

TWENTY-FOURTH
ANNUAL REPORT
OF THE
NATIONAL LABOR
RELATIONS BOARD

FOR THE FISCAL YEAR
ENDED JUNE 30

1959

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29,877

FRANK L. LEBERSON
LABOR RELATIONS BOARD

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I

Operations in Fiscal Year 1959

The spectacular upward trend of unfair labor practice cases which began in fiscal 1958 continued unabated during fiscal 1959.

The 12,239 unfair practice cases filed in fiscal 1959 was a new record in the 24-year history of the National Labor Relations Board. The 9,260 such cases filed in 1958 was also an alltime record, but the 1959 filings topped this by 32 percent. In 2 years, filings of unfair labor practice cases have risen 122 percent.

For the second time since 1941, charges of unfair practices constituted a majority of all cases filed with the Board; that is, the number of unfair labor practice cases exceeded the number of petitions for collective-bargaining elections. Unfair practice cases, which are substantially more time consuming to investigate and decide, amounted to 56 percent of all cases received by the agency.

At the same time, representation case filings rose during 1959 by 26 percent—to the highest level since 1952. Representation cases totaled 9,347 compared with 7,399 in 1958.

Altogether, the cases of these two types—which are the overwhelming bulk of the cases handled by the Board¹—reached the unprecedented number of 21,633. This compares with the previous record of 16,748 in fiscal 1958.

To meet this record influx of cases, the five-member Board and the General Counsel stepped up their activities in all phases of case handling:

1. More unfair labor practice cases were handled to conclusion than ever before in the agency's history—11,465. This was an increase of 57 percent over the previous record of 7,289 handled in fiscal 1958.

2. The five-member Board issued more decisions on unfair labor practice cases than ever before—764. The Board issued a total of 2,883 decisions in all types of cases, which was the highest number since 1953.

¹ The other types of cases handled by the agency are union-shop deauthorization polls and national emergency strike polls. Deauthorization polls were requested in 47 cases during fiscal 1959. No national emergency strike poll cases arose.

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3. The General Counsel issued more complaints in unfair practice cases than in any prior year. Complaints were issued in 2,101 cases—1,283 against employers and 818 against labor organizations. This compares with the issuance of complaints in 822 cases during fiscal 1958.

4. The number of petitions for injunctions filed by the General Counsel was a record, for the second year. Petitions for injunctions were filed in 134 cases, the same number as in fiscal 1958.

5. More hearings were held than ever before—3,698 in the various types of cases. The previous high was 3,285 in fiscal 1953.

6. More cases of all types were handled to conclusion than in any year since 1951. The 1959 total was 20,355 cases closed.²

7. More representation elections were conducted than in any year since 1954. In the 1959 fiscal year, 5,660 elections were held, compared with 4,524 in 1958 and 4,888 in 1957. The alltime high is 6,866 in fiscal 1952.

Despite these efforts, the agency finished the year with a record backlog of pending unfair labor practice cases—5,425. This was an increase of 12 percent over the 4,651 such cases pending at the close of fiscal 1958.

The backlog of representation cases rose 29 percent—to the highest level since 1952. A total of 2,230 such cases were pending at the close of fiscal 1959. This compares with 1,723 pending at the end of fiscal 1958 and 2,280 at the end of fiscal 1952.

Other developments in the field of unfair labor practice cases were:

- The number of charges filed against employers or unions was unprecedented. Charges filed against employers numbered 8,266, an increase of 36 percent over the prior record of 6,068 charges in fiscal 1958. Charges against labor organizations numbered 3,973, an increase of 24 percent over the record of 3,192 filed in 1958.

- For the second consecutive year, charges filed by individuals constituted a majority of all charges of unfair labor practices. Individuals filed 7,176, or 59 percent, of all charges filed. Of the 7,176 charges, 4,664 were against employers and 2,512 were against labor organizations.

In the field of representation cases:

- Of all the elections conducted by the Board, a slightly larger proportion was held pursuant to the agreement of the parties. In the 1959 fiscal year, 73 percent of all elections were based on all-party agreements. This compares with 72 percent in 1958 and 77 percent in 1957.

² In 1951, the Board closed 22,637 cases, but 6,843 of these were union-shop polls, which were abolished that year. Unfair practice and representation cases closed that year totaled 15,794. The union-shop polls were generally more simple to handle than either representation or unfair practice cases

- Fewer employees were covered by the elections than in any year since 1948, with the exception of fiscal 1958. In the 1959 fiscal year, 447,322 employees were eligible to vote in Board representation elections. This compares with 363,672 employees involved in elections in fiscal 1958, and 470,926 in fiscal 1957. In 1953, when election activity was at the peak, 751,337 employees were eligible to vote.

- Ninety percent of those eligible to vote cast valid ballots. This is the same level of participation as in fiscal 1958, but it continues to represent the highest participation in the history of Government-conducted collective-bargaining elections.

- For the second consecutive time in 5 years, more than 50 percent of all elections involved less than 30 employees.

- Labor organizations won a slightly higher percentage of the elections in which they participated. In fiscal 1959, they won majority designation in 62 percent of the elections, compared with 61 percent in 1958, 62 percent in 1957, and 65 percent in 1956.

1. Decisional Activities of the Board

The Board Members issued decisions in 2,883 cases of all types. Of these cases, 2,421 were brought to the Board on contest over either the facts or the application of the law; 475 were unfair labor practice cases; and 1,946 were representation cases. The remaining 462 cases were uncontested; in these, the Board issued orders to which the parties had consented or made rulings as to conduct of elections held by agreement of the parties.

In the representation cases, the Board directed 1,726 elections; the remaining 220 petitions for elections were dismissed.

Of the unfair labor practice cases, 274, or 57.7 percent, involved charges against employers; 201, or 42.3 percent, involved charges against unions.

Of the 475 contested unfair labor practice cases, the Board found violations in 406 cases, or 85 percent.

The Board found violations by employers in 238, or 87 percent, of the 274 cases against employers. In these cases, the Board ordered employers to reinstate a total of 648 employees and to pay back pay to a total of 944 employees. Illegal assistance or domination of labor organizations was found in 60 cases and ordered stopped. In 55 cases the employer was ordered to undertake collective bargaining.

