injunctions Under Section 10 (l) Against Violations of Section 8 (b) (4)

In the *Pipefitters (Hake)* case,³⁷ the Third Circuit Court of Appeals affirmed the injunction of the District Court of Eastern Pennsylvania against a union charged with a violation of the jurisdictional dispute provisions of section 8 (b) (4) (D).³⁸ The injunction was based on a showing that (1) the respondent union insisted on the reassignment to its members of certain work on a construction project;

³⁵ *Brown v. The Pacific Telephone and Telegraph Co.*, 218 F. 2d 542 (C A 9).

³⁶ June 24, 1954 (D C., No. Calif) The district court's decision is noted at pp 143-144 of the Nineteenth Annual Report.

³⁷ *Schauffler v United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry, Local 420 (Hake)*, 218 F 2d 476 (C A 3).

³⁸ See *Schauffler v. Local 420 Plumbers and Pipe Fitters (Hake)*, May 5, 1954 (D C., E Pa.).

and (2) after the filing of earlier similar charges, involving the union's conduct on other construction projects in the area, the Board had determined in a section 10 (k) proceeding that the union was not entitled to the disputed work. The injunction prohibited the respondent union from engaging in conduct of the type specified in the most recent charge, and was to be effective throughout the area where the union operated.

The court of appeals rejected the union's contention that the district court's decree should have been limited to the single construction project in connection with which the latest charges were filed, and that the injunction, if so limited, was moot and should be vacated because the project had been completed. The court also rejected the further argument that the broad injunction was improper in that it was coterminous with the Board's earlier section 10 (k) determination, and thus operated indirectly to enforce that determination, although the act confers no power on the Board to enforce its dispute determinations directly. The court of appeals pointed out that the scope of the relief the district court could grant under the circumstances depended on the language of section 10 (1) which provides for the granting of "such injunctive relief . . . as [the court] deems just and proper, notwithstanding any other provision of law. . . ." The power to issue an injunction under section 10 (1), according to the court of appeals, is thus very broad and is "limited only by the exercise of sound legal discretion." The court of appeals concluded that the district court did not abuse this discretion by broadly enjoining the union from engaging further in the practices with which it had last been charged, because there were cogent reasons for believing that the practices would continue beyond the construction project identified in the charge.

The union also urged that it had obtained intervening agreement on "methods for the voluntary adjustment" of the underlying dispute within the meaning of section 10 (k) which should require vacation of the injunction. The court of appeals pointed out that such an agreement is a limitation only on the Board's power to determine the dispute, but not on the district court's injunctive power under section 10 (1).

In the *Arnold Bakers* case³⁹ the Court of Appeals for the Second Circuit held that the District Court for Southern New York properly denied the Board's request for an injunction against conduct believed to violate section 8 (b) (4) (C).⁴⁰ The Second Circuit agreed with the view of the lower court that, on the facts, there was no showing that the picketing was intended or calculated to induce employees to engage in work stoppages.

³⁹ *Doubs v. Local 50, Bakery Workers (Arnold Bakers)*, 224 F.2d 49 (C. A. 2), affirming 127 F. Supp. 534 (D. C., So. N. Y.).

⁴⁰ The district court's decision is discussed at p. 150.

3. Contempt of 8 (b) (4) (A) Decree

In the *New York Shipping Association* case,⁴¹ the Second Circuit reversed the finding of the District Court for Southern New York that the respondent union had violated the court's injunction against the continuation of conduct it considered to violate section 8 (b) (4) (A) and was guilty of criminal contempt. The union had caused a tieup at New York port piers by refusing to service trucks carrying goods to and from the piers, which were operated by members of a rival union.⁴² After issuance of the injunction decree, the respondent union called a general strike throughout the port. The union's ensuing conviction of contempt by a jury was predicated on a finding that the strike was a subterfuge for the continued refusal to service trucks at the piers and had for its object either to force pier employers to cease doing business with the trucking concerns involved, or to force customers of the trucking concerns to cease doing business with them, and therefore violated the district court's decree. In setting the conviction aside, the court of appeals held that the union's refusal to service trucks at the piers was not a secondary boycott within the meaning of section 8 (b) (4) (A). In the court's view, the union's "object" in refusing to service trucks operated by the members of its rival was to further its "struggle for control of the Port," rather than to bring about a cessation of business such as is prohibited by section 8 (b) (4). The court concluded that, while the union's action inevitably may have resulted in cessation of business between pier employers and customers, this result was not shown to have been the union's "object," and that the action therefore was not within the contemplation of section 8 (b) (4) (A).

⁴¹ *Douds v. International Longshoremen's Assn., Ind. (New York Shipping Assn.)*, 224 F. 2d 455 (C. A. 2), rehearing denied July 22, 1955, certiorari denied 350 U. S. 873.

⁴² The respondent union caused the discharge of a former shop steward because of his defection to its rival. The discharged employee who picketed the pier where he had been employed was supported by the rival union to which he defected.

VII

Miscellaneous Litigation

Litigation for the purpose of aiding or protecting the Board's statutory processes during fiscal 1955 included subpoena enforcement proceedings; an action to prevent resort to a State court in matters within the purview of the National Labor Relations Act; and defense against suits to enjoin (1) representation proceedings and (2) Board action in connection with the administration of the act's non-Communist affidavit provisions.

1. Subpena Enforcement

In 2 cases of disobedience to Board subpoenas, 1 of the grounds upon which parties resisted enforcement was the intervening occurrence of a vacancy in the office of the Board's General Counsel.

In *Stanley Gemalo*,¹ the United States District Court for the Southern District of New York pointed out that, a complaint having been issued in the case, the subsequent occurrence of a vacancy in the office of the General Counsel did not preclude prosecution of the complaint. The court noted that the taking of all steps necessary to prosecution must be deemed to have been delegated to the General Counsel's staff, and that the attorney acting for the General Counsel therefore could properly request, and seek enforcement of, subpoenas. The rule of the *Bonwit Teller* case² was applicable to this extent, according to the court.

In the *Kingston Trap Rock* case³ the Third Circuit Court of Appeals similarly held that under the *Bonwit Teller* rule the expiration of the General Counsel's term clearly did not preclude enforcement of a subpoena issued while the General Counsel was still in office.

The court here also reaffirmed the propriety of precomplaint subpoenas for the purpose of eliciting facts necessary to a determination of the Board's jurisdiction.

¹ *N. L. R. B. v. Stanley Gemalo*, 130 F. Supp. 500.

² *Bonwit Teller, Inc. v N L R B*, 197 F. 2d 640 (C A. 2), certiorari denied 345 U S. 905, where the court held that the General Counsel's resignation during the hearing before the trial examiner did not invalidate the proceeding because the General Counsel, before resigning, had properly delegated authority to prosecute the complaint

³ *N. L. R. B. v. Kingston Trap Rock Co*, 222 F. 2d 299.

2. Proceedings To Enjoin Recourse to State Court

In the *Swift* case,⁴ the District Court for Eastern Missouri denied the Board's petition for an injunction restraining the company from availing itself of State court relief against the picketing activities of a union which were also the subject of pending unfair labor practice charges filed by the company with the Board. The Board had taken the view that the requested relief was necessary to protect (1) the Board's jurisdiction over the unfair labor practice charges of which it had taken cognizance, and (2) the district court's unimpeded determination of the merits of the Board's concurrent application for a section 10 (1) injunction against some of the conduct specified in the company's charges. The Board urged that the appropriateness of equitable relief against State court encroachment was established by the Supreme Court's rulings in the *Garner*⁵ and *Capital Service*⁶ cases. The district court held, however, that the *Garner* case was not applicable because that Board itself did not entertain jurisdiction over the charges covering the conduct enjoined by the State court, those charges having been dismissed by the Board's General Counsel. Regarding its own jurisdiction under section 10 (1), the district court was of the view that the State court's injunction was no impediment since it related to conduct which was sufficiently separate from the conduct specified in the Board's section 10 (1) application for relief pending the Board's disposition of the charges involved. The need for an injunction such as had been held proper in *Capital Service* was thus not present here, according to the court. The Board's appeal from the district court's ruling is presently pending decision before the Court of Appeals for the Eighth Circuit.

3. Requests for Relief Against Representation Proceedings

In two cases where parties sought to invalidate or arrest representation proceedings, relief was denied by the court.

In *Elm City Broadcasting*,⁷ the complaining employer requested the United States District Court for Connecticut (1) to set aside consent-election proceedings on the basis of which the Board had issued a certification of representatives, and (2) to enjoin the scheduled hearing on the certified union's refusal-to-bargain charges. The district court held that it was without jurisdiction over the subject matter of the employer's petition. Dismissing the case, the court reiterated that (1) absent constitutional issues, neither the Administra-

⁴ *N. L. R. B. v Swift & Company*, 130 F. Supp. 214.

⁵ *Garner v Teamsters Union*, 346 U. S. 485; Nineteenth Annual Report, pp. 116-117.

⁶ *Capital Service, Inc. v N. L. R. B.*, 347 U. S. 501; Nineteenth Annual Report, pp. 115-116. For more recent Supreme Court decisions regarding the scope of Federal jurisdiction over labor relations see pp. 122-124.

⁷ *Elm City Broadcasting Corp. v N. L. R. B.*, 123 F. Supp. 838.

tive Procedure Act nor the court's general equity powers permit interference with the exclusive statutory method for determining bargaining representatives by the Board; and (2) even where constitutional issues are raised, equitable relief may be had only where such relief is necessary because of the unavailability of the statutory methods of review or their inadequacy for preventing irreparable injury. No such situation was present here, the court concluded.⁸

In the *Pacific American Shipowners* case,⁹ the Court of Appeals for the Ninth Circuit denied a motion the granting of which would have had the effect of directing the Board to establish a bargaining unit it had previously determined to be inappropriate. The Board here had directed an election among certain ship's personnel. The complaining union, on the other hand, insisted before the Board and the court that the bargaining agent for a group of employees included in the larger unit should be determined on the basis of their vote alone. While the union's request for relief was rejected by the court without opinion, one judge, concurring, pointed out that the determination of bargaining units was reserved to the exclusive jurisdiction of the Board and was not subject to judicial review. Insofar as the petitioning union relied on certain provisions of an unfair labor practice decree to which it had previously consented, the concurring member of the court expressed the view that, whatever the immediate purposes of the particular provisions were, they could not be construed as a limitation on the subsequent exercise of the Board's power to determine the bargaining unit.

4. Injunctions Against Board Action Under Section 9 (h)

Two cases where unions sought to enjoin Board action involved the scope of the Board's powers in administering the non-Communist affidavit provisions of section 9 (h).¹⁰

In the *Fur and Leather Workers* case,¹¹ the Court of Appeals for the District of Columbia affirmed an injunction by which the District Court for the District of Columbia restrained the Board from depriving the complaining union of its compliance status under section 9 (h).

The Board had determined that the complaining union was not entitled to the benefits of the act because its president had been convicted of having filed a false affidavit under section 9 (h). A new affidavit, filed after the convicted officer's reelection by the union,

⁸ In view of its conclusions, the district court vacated its previous order for a temporary stay of the hearing on the unfair labor practice complaint against the employer.

⁹ *N L R. B. v Pacific American Shipowners Association*, 218 F 2d 913.

¹⁰ For Board and court decisions dealing extensively with this problem, see the discussion at pp 9-14 of the Nineteenth Annual Report

¹¹ *Farmer v Fur and Leather Workers Union*, 221 F 2d 862.

was rejected. In declaring the union out of compliance, the Board took the view that the officer's conviction apprised the union membership of the falsity of his most recent affidavit, and that to this extent, the present situation was unlike that in the earlier *Electrical Workers* case.¹² The court of appeals there had held that the Board was without statutory power to deprive a union of its compliance status under section 9 (h), but expressly reserved ruling on the question whether a union would be barred from the benefits of the act "if its membership was aware of the alleged falsity of the affidavit." Faced with such a situation, the court held that the Board is without any authority to deprive a union of its compliance status regardless of whether or not the membership of the union concerned was aware of the falsity of the non-Communist affidavit of one of its officers. According to the court, the only penalty Congress intended to provide for false non-Communist affidavits is the criminal penalty expressly provided in section 9 (h).

In the *Mine, Mill and Smelter Workers* case,¹³ the same court held, on the other hand, that the district court properly refused to enjoin the Board from investigating section 9 (h) affidavits filed by the petitioning union's officers. Distinguishing the present situation from that in the *Electrical Workers* case,¹⁴ the court pointed out that, pending the investigation here, the Board continued to process all cases before it involving the petitioning union and thus did not deprive it of the benefits of the act. The court particularly noted that in one important Board election the union received a large majority of the votes cast and was certified by the Board. The court of appeals agreed with the district court's conclusion that the union thus had shown no threat of irreparable injury which entitled it to equitable relief.

¹² *Farmer v United Electrical Workers*, 211 F 2d 36, certiorari denied 347 U. S. 943

¹³ *International Union of Mine, Mill and Smelter Workers v. Farmer*, 218 F. 2d 42.

¹⁴ See footnote 12, above.

APPENDIX A

Statistical Tables for Fiscal Year 1955

Table 1.—Total Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1955

	Number of cases					
	Total	Identification of complainant or petitioner				
		A. F. L. affiliates	C. I O affiliates	Unaffiliated unions	Indi- viduals	Employ- ers
	All cases ¹					
Pending July 1, 1954.....	4,394	1,849	815	260	1,129	341
Received July 1, 1954-June 30, 1955.....	13,391	5,672	2,592	657	3,196	1,274
On docket July 1, 1954-June 30, 1955.....	17,785	7,521	3,407	917	4,325	1,615
Closed July 1, 1954-June 30, 1955.....	13,671	5,972	2,648	735	3,091	1,225
Pending June 30, 1955.....	4,114	1,549	759	182	1,234	390
	Unfair labor practice cases					
Pending July 1, 1954.....	² 2,672	862	443	114	1,019	234
Received July 1, 1954-June 30, 1955.....	6,171	1,608	990	165	2,679	729
On docket July 1, 1954-June 30, 1955.....	8,843	2,470	1,433	279	3,698	963
Closed July 1, 1954-June 30, 1955.....	6,171	1,739	1,014	190	2,549	679
Pending June 30, 1955.....	2,672	731	419	89	1,149	284
	Representation cases					
Pending July 1, 1954.....	1,715	987	372	146	103	107
Received July 1, 1954-June 30, 1955.....	7,165	4,062	1,601	490	467	545
On docket July 1, 1954-June 30, 1955.....	8,880	5,049	1,973	636	570	652
Closed July 1, 1954-June 30, 1955.....	7,442	4,231	1,634	543	488	546
Pending June 30, 1955.....	1,438	818	339	93	82	106
	Union-shop deauthorization cases					
Pending July 1, 1954.....	7	0	0	0	7	-----
Received July 1, 1954-June 30, 1955.....	55	2	1	2	50	-----
On docket July 1, 1954-June 30, 1955.....	62	2	1	2	57	-----
Closed July 1, 1954-June 30, 1955.....	58	2	0	2	54	-----
Pending June 30, 1955.....	4	0	1	0	3	-----

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 12 cases filed under the National Labor Relations Act, prior to amendment. Of this number 10 were closed during the fiscal year leaving 2 pending on June 30, 1955

Table 1A.—Unfair Labor Practice and Representation Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1955

	Number of unfair labor practice cases						Number of representation cases					
	Total	Identification of complainant					Total	Identification of petitioners				
		A F L affiliates	C I O affiliates	Unaffiliated unions	Individuals	Employers		A F L affiliates	C I O affiliates	Unaffiliated unions	Individuals	Employees
	CA cases ¹						RC cases ¹					
Pending July 1, 1954.....	1,889	797	424	101	567	102	1,506	987	372	146	1	10
Received July 1, 1954-June 30, 1955.....	4,362	1,552	971	153	1,584	2102	6,160	4,059	1,601	490	10	10
On docket July 1, 1954-June 30, 1955.....	6,251	2,349	1,395	254	2,151	2102	7,666	5,046	1,973	636	11	11
Closed July 1, 1954-June 30, 1955.....	4,449	1,662	993	176	1,516	2102	6,414	4,228	1,634	543	9	9
Pending June 30, 1955.....	1,802	687	402	78	635	0	1,252	818	339	93	2	2
	CB cases ¹						RM cases ¹					
Pending July 1, 1954.....	633	52	12	12	450	107	107					107
Received July 1, 1954-June 30, 1955.....	1,382	49	16	12	1,081	224	545					545
On docket July 1, 1954-June 30, 1955.....	2,015	101	28	24	1,531	331	652					652
Closed July 1, 1954-June 30, 1955.....	1,332	66	13	13	1,026	214	546					546
Pending June 30, 1955.....	683	35	15	11	505	117	106					106
	CC cases ¹						RD cases ¹					
Pending July 1, 1954.....	108	0	3	1	2	102	102	0	0	0	0	102
Received July 1, 1954-June 30, 1955.....	345	3	2	0	11	329	460	3	0	0	0	457
On docket July 1, 1954-June 30, 1955.....	453	3	5	1	13	431	562	3	0	0	0	559
Closed July 1, 1954-June 30, 1955.....	302	1	4	1	5	291	482	3	0	0	0	479
Pending June 30, 1955.....	151	2	1	0	8	140	80	0	0	0	0	80
	CD cases ¹											
Pending July 1, 1954.....	30	4	1	0	0	25						
Received July 1, 1954-June 30, 1955.....	82	4	1	0	3	74						
On docket July 1, 1954-June 30, 1955.....	112	8	2	0	3	99						
Closed July 1, 1954-June 30, 1955.....	78	2	2	0	2	72						
Pending June 30, 1955.....	34	6	0	0	1	27						

¹ See table 1, footnote 1, for definitions of types of cases² These cases were filed against the plumbing industry of Greater Kansas City, the complainant was the Plumbing Contractor's association

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1955

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 4,362	1 100.0	8 (a) (3).....	3,089	70.8
8 (a) (1).....	2 4,362	2 100.0	8 (a) (4).....	99	2.3
8 (a) (2).....	403	9.2	8 (a) (5).....	1,213	27.8

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 1,809	1 100.0	8 (b) (3).....	145	8.0
8 (b) (1).....	1,145	63.3	8 (b) (4).....	427	23.6
8 (b) (2).....	1,145	63.3	8 (b) (5).....	14	.8
			8 (b) (6).....	14	.8

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 1,145	1 100.0	Total cases 8 (b) (4).....	1 427	1 100.0
8 (b) (1) (A).....	1,129	98.6	8 (b) (4) (A).....	303	71.0
8 (b) (1) (B).....	19	1.7	8 (b) (4) (B).....	124	29.0
			8 (b) (4) (C).....	39	9.1
			8 (b) (4) (D).....	82	19.2

¹ A single case may include allegations of violations of more than one section of the 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 1955

Formal action taken	All cases	Unfair labor practice cases			Representation cases
		All C cases	CA cases ¹	Other C cases ¹	
Complaints issued.....	497	497	287	210	-----
Notices of hearing issued.....	3,709	24	-----	24	3,685
Cases heard.....	2,299	404	246	158	1,895
Intermediate reports issued.....	416	416	287	129	-----
Decisions issued, total.....	2,571	526	361	165	2,045
Decisions and orders.....	461	461	² 336	³ 125	-----
Decisions and consent orders.....	65	65	25	40	-----
Elections directed.....	1,547	-----	-----	-----	1,547
Rulings on objections and/or challenges in stipulated election cases.....	97	-----	-----	-----	97
Dismissals on record.....	401	-----	-----	-----	401

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

² Includes 32 cases decided by adoption of intermediate report in absence of exceptions.

³ Includes 14 cases decided by adoption of intermediate report in absence of exceptions.