The Board found violations by unions in 165 cases, or 82 percent of the 201 cases against unions. In 43 of these cases the Board found illegal secondary boycotts and ordered them halted. In 50 cases the Board ordered unions to cease requiring employers to extend illegal assistance. Twenty-nine other cases involved the illegal discharge

of employees, and back pay was ordered for 95 employees. In the case of 45 of these employees found to be entitled to back pay, the employer, who made the illegal discharge, and the union, which caused it, were held jointly liable.

2. 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 and prosecuting cases where his investigators find evidence of violation of the act.

Also, under an arrangement between the five-member Board and the General Counsel,³ 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.

a. Representation Cases

The field staff closed 6,809 representation cases during the 1959 fiscal year without necessity of formal decision by the Board Members. This comprised 77 percent of the 8,840 representation cases closed by the agency.

Of the representation cases closed in the field offices, consent of the parties for holding elections was obtained in 4,053 cases. Petitions were dismissed by the regional directors in 640 cases. In 2,116 cases, the petitions were withdrawn by the filing parties.

b. Unfair Labor Practice Cases

The General Counsel's staff in the field offices closed 10,685 unfair labor practice cases without formal action, and issued complaints in 2,101 cases.

Of the 10,685 unfair labor practice cases which the field staff closed without formal action, 1,238, or 12 percent, were adjusted by

³ See Board memorandum describing authority and assigned responsibilities of the General Counsel (effective Apr. 1, 1955), 20 Federal Register 2175 (Apr. 6, 1955).

various types of settlements; 4,158, or 39 percent, were administratively dismissed after investigation. In the remaining 5,289 cases, or 49 percent of the cases closed without formal action, the charges were withdrawn; in many of these cases, the withdrawals actually reflected settlement of the matter at issue between the parties.

The regional directors, acting pursuant to the General Counsel's statutory authority, issued formal complaints alleging violation of the act in 2,101 cases. Complaints against employers were issued in 1,283 cases; complaints against unions, in 818 cases.

c. 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 6,775 cases filed during the 1959 fiscal year. This was 82 percent of the 8,266 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 1,311 cases, or 16 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 2,849 cases, or 72 percent of the 3,973 cases filed against unions.

Discrimination against employees because of their lack of union membership was also alleged in 2,454 cases, or 62 percent. Other major charges against unions alleged secondary boycott violations in 657 cases, or 17 percent, and refusal to bargain in good faith in 208 cases, or 5 percent.

d. Division of Law

The Division of Law, which is located in the Washington office of the General Counsel, is responsible for the handling of all court litigation involving the agency—in the Supreme Court, in the courts of appeals, and in the district courts.

During fiscal 1959, the Supreme Court handed down decisions in four cases involving Board orders. Two Board orders were enforced in full, and two were set aside.

The courts of appeals reviewed 83 Board orders during fiscal 1959. Of these 83 orders, 46 were enforced in full and 13 with modification; 17 orders were set aside; and 7 were remanded to the Board.

Petitions for injunctions in the district courts reached an alltime high for the second consecutive year. Of the 134 petitions filed during the year, 129 were filed under the mandatory provision, section 10(1), of the act. Five petitions were filed under the discretionary provision, section 10(j).

During the year, 54 petitions for injunctions were granted, 11 petitions were denied, 66 petitions were settled or placed on the courts' inactive docket, and 9 petitions were awaiting action at the end of the fiscal year.

3. Division of Trial Examiners

Trial examiners, who conduct hearings in unfair labor practice cases, held hearings in 1,158⁴ cases during fiscal 1959, an increase of 122 percent over the 522 hearings held in 1958. Intermediate reports and recommended orders were issued by the trial examiners in 762 cases, an increase of 74 percent over the 439 issued in 1958.

In 78 unfair labor practice cases which went to formal hearing, the trial examiners' findings and recommendations were not contested; these comprised 10 percent of the 762 cases in which trial examiners issued reports. In the preceding year, trial examiners' reports which were not contested numbered 63, or 14 percent of the 439 cases in which reports were issued.

4. Results of Representation Elections

The Board conducted a total of 5,644 representation elections during the 1959 fiscal year. This was an increase of 26 percent over the 4,490 representation elections conducted in fiscal 1958.

In the 1959 elections, collective-bargaining agents were selected in 3,484 elections. This was 62 percent of the elections held, and compared with selection of bargaining agents in 60 percent of the 1958 elections.

In these elections, bargaining agents were chosen to represent units totaling 265,554 employees, or 60 percent of those eligible to vote. This compares with 56 percent in fiscal 1958, and 57 percent in fiscal 1957.

Of the 446,254 who were eligible to vote, 90 percent cast valid ballots.

Of the 400,450 employees actually casting valid ballots in Board representation elections during the year, 255,539, or 64 percent, voted in favor of representation.

⁴ During the year 76 cases were closed by settlement agreements reached after the hearing opened but before issuance of intermediate report.

Unions affiliated with the American Federation of Labor-Congress of Industrial Organizations won 2,362 of the 4,137 elections in which they took part. This was 57 percent of the elections in which they participated, compared with 57 percent in 1958; and 58 percent in 1957.

Unaffiliated unions won 1,122 out of 2,079 elections; this was 54 percent, compared with 56 percent in 1958, and 63 percent in 1957.

5. Fiscal Statement

The expenditures and obligations of the National Labor Relations Board for fiscal year ended June 30, 1959, are as follows:

Salaries	\$9,825,499
Travel	741,071
Transportation of things	65,168
Communication services	313,470
Rents and utility services	73,644
Printing and reproduction	241,716
Other contractual services	397,820
Supplies and materials	126,401
Equipment	306,828
Grants, subsidies, and contributions	524,048
Refunds, awards, and indemnities	7,688
Taxes and assessments	31,731
Total, obligations and expenditures	<u>12,655,084</u>

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Comparison of Filings of Unfair Labor Practice Cases and Representation Cases,
Fiscal Years 1936-59