Table 4.—Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1955

A. BY EMPLOYERS ¹

	Total	By agree- ment of all parties	By Board or court order
Cases			
Notices posted.....	708	446	262
Recognition or other assistance withheld from employer-assisted union.....	87	51	36
Employer-dominated union disestablished.....	24	8	16
Workers placed on preferential hiring list.....	45	38	7
Collective bargaining begun.....	135	80	55
Workers			
Workers offered reinstatement to job.....	1, 275	721	554
Workers receiving back pay.....	1, 836	³ 1, 171	⁴ 665
Back-pay awards.....	\$785, 710	\$165, 390	\$620, 320

B BY UNIONS ²

	Cases		
Notice posted.....	272	174	98
Union to cease requiring employer to give it assistance.....	52	24	28
Notice of no objection to reinstatement of discharged employees.....	72	40	32
Collective bargaining begun.....	5	5	0
Workers			
Workers receiving back pay.....	188	107	81
Back-pay awards.....	\$95, 510	\$24, 710	\$70, 800

¹ In addition to the remedial action shown, other forms of remedy were taken in 48 cases.² In addition to the remedial action shown, other forms of remedy were taken in 36 cases.³ Includes 77 workers who received back pay from both employer and union.⁴ Includes 37 workers who received back pay from both employer and union.

Table 5.—Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1955

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.....	13,336	4,362	1,382	345	82	6,160	545	460
Manufacturing.....	8,287	2,755	513	111	17	4,243	313	335
Ordnance and accessories.....	45	16	2	0	0	18	1	8
Food and kindred products.....	1,034	303	68	23	3	550	41	46
Tobacco manufacturers.....	7	0	0	0	0	6	1	0
Textile mill products.....	280	124	14	2	0	117	13	10
Apparel and other finished products made from fabrics and similar materials.....	357	180	35	5	0	103	24	10
Lumber and wood products (except furniture).....	731	440	11	10	0	195	40	35
Furniture and fixtures.....	319	99	18	10	1	174	9	8
Paper and allied products.....	324	63	9	4	0	236	5	7
Printing, publishing, and allied industries.....	319	72	37	5	2	187	8	8
Chemicals and allied products.....	531	121	31	4	2	316	22	35
Products of petroleum and coal.....	146	33	12	2	0	87	6	6
Rubber products.....	90	31	2	1	0	48	3	5
Leather and leather products.....	195	54	9	0	0	112	13	7
Stone, clay, and glass products.....	261	84	27	6	2	129	7	6
Primary metal industries.....	488	133	36	3	0	276	20	20
Fabricated metal products (except ordnance, machinery, and transportation equipment).....	802	242	44	15	1	454	22	24
Machinery (except electrical).....	794	241	48	11	4	433	21	36
Electrical machinery, equipment, and supplies.....	534	192	39	3	0	264	15	21
Aircraft and parts.....	210	61	9	0	1	120	7	12
Ship and boat building and repairing.....	71	25	11	0	0	32	1	2
Automotive and other transportation equipment.....	259	72	24	2	0	137	10	14
Professional, scientific, and controlling instruments.....	111	38	9	1	0	59	2	2
Miscellaneous manufacturing.....	379	131	18	4	1	190	22	13
Agriculture, forestry, and fisheries.....	9	4	0	2	0	2	0	1
Mining.....	184	73	28	3	0	73	3	4
Metal mining.....	63	19	6	0	0	35	1	2
Coal mining.....	50	30	17	2	0	1	0	0
Crude petroleum and natural gas production.....	5	0	0	0	0	3	2	0
Nonmetallic mining and quarrying.....	66	24	5	1	0	34	0	2
Construction.....	1,082	413	363	116	44	133	13	0
Wholesale trade.....	922	228	55	28	1	481	88	41
Retail trade.....	872	242	39	22	4	488	48	29
Finance, insurance, and real estate.....	46	15	0	0	0	28	2	1
Transportation, communication, and other public utilities.....	1,645	552	358	56	16	563	68	32
Highway passenger transportation.....	48	15	3	1	0	20	6	3
Highway freight transportation.....	613	275	107	24	8	165	27	7
Water transportation.....	470	161	222	18	3	62	4	0
Warehousing and storage.....	199	30	7	8	1	130	16	7
Other transportation.....	34	6	2	3	0	23	0	0
Communication.....	179	41	8	1	2	107	11	9
Heat, light, power, water, and sanitary services.....	102	24	9	1	2	56	4	6
Services.....	289	80	26	7	0	149	10	17

¹ Source: Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1945² 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 1955

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.....	13,336	4,362	1,382	345	82	6,160	545	460
New England.....	844	238	49	16	3	476	27	35
Maine.....	39	12	2	1	0	23	0	1
New Hampshire.....	36	13	2	0	0	18	1	2
Vermont.....	26	9	1	0	0	14	2	0
Massachusetts.....	493	113	28	8	1	301	20	22
Rhode Island.....	99	42	9	5	0	35	1	7
Connecticut.....	151	49	7	2	2	85	3	3
Middle Atlantic.....	2,996	952	457	62	30	1,255	138	102
New York.....	1,655	553	302	37	17	618	91	37
New Jersey.....	588	174	60	7	2	286	20	39
Pennsylvania.....	753	225	95	18	11	351	27	26
East North Central.....	2,670	787	249	60	14	1,365	97	98
Ohio.....	687	198	65	11	2	361	23	27
Indiana.....	373	107	37	7	2	190	16	14
Illinois.....	794	232	87	27	6	384	30	28
Michigan.....	618	199	55	12	4	312	15	21
Wisconsin.....	198	51	5	3	0	118	13	8
West North Central.....	1,166	387	84	30	11	564	43	47
Iowa.....	90	12	2	3	0	61	5	7
Minnesota.....	202	34	12	3	1	127	12	13
Missouri.....	627	263	56	21	9	248	17	13
North Dakota.....	20	2	0	0	0	13	2	3
South Dakota.....	12	1	0	0	0	9	2	0
Nebraska.....	59	14	1	0	0	39	1	4
Kansas.....	156	61	13	3	1	67	4	7
South Atlantic.....	1,313	467	94	40	8	629	45	30
Delaware.....	22	7	1	1	0	11	1	1
Maryland.....	212	56	16	7	0	116	11	6
District of Columbia.....	57	10	9	2	0	32	4	0
Virginia.....	194	71	7	1	1	100	2	12
West Virginia.....	96	41	13	1	1	37	1	2
North Carolina.....	218	101	7	3	0	100	6	1
South Carolina.....	58	23	0	0	0	31	2	2
Georgia.....	241	86	28	22	3	95	5	2
Florida.....	215	72	13	3	3	107	13	4
East South Central.....	695	276	66	19	0	311	10	13
Kentucky.....	155	39	16	4	0	93	1	2
Tennessee.....	290	135	34	4	0	107	2	8
Alabama.....	163	63	15	11	0	68	5	1
Mississippi.....	87	39	1	0	0	43	2	2
West South Central.....	909	262	95	48	3	436	35	30
Arkansas.....	86	33	4	1	0	41	5	2
Louisiana.....	165	60	20	5	0	72	5	3
Oklahoma.....	156	37	2	14	0	90	9	4
Texas.....	502	132	69	28	3	233	16	21
Mountain.....	453	137	39	4	4	237	17	15
Montana.....	43	19	3	1	1	13	4	2
Idaho.....	46	16	2	0	0	24	2	2
Wyoming.....	22	9	4	1	0	7	1	0
Colorado.....	123	34	12	1	0	68	6	2
New Mexico.....	85	30	8	0	3	37	2	5
Arizona.....	75	22	5	0	0	47	1	0
Utah.....	34	5	2	0	0	23	0	4
Nevada.....	25	2	3	1	0	18	1	0
Pacific.....	2,008	752	224	54	9	762	120	87
Washington.....	417	204	44	12	2	132	18	5
Oregon.....	349	217	14	7	0	70	22	19
California.....	1,242	331	166	35	7	560	80	63

See footnotes at end of table

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1955—Continued

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
Outlying areas.....	282	104	25	12	0	125	13	3
Alaska.....	36	10	5	3	0	17	1	0
Hawaii.....	51	11	0	3	0	33	4	0
Puerto Rico.....	194	82	20	6	0	75	8	3
Canada.....	1	1	0	0	0	0	0	0
Virgin Islands.....	0	0	0	0	0	0	0	0

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 1955

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.....	4,617	100.0	4,459	100.0	1,332	100.0	302	100.0	78	100.0
Before issuance of complaint.....	5,329	86.4	3,846	86.3	1,166	87.5	244	80.8	³ 73	93.6
After issuance of complaint, before opening of hearing.....	180	2.9	109	2.4	43	3.2	27	8.9	1	1.3
After hearing opened, before issuance of intermediate report ¹	77	1.2	43	1.0	18	1.4	13	4.3	3	3.8
After intermediate report, before issuance of Board decision.....	51	.8	33	.7	16	1.2	2	.7	0	.0
After Board order adopting intermediate report in absence of exceptions.....	35	.6	25	.6	9	.7	1	.3	0	.0
After Board decision, before court decree.....	⁵ 239	3.9	196	4.4	36	2.7	6	2.0	1	1.3
After Board order adopting intermediate report followed by circuit court decree.....	17	.3	10	.2	4	.3	3	1.0	0	.0
After circuit court decree, before Supreme Court action.....	⁶ 185	3.0	147	3.3	32	2.4	6	2.0	0	.0
After Supreme Court action ²	⁶ 58	.9	50	1.1	8	.6	0	.0	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 16 cases in which a notice of hearing issued pursuant to sec. 10 (k) of the act. Of these 16 cases, 6 were closed after notice, 3 were closed after hearing, and 7 were closed after Board decision

⁴ Includes 10 NLRA cases.

⁵ Includes 1 NLRA case.

⁶ Includes 8 NLRA cases.

Table 8.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1955

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 6,171	100 0	4,459	100 0	1,332	100 0	302	100 0	78	100 0
Before issuance of complaint.....	5,329	86 4	3,846	86 3	1,166	87 5	244	80 8	73	93 6
Adjusted.....	617	10 0	453	10 2	108	8 1	38	12 6	18	23 1
Withdrawn.....	3,057	49 5	2,203	49 4	645	48 4	159	52 7	50	64 1
Dismissed.....	1,632	26 5	1,176	26 4	405	30 4	46	15 2	5	6 4
Otherwise.....	23	4	14	3	8	6	1	3	0	0
After issuance of complaint, before opening of hearing.....	180	2 9	109	2 4	43	3 2	27	8 9	1	1 3
Adjusted.....	78	1 3	55	1 2	19	1 4	4	1 3	0	0
Compliance with stipulated decision.....	3	(⁸)	2	(⁸)	1	1	0	0	0	0
Compliance with consent decree.....	51	8	25	6	11	8	14	4 6	7	1 3
Withdrawn.....	39	6	20	4	10	7	9	3 0	0	0
Dismissed.....	9	2	7	2	2	2	0	0	0	0
After hearing opened, before issuance of intermediate report.....	77	1 2	43	1 0	18	1 4	13	4 3	3	3 8
Adjusted.....	29	4	24	6	4	3	1	3	0	0
Compliance with stipulated decision.....	1	(⁸)	0	0	0	0	1	3	0	0
Compliance with consent decree.....	36	6	14	3	10	7	9	3 1	3	3 8
Withdrawn.....	6	1	3	2	2	1	1	3	0	0
Dismissed.....	5	1	2	(⁸)	2	2	1	3	0	0
After intermediate report, before issuance of Board decision.....	51	8	33	7	16	1 2	2	7	0	0
Compliance.....	46	8	30	7	15	1 1	1	4	0	0
Withdrawn.....	2	(⁸)	1	(⁸)	0	0	1	3	0	0
Dismissed.....	2	(⁸)	1	(⁸)	1	1	0	0	0	0
Other wise.....	1	(⁸)	1	(⁸)	0	0	0	0	0	0

After Board order adopting intermediate report in absence of exceptions.....	35	6	25	6	9	7	1	3	0	0
Compliance.....	16	3	10	2	5	4	1	3	0	0
Dismissed.....	19	3	15	4	4	3	0	0	0	0
After Board decision, before court decree.....	239	3 9	196	4 4	36	2 7	6	2 0	1	1 3
Compliance.....	119	2 0	88	2 0	24	1 8	6	2 0	1	1 3
Withdrawn.....	1	(⁵)	1	(⁵)	0	0	0	0	0	0
Dismissed.....	² 118	1 9	106	2 4	12	9	0	0	0	0
Otherwise.....	1	(⁵)	1	(⁵)	0	0	0	0	0	0
After Board order adopting intermediate report followed by circuit court decree.....	17	3	10	2	4	3	3	1 0	0	0
Compliance.....	14	3	7	2	4	3	3	1 0	0	0
Dismissed.....	1	(⁵)	1	(⁵)	0	0	0	0	0	0
Other wise.....	2	(⁵)	2	(⁵)	0	0	0	0	0	0
After circuit court decree, before Supreme Court action.....	185	3 0	147	3 3	32	2 4	6	2 0	0	0
Compliance.....	² 137	2 2	101	2 3	30	2 2	6	2 0	0	0
Dismissed.....	45	8	43	9	2	2	0	0	0	0
Otherwise.....	3	(⁵)	3	1	0	0	0	0	0	0
After Supreme Court denied writ of certiorari.....	50	8	43	1 0	7	5	0	0	0	0
Compliance.....	38	6	31	7	7	5	0	0	0	0
Dismissed.....	³ 12	2	12	3	0	0	0	0	0	0
After Supreme Court opinion compliance.....	8	1	7	1	1	1	0	0	0	0

¹ Includes 10 NLRA cases.² Includes 1 NLRA case.³ Includes 8 NLRA cases⁴ Includes 6 cases closed by compliance with Board decision after 10 (k) notice⁵ Includes 6 cases withdrawn after 10 (k) notice of hearing, 2 cases withdrawn after hearing and 1 case withdrawn after Board decision.⁶ Includes 1 case dismissed after 10 (k) hearing.⁷ All 10 (k) action waived by Board.⁸ Less than one-tenth of 1 percent.

Table 9.—Disposition of Representation Cases Closed, Fiscal Year 1955

Stage of disposition	All R cases		RC cases		RM cases		RD cases	
	Number of cases	Per- cent of cases closed	Number of cases	Per- cent of cases closed	Number of cases	Per- cent of cases closed	Number of cases	Per- cent of cases closed
Total number of cases closed.....	7,442	100 0	6,414	100 0	546	100 0	482	100 0
Before issuance of notice of hearing.....	3,414	45 9	2,900	45 2	291	53 3	223	46 3
After issuance of notice of hearing, before opening of hearing.....	1,860	25 0	1,642	25 6	110	20 2	108	22 4
After hearing opened, before issuance of Board decision.....	251	3 4	211	3 3	22	4 0	18	3 7
After issuance of Board decision.....	1,917	25 7	1,661	25 9	123	22 5	133	27 6

Table 10.—Analysis of Methods of Disposition of Representation Cases Closed, Fiscal Year 1955

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..	7,442	100 0	6,414	100.0	546	100 0	482	100 0
Consent election.....	1,888	25 4	1,739	27 1	98	17 9	51	10 6
Before notice of hearing.....	1,207	16 2	1,116	17 4	70	12 8	21	4 4
After notice of hearing, before hearing opened.....	624	8 4	575	9 0	21	3 8	28	5 8
After hearing opened, before Board decision.....	57	8	48	7	7	1 3	2	4
Stipulated election.....	1,160	15 6	1,082	16 9	51	9 3	27	5 6
Before notice of hearing.....	574	7 7	529	8 3	35	6 4	10	2 1
After notice of hearing, before hearing opened.....	502	6 8	481	7 5	10	1 8	11	2 3
After hearing opened, before Board decision.....	77	1 0	65	1 0	6	1 1	6	1 2
After postelection hearing and decision.....	7	1	7	1	0	0	0	0
Withdrawn.....	1,796	24 1	1,469	22 9	185	33 9	142	29 5
Before notice of hearing.....	1,040	14 0	845	13 2	104	19 0	91	18 9
After notice of hearing, before hearing opened.....	577	7 7	467	7 3	67	12 3	43	8 9
After hearing opened, before Board decision.....	88	1 2	72	1 1	9	1 7	7	1 5
After Board decision and direction of election.....	91	1 2	85	1 3	5	9	1	2
Dismissed.....	1,194	16 0	895	13 9	121	22 2	178	36 9
Before notice of hearing.....	583	7 8	400	6 2	82	15 0	101	20 9
After notice of hearing, before hearing opened.....	155	2 1	117	1 8	12	2 2	26	5 4
After hearing opened, before Board decision.....	29	4	26	4	0	0	3	.6
By Board decision.....	1,427	5.7	352	5 5	27	5 0	48	10 0
Board-ordered election.....	1,392	18 7	1,217	19 0	91	16 7	84	17 4
Otherwise.....	12	2	12	.2	0	0	0	0

¹ Includes 4 RC, 13 RM, and 9 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 1955

Type of case	Total elections	Type of election			
		Consent ¹	Stipulated ²	Board ordered ³	Regional directed ⁴
All elections, total.....	4,392	1,870	1,136	1,368	18
Eligible voters, total.....	530,811	134,122	131,666	263,230	1,793
Valid votes, total.....	466,809	118,028	117,989	229,269	1,523
RC cases, ⁵ total.....	4,003	1,728	1,062	1,213	-----
Eligible voters.....	471,709	121,276	123,564	226,869	-----
Valid votes.....	416,911	106,948	110,667	199,296	-----
RM cases, ⁵ total.....	212	91	47	74	-----
Eligible voters.....	44,286	8,811	3,622	31,853	-----
Valid votes.....	36,531	7,380	3,155	25,996	-----
RD cases, ⁵ total.....	157	50	27	80	-----
Eligible voters.....	13,002	4,022	4,480	4,500	-----
Valid votes.....	11,825	3,689	4,167	3,969	-----
UD cases, ⁵ total.....	20	1	0	1	18
Eligible voters.....	1,814	13	0	8	1,793
Valid votes.....	1,542	11	0	8	1,523

¹ Consent elections are held by an agreement of all parties concerned. Postelection 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. Postelection rulings on objections and/or challenges are made by the Board.

⁴ These elections are held pursuant to direction by the regional director. Postelection rulings on objections and/or challenges are made by the Board.

⁵ See table 1, footnote 1, for definitions of types of cases.

Table 12.—Results of Union-Shop Deauthorization Polls, Fiscal Year 1955

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	Cost 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.....	20	12	60 0	8	40 0	1,814	433	23 9	1,381	76 1	1,542	85.0	842	46 4
A. F. L.....	15	11	73 3	4	26 7	471	335	71 1	136	28 9	407	86 4	282	59 9
C. I. O.....	3	0	.0	3	100 0	1,187	0	0	1,187	100 0	1,010	85 1	486	40 9
Unaffiliated.....	2	1	50 0	1	50 0	156	98	62 8	58	37 2	125	80 1	74	47 4

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 Elections¹ by Affiliation of Participating Unions, Fiscal Year 1955

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.....	2,4215	2,849	67 6	2,515,995	378,962	73 4	2,453,442	87 9	335,393	74 0
A. F. L.....	2,946	1,721	58 4	318,812	140,017	43 9	280,271	87 9	138,636	49 5
C. I. O.....	1,456	804	55 2	268,325	147,614	55 0	236,283	88 1	123,320	52 2
Unaffiliated.....	528	324	61 4	180,449	91,331	50 6	153,651	85 1	73,437	47 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 two 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 three groupings by affiliation.