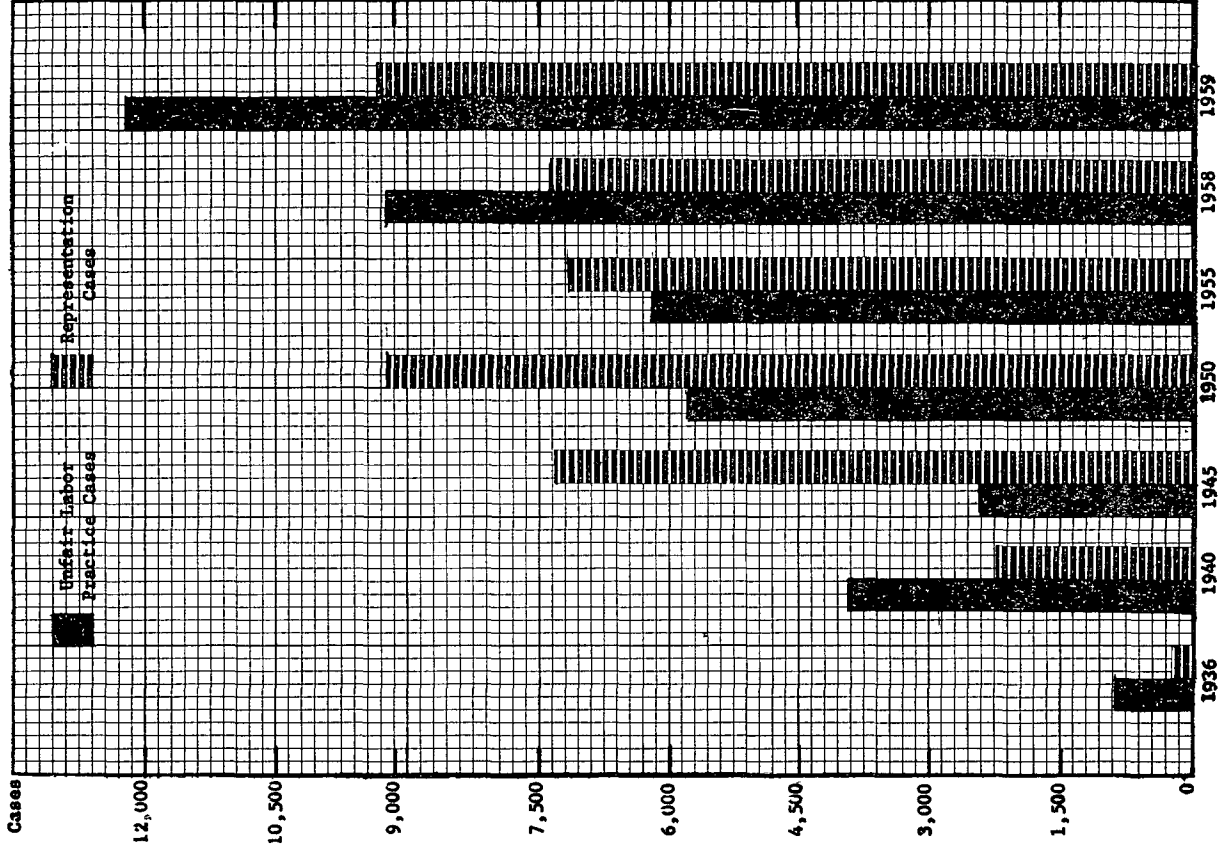


CHART I.—The changing character of the Board's caseload is indicated by comparison of filings of unfair labor practice cases and representation cases at intervals during the 24 years, 1936-59.

Unfair Labor Practice Cases Filed, Against Employers and Unions, Fiscal Years 1955-59

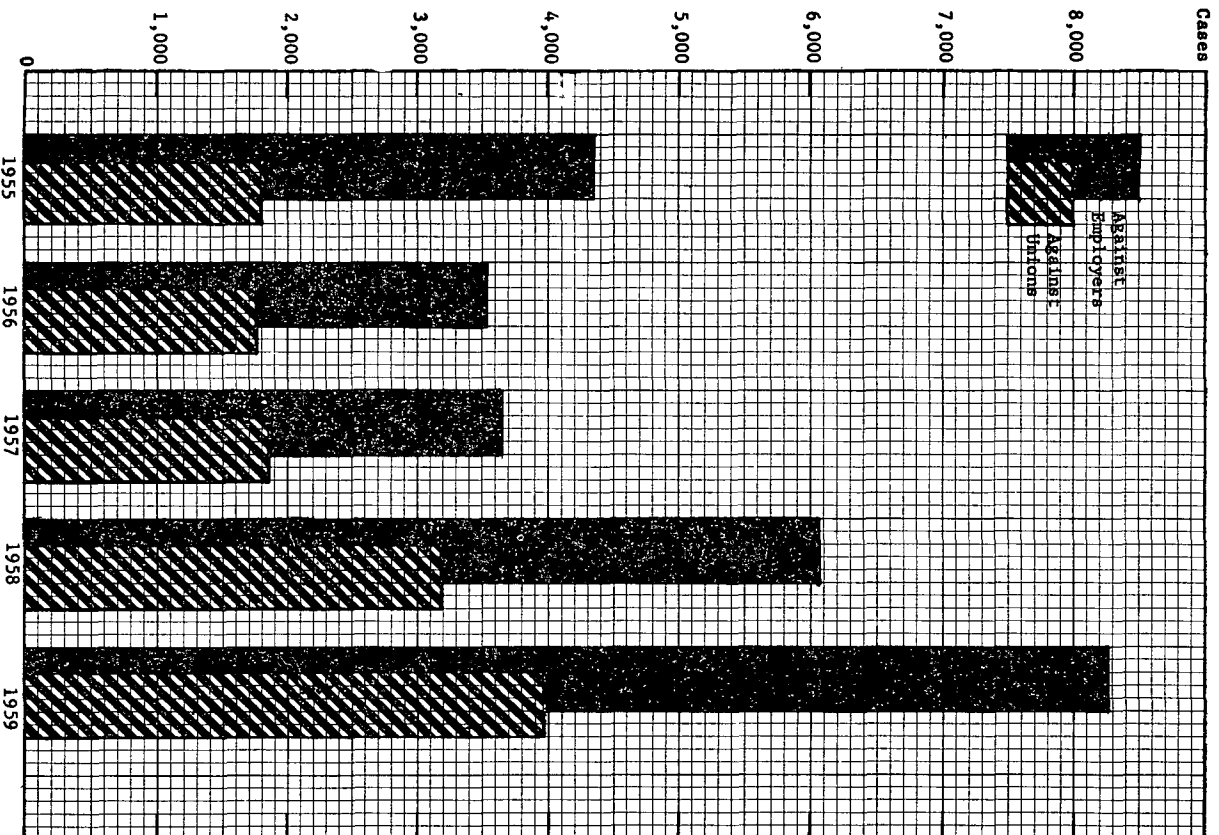


CHART II.—Comparison of the number of unfair labor practice cases filed against unions and against employers during the 5 years, 1955-59.