Table 13A.—Outcome of Collective-Bargaining Elections ¹ by Affiliation of Participating Unions, and Number of Employees in Units, Fiscal Year 1955

Affiliation of participating unions	Number of elections				Number of employees involved (number eligible to vote)					Total valid votes cast	
	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.....	4,215	1,721	804	324	1,366	515,995	140,017	147,614	91,331	137,033	453,442
1-union elections -											
A. F. L.....	2,227	1,345			882	143,679	69,722			73,957	127,270
C. I. O.....	896		537		359	100,754		53,097		47,657	92,116
Unaffiliated.....	207			149	58	11,913			8,089	3,824	9,887
2-union elections											
A. F. L-C I O.....	358	138	184		36	65,022	17,946	40,916		6,160	56,847
A. F. L-unaffiliated.....	134	55		71	8	66,475	25,801		36,867	3,807	57,141
A. F. L-A. F. L.....	166	151			15	19,064	18,066			998	17,140
C. I. O-unaffiliated.....	147		64	81	2	81,071		49,732	31,332	7	68,158
C. I. O-C I O.....	10		8		2	1,665		1,384		281	1,533
Unaffiliated-unaffiliated.....	9			9	0	1,780			1,780	0	1,477
3-union elections											
A. F. L-C. I. O-unaffiliated.....	20	4	5	10	1	13,352	2,896	611	9,826	19	11,653
A. F. L-A. F. L-A. F. L.....	11	11			0	949				0	799
A. F. L-A. F. L-C. I. O.....	18	12	4		2	4,407	2,828	1,456		123	4,080
A. F. L-A. F. L-unaffiliated.....	5	2		2	1	3,810	1,431		2,179	200	3,445
4-union elections											
A. F. L-A. F. L-A. F. L-C I O.....	1	1	0		0	6	6	0		0	6
A. F. L-A. F. L-C I. O-unaffiliated.....	2	2	0	0	0	372	372	0	0	0	354
A. F. L-C. I. O-C I. O-unaffiliated.....	2	0	1	1	0	1,301	0	403	898	0	1,174
A. F. L-C I. O-unaffiliated-unaffiliated.....	2	0	1	1	0	375	0	15	360	0	362

¹ For definition of this term, see footnote 1, table 13

Table 14.—Decertification Elections by Affiliation of Participating Unions, Fiscal Year 1955

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.....	157	55	35 0	102	65 0	13,002	7,478	57 5	5,524	42 5	11,825	90 9	5,889	49 8
A F L.....	105	27	25 7	78	74 3	7,351	3,246	44 2	4,105	55 8	6,724	91 5	3,061	45 5
C I O.....	41	24	58 5	17	41 5	4,264	3,134	73 5	1,130	26 5	3,905	91 6	2,209	56 6
Unaffiliated.....	11	4	36 4	7	63 6	1,387	1,098	79 2	289	20 8	1,196	86 2	619	51 8

Table 14A.—Voting in Decertification Elections, Fiscal Year 1955

Union affiliation	Elections in which a representative was redesignated					Election 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.....	7,478	6,810	91 1	4,383	2,427	5,524	5,015	90 8	1,495	3,520
A F L.....	3,246	2,992	92 2	2,019	973	4,105	3,732	90 9	1,042	2,690
C I O.....	3,134	2,870	91 6	1,808	1,062	1,130	1,035	91 6	390	645
Unaffiliated.....	1,098	948	86 3	556	392	289	248	85 8	63	185

Table 15.—Size of Units in Collective-Bargaining and Decertification Elections, Fiscal Year 1955

A. COLLECTIVE-BARGAINING ELECTIONS

Size of unit (number of employees)	Number of elec- tions	Per- cent of total	Elections in which representation rights were won by—						Elections in which no repre- sentative was chosen	
			A F L affili- ates		C ' I O affili- ates		Unaffiliated unions		Number	Per- cent
			Number	Per- cent	Number	Per- cent	Number	Per- cent		
Total.....	4, 215	100 0	1, 721	100 0	804	100 0	324	100 0	1, 366	100 0
1-9.....	738	17 5	427	24 8	80	10 0	43	13 3	188	13 8
10-19.....	758	18 0	377	21 9	103	12 8	51	15 7	227	16 6
20-29.....	555	13 2	226	13 1	117	14 6	35	10 8	177	13 0
30-39.....	376	8 9	138	8 0	85	10 6	11	3 4	142	10 4
40-49.....	233	5 5	97	5 6	51	6 3	11	3 4	74	5 4
50-59.....	203	4 8	64	3 7	36	4 5	23	7 1	80	5 9
60-69.....	157	3 7	56	3 3	30	3 7	14	4 3	57	4 2
70-79.....	117	2 8	40	2 3	29	3 6	10	3 1	38	2 8
80-89.....	110	2 6	40	2 3	20	2 5	6	1 9	44	3 2
90-99.....	81	1 9	19	1 1	19	2 4	7	2 2	36	2 6
100-149.....	288	6 8	80	4 6	65	8 1	30	9 3	113	8 3
150-199.....	131	3 1	39	2 3	32	4 0	16	4 9	44	3 2
200-299.....	140	3 3	32	1 9	30	3 7	20	6 2	58	4 2
300-399.....	111	2 6	31	1 8	33	4 1	15	4 6	32	2 3
400-499.....	53	1 3	15	9	17	2 1	7	2 2	14	1 0
500-599.....	31	8	6	4	9	1 1	7	2 2	9	7
600-799.....	45	1 1	15	9	14	1 7	5	1 5	11	8
800-999.....	20	5	2	1	10	1 2	2	6	6	4
1,000-1,999.....	41	1 0	11	6	15	1 9	3	9	12	9
2,000-2,999.....	15	4	3	2	5	6	4	1 2	3	2
3,000-3,999.....	2	(1)	0	0	2	3	0	0	0	0
4,000-4,999.....	2	(1)	0	0	1	1	1	3	0	0
5,000-9,999.....	5	1	2	1	0	0	2	. 6	1	1
10,000 and over.....	3	1	1	1	1	. 1	1	. 3	0	. 0

B. DECERTIFICATION ELECTIONS

Total.....	157	100 0	27	100 0	24	100 0	4	100 0	102	100 0
1-9.....	22	14 0	3	11 1	0	0	0	0	19	18 6
10-19.....	25	15 9	4	14 8	1	4 2	0	0	20	19 6
20-29.....	19	12 1	3	11 1	3	12 5	1	25 0	12	11 7
30-39.....	14	8 9	5	18 6	1	4 2	0	0	8	7 8
40-49.....	10	6 4	1	3 7	2	8 3	0	0	7	6 9
50-59.....	12	7 6	3	11 1	2	8 3	0	0	7	6 9
60-69.....	9	5 7	1	3 7	2	8 3	0	0	6	5 9
70-79.....	6	3 8	1	3 7	2	8 3	1	25 0	2	2 0
80-89.....	3	1 9	0	0	0	0	0	0	3	2 9
90-99.....	3	1 9	0	0	0	0	0	0	3	2 9
100-149.....	10	6 4	1	3 7	4	16 7	0	0	5	4 9
150-199.....	10	6 4	1	3 7	2	8 3	1	25 0	6	5 9
200-299.....	8	5 1	2	7 4	4	16 7	0	0	2	2 0
300-399.....	2	1 3	1	3 7	0	0	0	0	1	1 0
400 and over.....	4	2 6	1	3 7	1	4 2	1	25 0	1	1 0

¹ Less than one-tenth of 1 percent

Table 16.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1955

Division and State 1	Number of elections					Employ-ees eligible to vote	Total valid votes cast	Valid votes cast for—				Employ-ees in units choosing representation
	Total	In which representation rights were won by—			In which no representa-tive was chosen			A. F. I. affiliates	C. I. O affiliates	Unaffiliated unions	No union	
		A. F. L. affiliates	C. I. O affiliates	Unaffiliated unions								
Total.....	4,215	1,721	804	324	1,366	515,995	453,442	138,636	123,320	73,437	118,049	378,962
New England.....	325	104	104	26	91	40,968	37,098	9,471	12,511	3,973	11,143	29,060
Maine.....	13	3	1	2	7	1,378	1,232	183	243	176	630	397
New Hampshire.....	17	6	2	0	9	4,693	4,211	2,258	762	0	1,191	3,061
Vermont.....	8	6	0	1	1	530	507	276	0	50	181	510
Massachusetts.....	190	52	77	16	45	20,381	18,411	3,885	7,478	2,081	4,967	15,340
Rhode Island.....	32	13	8	2	9	1,841	1,681	291	664	39	687	1,050
Connecticut.....	65	24	16	5	20	12,145	11,056	2,578	3,364	1,627	3,487	8,702
Middle Atlantic.....	823	360	165	97	201	143,764	121,747	33,624	36,552	34,585	16,986	125,412
New York.....	365	168	61	42	94	83,599	68,355	22,126	18,250	21,231	6,748	76,494
New Jersey.....	205	94	43	23	45	27,915	24,785	6,947	8,251	5,662	3,925	23,810
Pennsylvania.....	253	98	61	32	62	32,250	28,607	4,551	10,051	7,692	6,313	25,108
East North Central.....	1,018	362	233	70	353	121,696	109,398	30,323	34,273	19,432	25,370	92,233
Ohio.....	291	96	72	26	97	32,975	30,219	6,212	11,098	3,146	9,763	21,387
Indiana.....	151	59	25	6	61	17,840	15,193	3,718	3,764	4,362	3,349	13,986
Illinois.....	255	101	51	18	85	47,611	43,270	13,375	13,578	10,373	5,944	40,841
Michigan.....	230	54	78	18	80	18,943	16,831	4,710	5,481	1,478	5,162	13,217
Wisconsin.....	91	52	7	2	30	4,327	3,885	2,308	352	73	1,152	2,802
West North Central.....	309	200	58	25	116	31,191	27,171	10,139	5,455	4,284	7,293	22,330
Iowa.....	45	19	8	3	15	3,958	3,394	1,281	1,129	147	837	2,804
Minnesota.....	96	51	15	7	23	7,159	6,189	3,124	1,161	516	1,388	5,747
Missouri.....	149	81	19	11	38	11,658	10,218	4,165	1,205	2,154	2,694	8,651
North Dakota.....	11	6	2	1	2	410	333	192	79	6	56	339
South Dakota.....	9	3	0	0	6	1,865	1,764	152	618	0	994	84
Nebraska.....	37	15	4	1	17	1,799	1,660	647	271	225	517	1,239
Kansas.....	52	25	10	2	15	4,342	3,613	578	992	1,236	807	3,466

South Atlantic.....	429	190	64	15	160	65,401	58,674	19,792	11,633	2,931	24,318	35,095
Delaware.....	7	3	2	0	2	292	210	123	29	0	58	218
Maryland.....	72	35	9	1	27	8,234	7,360	3,413	839	278	2,830	5,538
District of Columbia.....	26	12	1	2	11	6,344	5,086	3,254	17	1,480	335	5,921
Virginia.....	66	38	4	3	21	5,570	4,991	2,592	711	605	1,083	4,578
West Virginia.....	27	11	6	2	8	2,259	2,070	735	725	85	525	1,921
North Carolina.....	72	21	16	2	33	25,636	23,611	5,163	5,516	182	12,750	8,667
South Carolina.....	23	4	5	2	12	5,238	4,835	1,210	893	17	2,715	1,375
Georgia.....	81	43	12	2	24	8,184	7,288	2,272	2,093	262	2,661	4,586
Florida.....	55	23	9	1	22	3,444	3,223	1,030	810	22	1,361	2,293
East South Central.....	206	70	38	6	92	24,905	22,749	5,103	7,491	549	9,606	13,730
Kentucky.....	53	22	8	2	21	6,465	5,471	1,907	1,785	297	1,482	4,669
Tennessee.....	77	30	14	2	31	9,468	8,894	1,689	3,274	105	3,826	5,308
Alabama.....	44	10	11	2	21	3,657	3,333	746	846	0	1,594	1,815
Mississippi.....	32	8	5	0	19	5,315	5,051	761	1,586	0	2,704	1,877
West South Central.....	279	109	42	11	117	29,072	25,554	8,336	6,653	1,779	8,786	19,588
Arkansas.....	30	10	7	0	13	3,246	2,987	890	981	0	1,116	2,005
Louisiana.....	43	14	6	2	21	5,632	4,806	1,136	1,213	390	2,067	2,862
Oklahoma.....	49	14	9	2	24	3,423	3,161	1,222	521	197	1,221	2,561
Texas.....	157	71	20	7	59	16,771	14,600	5,088	3,038	1,192	4,382	12,160
Mountain.....	143	68	24	6	45	6,673	5,762	2,199	1,718	538	1,307	5,228
Montana.....	10	3	2	0	5	451	369	89	191	0	89	342
Idaho.....	20	14	2	0	4	1,055	905	181	344	225	155	857
Wyoming.....	5	2	1	0	2	157	153	42	25	0	86	56
Colorado.....	51	24	8	1	18	1,453	1,343	464	392	69	418	978
New Mexico.....	19	7	0	1	11	570	530	252	0	36	242	203
Arizona.....	16	9	2	4	1	1,437	1,225	547	421	167	90	1,379
Utah.....	14	5	6	0	3	790	616	231	199	41	145	683
Nevada.....	8	4	3	0	1	760	621	393	146	0	82	730
Pacific.....	510	227	66	50	167	44,137	38,965	17,215	6,525	3,560	11,665	30,225
Washington.....	97	55	6	16	20	5,420	4,239	3,088	287	226	638	4,923
Oregon.....	54	24	8	1	21	2,423	2,197	1,026	384	39	748	1,637
California.....	359	148	52	33	126	36,294	32,529	13,101	5,854	3,295	10,279	23,665
Outlying areas.....	83	31	10	18	24	8,188	6,324	2,434	509	1,806	1,575	6,061
Alaska.....	4	4	0	0	0	43	41	27	0	0	14	43
Hawaii.....	28	15	1	4	8	1,800	1,422	744	12	403	263	1,535
Puerto Rico.....	51	12	9	14	16	6,345	4,861	1,663	497	1,403	1,298	4,483
Virgin Islands.....	0	0	0	0	0	0	0	0	0	0	0	0

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 1955

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	4, 215	1, 721	804	324	1, 366	515, 995	453, 442
Manufacturing	2, 956	1, 059	680	260	957	396, 824	353, 793
Ordnance and accessories	11	6	3	0	2	2, 442	2, 295
Food and kindred products	384	175	47	28	134	29, 432	25, 222
Tobacco manufacturers	3	0	0	0	3	8, 601	8, 003
Textile mill products	94	22	34	11	27	30, 033	26, 926
Apparel and other finished products made from fabrics and similar material	59	16	8	4	31	8, 622	7, 853
Lumber and wood products	136	62	20	17	37	9, 917	8, 823
Furniture and fixtures	112	42	23	8	39	9, 758	8, 994
Paper and allied products	137	62	30	6	39	17, 909	16, 366
Printing, publishing, and allied industries	126	60	14	9	43	5, 635	5, 269
Chemicals and allied products	222	87	37	16	82	19, 188	17, 781
Products of petroleum and coal	62	28	14	11	9	3, 690	3, 252
Rubber products	37	13	7	1	16	4, 442	4, 091
Leather and leather products	71	8	39	9	15	10, 509	9, 461
Stone, clay, and glass products	92	41	24	7	20	8, 510	7, 704
Primary metal industries	206	72	57	24	53	19, 738	17, 804
Fabricated metal products (except machinery and transportation equipment)	306	103	83	14	106	28, 810	26, 176
Machinery (except electrical)	340	93	96	33	118	51, 373	46, 577
Electrical machinery, equipment, and supplies	213	63	53	30	67	80, 033	67, 913
Aircraft and parts	63	19	17	6	21	18, 304	16, 207
Ship and boat building and repairing	24	13	9	0	2	1, 367	1, 162
Automotive and other transportation equipment	99	26	31	13	29	14, 971	13, 937
Professional, scientific, and controlling instruments	42	12	8	6	16	3, 937	3, 513
Miscellaneous manufacturing	117	36	26	7	48	9, 603	8, 464
Forestry	1	1	0	0	0	14	14
Mining	45	20	6	3	16	5, 280	4, 807
Metal mining	17	6	4	2	5	4, 218	3, 795
Coal mining	1	0	0	0	1	50	50
Crude petroleum and natural gas production	3	1	0	0	2	104	101
Nonmetallic mining and quarrying	24	13	2	1	8	908	861
Construction	76	53	1	7	15	11, 206	7, 142
Wholesale trade	356	179	39	12	126	10, 529	9, 525
Retail trade	320	177	18	6	119	26, 919	23, 448
Finance, insurance, and real estate	14	7	1	0	6	2, 935	2, 754
Transportation, communication, and other public utilities	384	194	46	30	114	60, 077	50, 023
Highway passenger transportation	5	3	0	0	2	851	804
Highway freight transportation	104	54	3	4	43	1, 889	1, 732
Water transportation	42	19	10	8	5	35, 838	29, 058
Warehousing and storage	83	42	11	7	23	3, 281	2, 958
Other transportation	19	3	6	5	5	860	759
Communication	84	55	10	3	16	9, 053	7, 192
Heat, light, power, water, and sanitary services	47	18	6	3	20	8, 305	7, 520
Services	63	31	13	6	13	2, 211	1, 936

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 1955

Proceedings	Number of cases instituted	Number of applications granted	Number of applications denied	Cases settled, inactive, pending, etc
Under Sec 10 (g)				
(a) Against unions.....	1	1		1 settled
(b) Against employees.....	0	0	0	0
Under Sec 10 (l).....	59	22	10	12 alleged illegal, activity suspended 16 settled ⁴ 1 withdrawn 3 pending
Total.....	60	23	10	33

¹ Injunction granted on appeal from dismissal of petition during previous fiscal year.

² Two injunctions granted in cases instituted during previous fiscal year.

³ Two injunctions denied in cases instituted during previous fiscal year.

⁴ One case settled which was instituted during previous fiscal year.

Table 19.—Litigation for Enforcement or Review of Board Orders, Fiscal Year 1955 and July 5, 1935, to June 30, 1955

Results	July 1, 1954, to June 30, 1955		July 5, 1935, to June 30, 1955	
	Number	Percent	Number	Percent
Cases decided by United States courts of appeals.....	110	100 0	1,538	100 0
Board orders enforced in full.....	66	60 0	920	59 8
Board orders enforced with modification.....	15	13 6	314	20 4
Remanded to Board.....	4	3 6	29	1 9
Board orders partially enforced and partially remanded.....	2	1 8	9	.6
Board orders set aside.....	23	21 0	266	17 3
Cases decided by United States Supreme Court.....	1	100 0	90	100 0
Board orders enforced in full.....	1	100 0	64	71 1
Board orders enforced with modification.....			11	12 2
Board orders set aside.....			7	7 8
Remanded to Board.....			1	1 1
Remanded to Court of Appeals.....			6	6 7
Board's request for remand or modification of enforcement order denied.....			1	1 1

¹ Includes 11 cases which were summarily enforced because of respondent's failure to take exception to the intermediate report