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 Unfair Labor Practice Cases, by Charging Party, Fiscal Years 1955-59

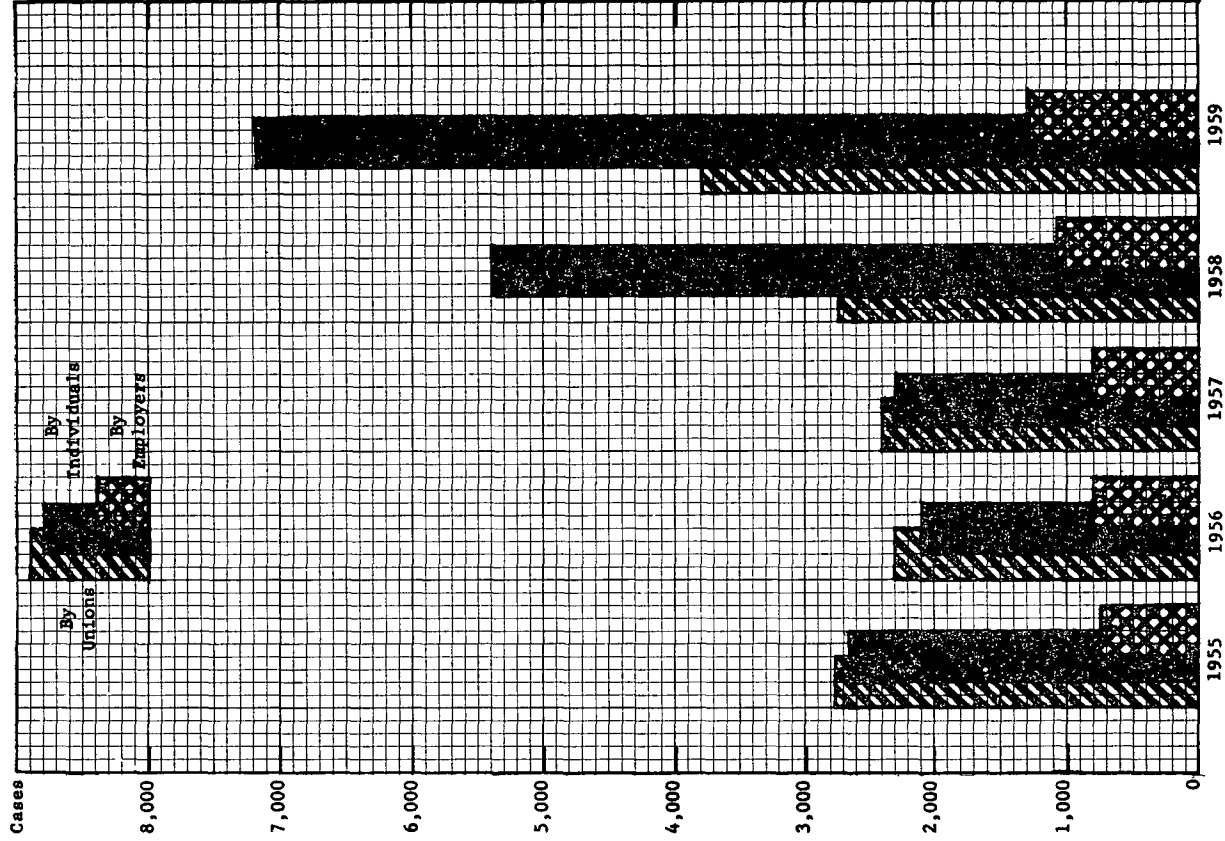


CHART III—Comparison of the number of unfair labor practice cases filed by individuals, employers, and unions during the 5 years, 1955-59.

Unfair Labor Practice Cases in Which Complaints Were Issued, Fiscal Years 1955-59