Table 20.—Record of Injunctions Petitioned For, or Acted Upon, Fiscal Year 1955

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temp. restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
2-CA-2554, 2907.	Henry Heide, Inc. (CIO-Retail & Wholesale Employees, Local 50).	Mar 12, 1953	10 (j)			Oct. 14, 1953		Nov. 19, 1954	Feb. 18, 1954.
17-CC-18.	AFL-Teamsters, Locals 554, 608 (McAllister Transfer, Inc.)	Apr. 13, 1953	10 (l)			Apr. 22, 1953		Mar. 25, 1955	Dec. 16, 1954.
5-CC-29.	AFL-Baltimore Building & Construction Trades Council and Local 16 et al (John A. Piezonki d/b/a Stover Steel Service)	Apr 23, 1953	10 (l)			(1)		July 13, 1954	June 28, 1954.
14-CC-44, 45.	AFL-Teamsters, Locals 600, 632 and 688 (Osceola Foods Inc and Atkins Pickle Co.).	Apr. 28, 1953	10 (l)			June 24, 1953		Sept. 13, 1954	Nov. 25, 1953.
13-CC-67.	AFL-Teamsters, Local 200 (Reilly Cartage Co.).	May 8, 1953	10 (l)			June 10, 1953		Mar. 25, 1955	Dec. 16, 1954.
3-CC-31, 32.	AFL-Teamsters, Local 182 and AFL-Carpenters Local 125 (Jay-K Independent Lumber Corp).	June 2, 1953	10 (l)			(1)		Jan 26, 1955	June 15, 1954.
15-CC-37.	AFL-Plumbers, Local 106 et al. (Columbia-Southern Chemical Corp.).	July 16, 1953	10 (l)			(1)		Oct. 18, 1954	Oct. 5, 1954.
10-CC-60.	AFL-Painters, Local 1730 (Painting & Decorating Contractors of America).	Aug. 24, 1953	10 (l)			Dec. 9, 1953		Oct. 8, 1954	Sept. 3, 1954.
10-CC-62.	AFL-Painters, Local 193 and District Council 38 (Pittsburgh Plate Glass).	Oct. 7, 1953	10 (l)			Nov. 3, 1953		Feb. 28, 1955	Oct. 25, 1954.
3-CA-736.	Genesee Foundry Co. (CIO-Steel Workers)	Oct. 27, 1953	10 (j)			(1)		Jan. 29, 1955	Sept. 16, 1954.
14-CD-40.	AFL-Plumbers, Local 553 (M. E. Fiterman Co.).	Nov. 4, 1953	10 (l)			Nov. 9, 1953		Aug. 24, 1954	Withdrawn.
21-CC-168, 169.	AFL-Teamsters, Local 87 and AFL-Chemical Workers, Local 482 (Camp & Felder Compress Co.).	Dec. 2, 1953	10 (l)			(1)		Oct 6, 1954	Settled.
13-CC-85.	AFL-Teamsters, Local 200 (Lincoln Warehouse Co).	Jan. 13, 1954	10 (l)			Mar 24, 1954		Aug. 16, 1954	Withdrawn
39-CC-11.	AFL-Teamsters, Local 968 (Otis Massey, Ltd.)	Feb. 9, 1954	10 (l)			May 7, 1954		Oct. 29, 1954	July 22, 1954.
16-CC-22.	AFL-Teamsters, Local 568 et al (Red Ball Motor Freight).	Feb 16, 1954	10 (l) (La.)			Feb. 16, 1954			Jan. 25, 1955
16-CC-22.	AFL-Teamsters, Local 968 (Red Ball Motor Freight).	Feb. 24, 1954	10 (l) (Tex.)			May 4, 1954			Jan. 25, 1955.
6-CC-94.	AFL-Teamsters, Local 249 (Crump, Inc.)	Feb. 23, 1954	10 (l)			Mar. 5, 1954		May 9, 1955	Apr 21, 1955.
2-CC-279.	International Longshoremen's Assn. and Locals 791, 856, 824, 874, 895, 920, 975, and 1258 (New York Shipping Assn).	Mar. 4, 1954	10 (l)	May 4, 1954	Nov. 10, 1954	(1)			Withdrawn.

2-CC-277.....	Independent Brotherhood of Production Maintenance & Operating Employees Local 10 (Aielo Dairy Farms Co)	Mar 18, 1954	10 (l)			Apr 19, 1954		Oct. 2, 1954	Sept. 8, 1954.
2-CC-287, 288.....	International Longshoremen's Assn and Local 333 (Marine Towing & Trans Empis Assn)	Mar 30, 1954	10 (l)	Mar. 30, 1954	Sept 21, 1954			June 13, 1955	Withdrawn
1-CC-100.....	International Longshoremen's Assn, Locals 805, 799 and 800 et al (Boston Shipping Assn., et al).	Apr 2, 1954	10 (l)			(l)		July 19, 1954	Withdrawn.
16-CC-22.....	AFL-Teamsters, Local 878 (Red Ball Motor Freight)	Apr. 19, 1954	10 (l)			(l)			Jan. 25, 1955
14-CC-56.....	AFL-Meat Cutters, Local 88 (Swift & Co)	Apr 20, 1954	10 (l)			July 30, 1954			
2-CC-290.....	International Longshoremen's Assn and Local 327-1 et al (New York Dock Co, et al).	Apr 23, 1954	10 (l)			(l)		Mar 8, 1955	Withdrawn
2-CC-284.....	International Longshoremen's Assn and Locals 338, 824 (Refined Syrups & Sugars, Inc)	Apr 23, 1954	10 (l)			(l)		July 2 1954	Withdrawn.
10-CC-64.....	AFL-Teamsters, Local 728 (National Trucking Co)	Apr. 30, 1954	10 (l)				July 8, 1954		Feb. 2, 1955.
11-CC-5, 6.....	AFL-Teamsters, Locals 391, 71 (Thurston Motor Lines, Inc)	Apr. 30, 1954	10 (l)			June 1, 1954		Dec. 14, 1954	Nov. 4, 1954.
2-CC-293.....	AFL-Garment Workers, Ladies, Local 66 (Gemso, Inc.)	May 4, 1954	10 (l)			June 29, 1954		Feb. 7, 1955	Jan 6, 1955.
2-CC-294.....	AFL-Musicians, Local 802 (Gothan Broadcasting Corp)	May 7, 1954	10 (l)			May 27, 1954		Jan. 11, 1955	Dec. 29, 1954
2-CC-296.....	CIO-Electrical Workers, Loc 459 (Royal Typewriter Co).	May 13, 1954	10 (l)			June 15, 1954		Mar. 1, 1955	Jan. 27, 1955.
2-CC-297.....	Independent Brotherhood of Production Maintenance & Operating Employees Local 10 (Pollo Dairy Products Co.)	May 18, 1954	10 (l)			May 25, 1955 (consent)		Apr. 21, 1955	Mar. 9, 1955.
19-CC-60, CB-311.....	AFL-Pasco-Kennerwick Building & Construction Trades Council (Cisco Construction Co).	May 25, 1954	10 (l)				July 1, 1954	Apr. 18, 1955	Mar. 31, 1955
10-CC-69.....	AFL-Teamsters, Local 612 (Goodyear Tire & Rubber Co of Alabama)	May 28, 1954	10 (l)			June 9, 1954		May 31, 1955	Apr. 5, 1955.
20-CA-958.....	Pacific Telephone & Telegraph Co. (Order of Repeatermen & Toll Test-board).	June 8, 1954	10 (j)			Feb. 7, 1955 ²			
4-CC-50.....	AFL-Teamsters, Local 628 (American News Co).	June 21, 1954	10 (l)			July 6, 1954		Nov. 3, 1954	Withdrawn.
5-CC-37.....	AFL-Baltimore Building Trades Council & AFL-Hod Carriers (Industrial Engineering Co.)	June 22, 1954	10 (l)			(l)		Nov. 5, 1954	Settled.
2-CD-95, 96.....	AFL-Bridge, Structural Iron Workers, Locals 11, 45, 373, 480, 483 (Dravo Corp. and Merrit-Chapman and Scott Corp)	June 28, 1954	10 (l)			(l)		Mar. 14, 1955	Withdrawn.
1-CC-105.....	AFL-Roofters, Local 105 (Francis Harvey & Sons).	July 2, 1954	10 (l)			(l)		Dec. 8, 1954	Settled.
3-CC-40, 3-CD-9.....	AFL-Teamsters, Local 182 (Pilot Freight Carriers, Inc)	July 9, 1954	10 (l)			Aug. 27, 1954			Nov. 22, 1954.

See footnotes at end of table

Table 20.—Record of Injunctions Petitioned For, or Acted Upon, Fiscal Year 1955—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temp. restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
24-CC-22, 23...	AFL Union de Trabajadores De Mulles #24922 (San Juan Merchantile Corp. & International Longshoremen's Assn., Dist. Council of Parts of P. R. and Its Local 1575).	July 9, 1954	10 (I)	July 16, 1954	Dec. 14, 1954	(¹)	-----	Dec 14, 1954	Oct. 13, 1954.
14-CC-59, 60...	United Mine Workers of A. Dist 50 (Marion Machine Works & Wiley Cochran).	July 13, 1954	10 (I)	-----	-----	July 21, 1954	-----	May 5, 1955	Apr. 21, 1955.
3-CC-39.....	AFL-Teamsters, Local 649 (Olean Building Exchange).	July 16, 1954	10 (I)	-----	-----	(¹)	-----	Nov. 22, 1954	Settled
15-CC-41.....	AFL-Teamsters, Local 991 (Alabama Cartage Co., Inc.)	July 16, 1954	10 (I)	-----	-----	(¹)	-----	Sept. 23, 1954	Settled
10-CC-75.....	AFL-Teamsters, Local 515, #612 (Bowman Transportation Co.)	July 23, 1954	10 (I)	-----	-----	(¹)	-----	Oct. 29, 1954	Sept. 1, 1954.
10-CC-79.....	AFL-Teamsters, Local 859 (Associated General Contractors of America)	July 29, 1954	10 (I)	-----	-----	Aug. 16, 1954	-----	Jan. 12, 1955	Dec 30, 1954.
2-CC-308.....	AFL-Teamsters, Local 553 (Oil Products, Inc.)	Aug 9, 1954	10 (I)	-----	-----	(¹)	-----	Dec. 8, 1954	Nov. 15, 1954.
6-CD-33, 35.....	AFL-Plumbers, Local 449 (Refrigeration Equipment Co.)	Aug. 9, 1954	10 (I)	-----	-----	Aug. 13, 1954	-----	-----	May 6, 1955.
19-CC-61.....	AFL-Carpenters, Millmen's Local 870 et al (Exchange Lumber & Mfg Co.)	Aug 13, 1954	10 (I)	-----	-----	(¹)	-----	Sept. 21, 1954	Withdrawn.
16-CC-34, 43.....	AFL-Teamsters, Local 47 (Texas Industries, Inc. and McCann Construction).	Aug. 18, 1954	10 (I)	-----	-----	Aug 24, 1954	-----	-----	May 24, 1955
10-CC-83.....	AFL-Teamsters, Local 728 (National Trucking Co.)	Aug 19, 1954	10 (I)	-----	-----	Sept. 20, 1954 (in part)	-----	Apr. 26, 1955	Feb. 2, 1955.
10-CC-78.....	AFL-Bridge, Structural Iron Workers Outside Erectors, Local 597 (Bushnell Steel Co.).	Aug 23, 1954	10 (I)	-----	-----	Sept. 1, 1954 (consent)	-----	Dec. 10, 1954	Nov. 22, 1954.
13-CB-337.....	AFL-American Wire Weavers Protective Assn. (Appleton Wire Workers).	Aug. 20, 1954	10 (I)	-----	-----	(¹)	-----	Sept. 10, 1954	Withdrawn.
14-CC-62, 14-CD-47.....	AFL-District Council of Carpenters, etc., (Artercraft Venetian Blind Mfg. Co.)	Aug 31, 1954	10 (I)	-----	-----	Oct 26, 1954	-----	Apr 18, 1955	Feb. 17, 1955.
8-CC-29.....	AFL-Carpenters, Local 11 (General Millwork, Corp.)	Sept. 8, 1954	10 (I)	-----	-----	(¹)	-----	-----	-----
13-CC-90.....	AFL-Retail Clerks and Local 1460 (Jewel Food Stores)	Sept. 8, 1954	10 (I)	-----	-----	Sept. 14, 1954	-----	-----	-----
21-CC-189.....	AFL-Carpenters and Local 1976 (Sand, Door & Plywood Co.).	Sept. 20, 1954	10 (I)	-----	-----	-----	-----	Nov. 22, 1954	-----