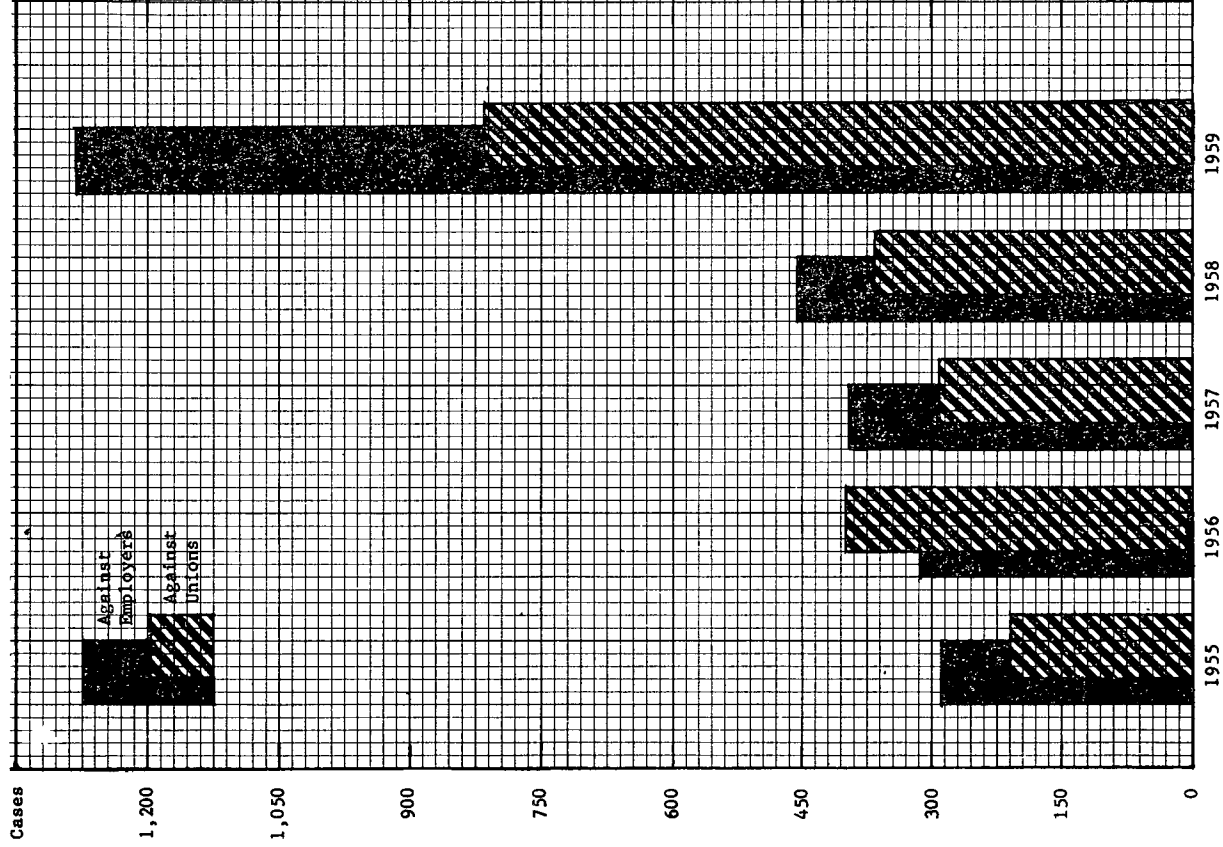


CHART IV.—Comparison of the number of cases in which complaints were issued against employers and unions during the 5 years, 1955-59.

Representation Cases Filed, by Petitioner, Fiscal Years 1955-59

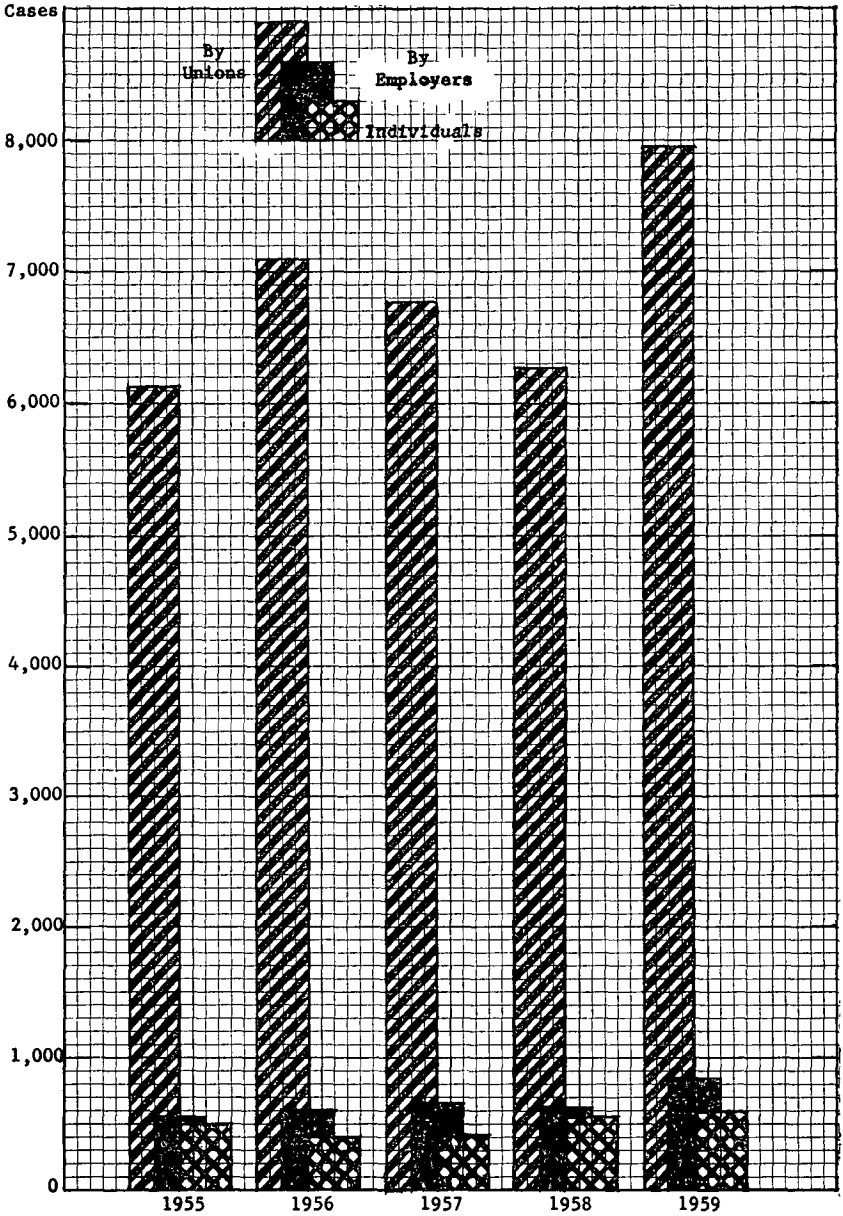


CHART V.—Comparison of number of petitions for representation elections filed by unions, employers, and individual employees during the 5 years, 1955-59.

II

Representation Cases

The act requires that an employer bargain with the representative selected by a majority of his employees in a unit appropriate for collective bargaining. But the act does not require that the representative be selected by any particular procedure, as long as the representative is clearly the choice of a majority of the employees.

As one method for employees to select a majority representative, the act authorizes the Board to conduct representation elections. The Board may conduct such an election 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 a 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, airlines, hospitals, and governmental bodies.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.

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.

¹ The Board does not always exercise that power where the enterprises involved have relatively little impact upon interstate commerce. See the Board's standards for asserting jurisdiction, discussed in the Twenty-third Annual Report, pp. 8-9. See also Twenty-first Annual Report, pp. 7-28, and Twenty-second Annual Report, pp. 7-9.

This chapter deals with the general rules which govern the determination of bargaining representatives, and the Board's decisions during the past fiscal year in which those rules were adapted to novel situations or changed upon reexamination.

1. Showing of Employee Interest To Justify Election

Under section 9(c) (1), the Board requires that a petitioner, other than an employer,² seeking a representation election show that the proposed election is favored by at least 30 percent of the employees. This showing must relate to the unit found appropriate.³ In one recent case, where the petitioner's showing of interest had become inadequate because of expansion of the particular voting group, the Board conditioned the holding of an election on a new showing as of the date of the hearing.⁴

Intervening parties are permitted to participate in certification and decertification elections⁵ upon a showing of a contractual interest⁶ or other representative interest.⁷ The intervenor's interest must have been acquired before the close of the hearing. An intervenor seeking a unit other than that sought by the petitioner must make a 30-percent showing of interest.⁸

a. Sufficiency of Showing of Interest

The sufficiency of a party's showing of interest is determined administratively and may not be litigated at the representation hearing. As again pointed out during the past year, the reason for the rule is that "such issues can best be resolved on the basis of an election by secret ballot."⁹ This rule applies equally whether a party challenging an interest showing seeks to show at the hearing that it was either invalid or inadequate.¹⁰ Thus, the Board has declined to per-

² NLRB Statements of Procedure, sec. 101.18(a).