24-CC-24	International Longshoremen's Assn, District Council of Ports of P. R. Local 1585 et al (Puerto Rico Steamship Assn).	Sept. 23, 1954	10 (1)			Oct 4, 1954		Mar. 17, 1955	Feb. 17, 1955
21-CC-190	AFL-Teamsters, Local 6-26 (Lewis Food Co.)	Sept. 30, 1954	10 (1)			Oct 19, 1954			
10-CC-84	AFL-Plumbers, Local 177 (Carrier Corp.)	Oct. 2, 1954	10 (1)			(1)		Feb. 11, 1955	Settled.
16-CC-47, 48	AFL-Teamsters, Local 866 (American Iron & Machine Works, Co.)	Oct. 11, 1954	10 (1)				Oct. 16, 1954		
2-CC-315	AFL-Garment Workers, Ladies, Local 155 (James Knitting Mills, Inc)	Oct. 19, 1954	10 (1)			Nov. 15, 1954		Mar 22, 1955	Feb. 25, 1955
5-CC-40	AFL-Baltimore Building & Trades Council et al (Dominion Contractors)	Oct. 21, 1954	10 (1)	Oct. 25, 1954	Oct. 29, 1954	(1)		May 12, 1955	Mar 15, 1955
18-CC-24	AFL-Carpenters, Locals 7 and 1865 (Hargrow Mfg Co.)	Nov. 2, 1954	10 (1)			(1)		Dec 2, 1954	Withdrawn.
14-CC-68	AFL-Teamsters, Local 688 (Metal Goods Corp)	Nov 10, 1954	10 (1)			Nov. 19, 1954		Dec. 20, 1954	Withdrawn.
2-CC-316	CIO-Furniture Workers, Local 140 (Staffin United Latex Corp)	Nov. 12, 1954	10 (1)			(1)		Dec. 30, 1954	Dec. 16, 1954
39-CC-20	AFL-Teamsters, Local 657 et al. (Southwestern Motor Transport)	Nov. 24, 1954	10 (1)						
8-CC-30	AFL-Teamsters, Locals 406, 20, 22, 44 (F. S Royster Guano Co.).	Dec. 1, 1954	10 (1)			(1)		May 27, 1955	Settled
1-CC-111	AFL-Painters, Local 1333 (Associated General Contractors of America).	Dec 2, 1954	10 (1)			(1)		Mar. 21, 1955	Settled.
19-CC-72	AFL-Carpenters, Seattle District Council (Cisco Construction Co)	Dec. 3, 1954	10 (1)				Dec. 20, 1954		
21-CC-192	AFL-Teamsters, Locals 626, 595, 542 (Lewis Foods Co).	Dec 20, 1954	10 (1)			(1)		Apr 5, 1955	Mar. 22, 1955
2-CC-321	AFL-Bakery Workers, Local 50 (Arnold Bakers Employees Assn).	Dec. 20, 1954	10 (1)				Jan. 5, 1955		
14-CC-70, 72	Chemical Workers Emergency Reorganization Committee, Local 542 (Illinois Farm Supply)	Dec. 20, 1954	10 (1)			(1)		Apr. 19, 1955	Feb. 2, 1955
3-CC-42	AFL-Teamsters, Local 375 (Service Transport Co)	Dec. 20, 1954	10 (1)			(1)			
5-CD-14	AFL-Lathers, Local 9 (A. W. Lee, Inc)	Dec 29, 1954	10 (1)			(1)			
13-CD-36, 37	AFL-Sheet Metal Workers, Local 1 and John Stables and AFL-Plumbers, Pipes Trades Council 34 and Local 383 (Refrigeration & Air Conditioning Contractors of Peoria & Meyer Furnace Co.)	Mar. 24, 1955	10 (1)			(1)			
2-CC-324	AFL-Carpenters, Casket Makers Local 3128 (Metropolitan N. Y. & N. Y. Casket Mfgs Association)	Apr. 11, 1955	10 (1)			(1)			
35-CC-28, 29	AFL-Teamsters, Locals 135, 369 (Marsh Foodliners, Inc)	Apr. 12, 1955	10 (1)			May 3, 1955			
17-CC-29	AFL-Electrical Workers, Local 124 (United Contractors Council)	Apr. 14, 1955	10 (1)			May 12, 1955			
16-CC-57	AFL-Teamsters, Local 577 (Ferguson-Steer Motor Co)	Apr. 19, 1955	10 (1)			(1)			

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned For, or Acted Upon, Fiscal Year 1955—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temp. restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
19-CC-73	AFL-Teamsters, Local 148 (Harold Evans).	Apr. 22, 1955	10 (1)	-----	-----	(1)	-----	-----	-----
20-CC-106	AFL-Retail Clerks, Retail Fruit & Vegetable Workers, Local 1017 and Grocery Clerks Local 648 (Retail Fruit Dealers Association of San Francisco).	Apr. 22, 1955	10 (1)	-----	-----	(1)	-----	-----	-----
21-CC-195	AFL-Roofers, Local 45 et al. (Roofing Contractors Assn. of San Diego County)	Apr. 25, 1955	10 (1)	-----	-----	(1)	-----	-----	-----
36-CC-38	CIO-Woodworkers, Local 7-140 and Wm. Harris, Business Agent (Firchau Bros. Logging Co.)	Apr. 29, 1955	10 (1)	-----	-----	-----	June 10, 1955	-----	-----
2-CD-99	AFL-Engineers, Operating, Local 8250 (Arundel Corp.).	May 6, 1955	10 (1)	May 6, 1955	May 16, 1955	-----	May 16, 1955	-----	-----
9-CC-73	AFL-Plumbers, Local 103 (Sears, Roebuck & Co.).	May 6, 1955	10 (1)	-----	-----	May 10, 1955 (consent)	-----	-----	June 15, 1955.
1-CC-116	AFL-Hod Carriers, Local 560 and Salvatore Pavone and AFL-Teamsters, Local 379 and Nicholas Gargane, agent (Pascale Trucking Co.)	May 17, 1955	10 (1)	-----	-----	(1)	-----	-----	-----
5-CC-46, 47	AFL-Baltimore Building & Construction Trades Council, et al (Selby-Battersby & Co. and Association Builders & Contractors of Maryland, Inc.).	May 25, 1955	10 (1)	-----	-----	(1)	-----	-----	-----
2-CC-332	AFL-Teamsters, Local 239 (Fedders-Guigan Corp.)	May 26, 1955	10 (1)	-----	-----	(1)	-----	-----	June 23, 1955
2-CC-339	Newspaper & Mail Deliverers, Vicinity of New York (New York Sunday Graphic, Inc.).	May 27, 1955	10 (1)	May 27, 1955	June 9, 1955	June 9, 1955	-----	-----	-----
2-CC-333	AFL-Teamsters, Local 650 (Crowley's Milk Co., Inc.).	May 31, 1955	10 (1)	-----	-----	-----	-----	-----	-----
16-CC-65	AFL-Teamsters, Local 886 (Galveston Truck Lines).	June 1, 1955	10 (1)	-----	-----	(1)	-----	-----	-----
19-CC-76	AFL-Teamsters, Local 524 (Mack's Markets)	June 1, 1955	10 (1)	-----	-----	-----	June 21, 1955	-----	-----
1-CC-118	CIO-Packinghouse Workers, Local 575 (Boston Wholesale Meat Dealers Assn., Inc.).	June 4, 1955	10 (1)	June 4, 1955	June 14, 1955	-----	-----	June 14, 1955	Withdrawn.
4-CC-58	AFL-Electrical Workers, Local 313 (Peter D. Furness Electric Co.).	June 10, 1955	10 (1)	-----	-----	(1)	-----	-----	-----

2-CC-337, 338	CIO-Retail & Wholesale Employees, District 65 (Cowan Publishing Corp and Circulation Associates)	June 17, 1955	10 (i)						
21-CC-198, 200	AFL-Engineers, Operating, Local 12 (Crook Co and Shepherd Machinery Co)	June 17, 1955	10 (j)						
10-CC-99	AFL-Bakery Workers, Local 25 (King's Bakery, Inc.).	June 21, 1955	10 (k)			June 28, 1955			

¹ Because of suspension of unfair labor practice, case retained on court docket for further proceedings if appropriate.

² Injunction denied June 24, 1954. On appeal, CA-9 on Dec 30, 1954, reversed District Court and remanded case to lower court to enter 10 (j) injunction.

³ Granted against Local, but denied as to the International