³ See, e.g., *N. Sumergate & Sons*, 121 NLRB 667; *Independent Lmen Service Company of Mississippi*, 122 NLRB 1002; cf. *The Hartford Electric Light Co.*, 122 NLRB 1421.

⁴ *Kermac Nuclear Fuels Corp.*, 122 NLRB 1512.

⁵ Where the Board was administratively satisfied that a party seeking a place on the ballot had an adequate interest, intervention has been granted even though the party did not appear at the hearing. *Toledo Marine Terminals, Inc.*, 123 NLRB 583; *California Spray-Chemical Corp.*, 123 NLRB 1224.

⁶ *John St George, d/b/a Michele Frocks*, 121 NLRB 1273; *Pacific States Steel Corp.*, 121 NLRB 641. The smallness of the contractual unit is not a ground for denying intervention. *Brooklyn Union Gas Co.*, 123 NLRB 441. Cf. *The Mastic Tile Corporation of America*, 122 NLRB 1528 (denying International's motion to intervene for lack of interest).

⁷ See *Toledo Marine Terminals, Inc.*, *supra*.

⁸ See Twenty-third Annual Report, p. 14, and earlier reports.

⁹ *Plains Cooperative Oil Mill*, 123 NLRB 1709.

¹⁰ An administrative investigation of allegations challenging the validity of an interest showing will be made if supporting evidence is submitted. See Twenty-third Annual Report, p. 14.

mit attacks on the procedures employed in the prehearing investigation of interest showings,¹¹ or to pass on allegations that cards supporting the challenged interest showing had been revoked or withdrawn,¹² or that under the circumstances no showing of interest could have been made.¹³ Nor will the Board permit litigation of the question of supervisory assistance in, or influence upon, the acquisition of a showing of interest.¹⁴ The Board had occasion to make clear that this rule is applicable to interest showings supporting any kind of petition including decertification petitions.¹⁵

2. Existence of Question of Representation

Section 9(c)(1) conditions the granting of a petition for a representation election on a finding by the Board that a question of representation exists. Whether this condition is satisfied depends in the first place on whether or not the petition filed with the Board has a proper basis.¹⁶

a. Certification Petitions

A petition for certification as bargaining agent is generally regarded as raising a question of representation if the petitioner is shown to have made a demand for recognition and the employer has refused to recognize the petitioner.

A recognition demand to be sufficient for the purpose of sustaining a union's petition need not be made in any particular form. Also, the Board has consistently held that a union's request for a new contract is the equivalent of a new demand for recognition which, when denied by the employer, raises a question of representation.¹⁷

The employer's denial of a demand for recognition need not occur before the petition is filed and raises a question of representation if made either before or during the hearing.¹⁸ A petition is, therefore, not invalid because it fails to allege,¹⁹ or erroneously alleges,²⁰ that the petitioner's demand for recognition was denied.

¹¹ *Economy Furniture*, 122 NLRB 1113

¹² *Plains Cooperative Oil Mill*, *supra*, footnote 9.

¹³ *Independent Motion Picture Producers Association, Inc.*, 123 NLRB 1942.

¹⁴ *Georgia Kraft Co.*, 120 NLRB 806, Twenty-third Annual Report, p. 14

¹⁵ *Park Drug Co.*, 122 NLRB 878.

¹⁶ The ultimate finding of the existence of a representation question depends further on the presence or absence of certain factors, *viz.*, qualification of the proposed bargaining agent (see pp. 17-19); bars to a present election, such as contract or prior determinations (see pp. 17-36); and the appropriateness of the proposed bargaining unit (see pp. 37-45).

¹⁷ *The Mastic Tile Corporation of America*, 122 NLRB 1528

¹⁸ *Seaboard Warehouse Terminals, Inc.*, 123 NLRB 378; *Plains Cooperative Oil Mill*, 123 NLRB 1709.

¹⁹ *Seaboard Warehouse Terminals, Inc.*, *supra*.

²⁰ *Plains Cooperative Oil Mill*, *supra*.

The Board has adhered to the *General Box*²¹ rule that a recognized, but uncertified, bargaining representative is entitled to the benefits of a Board-conducted election and certification in the appropriate unit, and that a petition for such certification raises a valid question of representation.²²

An employer petition, in order to raise a question of representation, also must be based on an affirmative claim by a bargaining agent to represent the employees specified in the petition. As in the case of other petitions, the recognition claim need not have been made in any particular manner and may take the form of conduct. Thus, for instance, silent acquiescence by one union in the recognition demand of another union, with which it had engaged in jointly organizing the petitioning employer's plant, was held to have constituted an implied demand which supported the employer's petition.²³ And in one case, telephone calls from the union's business agent to the petitioning employer were again held to have amounted to a recognition demand when viewed in connection with other conduct, particularly economic pressures set in motion by the union against the employer and continued after the filing of the petition.²⁴

b. Decertification Petitions

A question of representation may also be raised by a petition under section 9(c) (1) (A) (ii) for the decertification of a bargaining agent "which has been certified or is currently recognized" by the employer. The Board has continued to require that, in order to be acted upon, the unit specified in the petition must be the recognized or certified unit.²⁵

At the end of fiscal 1959, the Board reversed its practice of permitting opposing parties in a decertification proceeding to show that the petition does not raise a valid question of representation because the employer instigated, or assisted in, the filing of the petition.²⁶ Under the new policy, the Board will exclude from decertification cases any evidence of such employer participation not only where the evidence pertains to showing of interest,²⁷ but also where it pertains to employer responsibility for the filing of the petition.

c. Disclaimer of Interest

A petition will be dismissed for lack of a question of representation if interest in the employees involved has been effectively dis-

²¹ *General Box Co.*, 82 NLRB 678.

²² *The Purdy Co.*, 123 NLRB 1630; *Pacific States Steel Corporation*, 121 NLRB 641.

²³ *Atlantic-Pacific Manufacturing Corp.*, 121 NLRB 783

²⁴ *Neill Wholesale Grocery of Watertown, Inc.*, 121 NLRB 619.

²⁵ See, e.g., *Oakwood Tool and Engineering Co.*, 122 NLRB 812.

²⁶ *Union Manufacturing Co.*, 123 NLRB 1633. Prior inconsistent cases (see Twenty-third Annual Report, p. 16) were overruled *pro tanto*.

²⁷ *Georgia Kraft Co.*, 120 NLRB 806, see p. 15, *supra*.

claimed, be it by the petitioning representative himself,²⁸ by the representative named in an employer petition, or by the incumbent which is sought to be decertified.²⁹

As often stated by the Board, a union's disclaimer of representation must be clear and unequivocal, and not inconsistent with its other acts or conduct.³⁰ Thus, a union's disclaimer was held ineffective where it was made at a time when there was pending an appeal from the dismissal of the union's unfair labor practice charges alleging a refusal to bargain by the employer, and where the union had pressed the appeal beyond the date of the representation hearing.³¹ It was pointed out that the union's efforts to obtain a bargaining order against the employer were plainly inconsistent with its purported disclaimer of representative interest. Disclaimers were likewise held ineffectual where it was shown that the disclaiming unions had picketed the employer, or otherwise resorted to economic pressures, for the manifest purpose of obtaining immediate recognition and a contract.³²

3. Qualification of Representatives

Section 9(c)(1) provides that employees may be represented "by an employee or group of employees or any individual or labor organization." However, the Board's power to investigate and certify the representative status of a labor organization is subject to certain statutory limitations. Thus, section 9(b)(3) of the act prohibits a labor organization from being certified as representative of a unit of plant guards if it "admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."³³

Moreover, the Board could not certify a labor organization which is not in compliance with the filing and non-Communist affidavit requirements of section 9(f), (g), and (h).

²⁸ Compare *Teletype Corp*, 122 NLRB 1594.

²⁹ Compare *Illinois Farm Supply Co.*, 123 NLRB 52.

³⁰ See *Humko, A Division of National Dairy Products Corp*, 123 NLRB 310.

³¹ *Ibid.* Member Jenkins dissenting; Member Fanning concurring in this respect but dissenting from the direction of an election.

³² *Bergen Knitting Mills*, 122 NLRB 801; *Weaver Motors*, 123 NLRB 209; *Netti Wholesale Grocery of Watertown*, 121 NLRB 619. See also *Atlantic-Pacific Manufacturing Corp*, 121 NLRB 783, where continued strike payments were held inconsistent with an asserted disclaimer.

³³ See, e.g., *Petroleum Chemicals, Inc*, 121 NLRB 630. Here the Board rejected a contention that the petitioning guard union was disqualified because the record did not affirmatively show that the union had severed its former affiliation with a nonguard federation. The requisite disaffiliation had been established in earlier cases. Nor was a finding of disqualification held required because the union's constitution provided for retention of membership by employees promoted to supervisory guard positions.

Also the Board requires that a union which seeks to sever a craft group from an existing broader unit have status as the traditional representative of employees in the particular craft.

In keeping with the long-established rule that unfair labor practice charges may not be litigated in representation proceedings, the Board has continued to decline to permit parties to challenge the qualification of a union which seeks a place on the ballot on the ground that the union has been unlawfully assisted or dominated by the employer in violation of section 8(a)(2).³⁴

a. Filing Requirements*

To be entitled to certification under section 9, a representative, as well as the organizations of which it is "an affiliate or constituent unit," must be in compliance with subsections (f), (g), and (h) of section 9.³⁵

A petition filed by a noncomplying petitioner,³⁶ or one who is found to be "fronting" for a noncomplying representative, will be dismissed.³⁷ On the other hand, it is the Board's practice to permit a noncomplying representative to intervene in proceedings on the petition of a complying party and to appear on the ballot. The Board also will accept an employer's petition involving a noncomplying union. However, if the noncomplying intervenor wins the election, the Board certifies only the results of the election but not the intervenor's representative status.³⁸

(1) Compliance Required of Individual Petitioner

The Board ruled during the past year that an individual who petitions for certification as bargaining representative of a group of employees³⁹ is a "labor organization" for the purposes of section 9(c), and must have complied with section 9 (f), (g), and (h) if

³⁴ See, e.g., *John Liber & Co.*, 123 NLRB 1174.

*The filing requirements of the act were repealed by Public Law 86-257, known as the Labor-Management Reporting and Disclosure Act of 1959, sec 201 (d) and (e).

³⁵ See, e.g., *E. W. Coslett & Sons*, 122 NLRB 961, where a "local lodge" was held subject to the filing requirements because it was found that the lodge was not, as contended, merely an "administrative arm" of the parent international, but a local organized under the international's constitution, having officers, admitting employees as members, and having bargaining relations with the employer. Compare *Baggett Transportation Co.*, 123 NLRB 1706; *Seaboard Warehouse Terminals, Inc.*, 123 NLRB 378.

³⁶ Questions concerning the fact or adequacy of a party's compliance may be litigated only in a collateral administrative proceeding. See, e.g., *Seaboard Warehouse Terminals, Inc.*, *supra*; *Sanford Plastics Corp.*, 123 NLRB 1499.

³⁷ Compare *The Gladden Co.*, 121 NLRB 752; *Wonderknit Corp.*, 123 NLRB 53; *General Electric Co.*, 123 NLRB 884; *General Shoe Corp.*, 123 NLRB 1492.

³⁸ See, e.g., *American Publishing Corp.*, 121 NLRB 115; *Carnation Co.*, 121 NLRB 178, *E. W. Coslett & Sons*, 122 NLRB 961.

³⁹ Sec 9(c)(1) provides for the filing of representation petitions "by an employee or group of employees or any individual or labor organization."

his petition is to be processed.⁴⁰ However, it was made clear that an individual who petitions for the decertification of an incumbent bargaining agent is not required to comply, since the petitioner then acts as an individual and not as a labor organization.⁴¹

b. Craft Representatives

The Board has continued to require that a petitioner seeking to sever a craft group from a group with a bargaining history on a larger basis must show that it is "a union which has traditionally devoted itself to serving the special interests of the [particular] employees."⁴²

The Board again had occasion to reject the contention that a new organization does not meet the "traditional union" test. As reiterated in one case,⁴³ a "'union newly organized for the sole and exclusive purpose of representing members of [a given] craft' may be as much a craft union as one which has been long established and has the same right as an older organization to seek to sever a craft from a larger unit."⁴⁴

4. Contract as Bar to Election

During fiscal 1959, the Board has kept in force its longstanding policy not to direct an election among employees presently covered by a valid collective-bargaining agreement except under certain circumstances which are discussed in this section. Generally, the Board has continued to require that a contract asserted as a bar be in writing⁴⁵ and properly executed and binding on the parties; that the contract be of no more than "reasonable" duration; and that the contract contain substantive terms and conditions of employment which are consistent with the policies of the act. However, as briefly noted in the last annual report,⁴⁶ a number of new rules were adopted

⁴⁰ *The Grand Union Co.*, 123 NLRB 1665, Member Bean concurring in part and dissenting in part, Member Jenkins concurring. The unfair labor practice aspects of the case, in connection with which the question arose, are discussed at pp. 63-69, *infra*.

⁴¹ *The Grand Union case* overrules *Perfect Circle Corp.*, 114 NLRB 725, 726, *Campbell Offset Printing Co., Inc.*, 92 NLRB 1421, footnote 2; *Hofmann Packing Co.*, 87 NLRB 601, footnote 2; *Standard Oil Co. (Indiana)*, 80 NLRB 1022, footnote 1, *Acme Boot Manufacturing Co.*, 76 NLRB 441, footnote 2, and similar cases insofar as inconsistent.

⁴² *American Potash & Chemical Corp.*, 107 NLRB 1418. The "traditional union" qualification does not apply where severance is not sought, that is, where the craft group involved has no bargaining history on a broader basis. See *Container Corporation of America*, 121 NLRB 249; *Plastic Film Co., Inc.*, 123 NLRB 1635.

⁴³ *Vickers, Inc.*, 122 NLRB 155, citing *Friden Calculating Machine Co., Inc.*, 110 NLRB 1618.

⁴⁴ See also *Dana Corp.*, 122 NLRB 365, and *General Electric Co.*, 123 NLRB 884.

⁴⁵ In *Appalachian Shale Products Co.*, 121 NLRB 1160, the Board specifically reaffirmed the rule that an oral contract or an orally extended written contract cannot serve as a bar.

⁴⁶ Twenty-third Annual Report, p. 21.

to govern the application of these general principles. The new rules⁴⁷ are set out below in the pertinent subsections.⁴⁸

a. Execution and Ratification of Contract

The requirements that a contract in order to bar a petition be signed, and ratified if necessary, were simplified in certain respects.

(1) Execution of Contract

In reaffirming the rule that in order to be a bar, a contract must have been signed by the parties before the filing of a petition, the Board eliminated the exception in favor of contracts not so signed but considered by the parties as having been properly concluded, and put into effect by the parties in important respects.⁴⁹ The new rule provides—

that a contract to constitute a bar must be signed by all the parties⁵⁰ before a petition is filed and that unless a contract signed by all the parties precedes a petition, it will not bar a petition even though the parties consider it properly concluded and put into effect some or all of its provisions.⁵¹

However, the Board made clear in *Appalachian Shale* that where the requirement for signature by all parties has been complied with, the contract will be recognized as a bar even though it is not embodied in a formal document. Thus, an agreement evidenced by the exchange of a written proposal and a written acceptance, both signed, may be sufficient.

(2) Ratification

The requirement of contract ratification by the union membership was restated by the Board in the *Appalachian* case as follows:

Where ratification is a condition precedent to contractual validity by express contractual provision, the contract will be ineffectual as a bar unless it is ratified prior to the filing of a petition, but if the contract itself contains no express provision for prior ratification, prior ratification will not be required as a condition precedent for the contract to constitute a bar.

The new rule is intended to eliminate litigation concerning the existence of an understanding of the parties outside the contract, or of

⁴⁷ An alphabetical list of the lead cases and the cases which were overruled is provided in this section. (See pp. 34-35, *infra*.)

⁴⁸ The revised rules were made to apply to the cases which gave rise to their adoption and all cases then pending. *Deluxe Metal Furniture Co.*, 121 NLRB 995. Compare *American Can Co.*, 123 NLRB 438.

⁴⁹ *Appalachian Shale Products Co.*, *supra*. See also *Belleville Employing Printers*, 122 NLRB 350, and *Sutherland Paper Co.*, 122 NLRB 1284.

⁵⁰ See, e.g., *Zangerle Peterson Co.*, 123 NLRB 1027 (contract not countersigned as required by its terms held no bar).

⁵¹ *Owego Falls Corp.*, 110 NLRB 621; *Natona Mills*, 112 NLRB 236, and other cases similarly decided were overruled to this extent.

provisions in the union's constitution or bylaws, which may be interpreted as requiring ratification.⁵²

b. Coverage of Contract

The rules regarding the adequacy of a contract in point of coverage remain unchanged insofar as a contract in order to bar a petition "must clearly by its terms encompass the employees sought in the petition,"⁵³ and "must embrace an appropriate unit."⁵⁴ As heretofore, a contract for members only does not operate as a bar.⁵⁵

(1) Master Agreements

The Board in *Appalachian Shale* reaffirmed that—

a master agreement is no bar to an election at one of the employer's plants where by its terms it is not effective until a local agreement has been completed or the inclusion of the plant has been negotiated by the parties as required by the master agreement, and a petition is filed before these events occur. However, where the master agreement is found to be the basic agreement and the local supplement merely serves to fill out its terms as to certain local conditions, it will constitute a bar.

(2) Change of Circumstances During Contract Term

In the *General Extrusion* case,⁵⁶ the Board announced certain changes in the rules governing the effectiveness of contracts as a bar where changes in the employer's operations and personnel complement have occurred before the filing of the petition.

(a) Prehire contracts

The following rules were adopted:

- (1) A contract is not a bar if executed before any employees were hired.
- (2) A contract executed before a substantial increase in personnel is a bar to an election only if at least 30 percent of the work force employed at the time of the hearing was employed at the time the contract was executed, and 50 percent of the job classifications in existence at the time of the hearing were in existence at the time the contract was executed.

(b) Changed operations

The rule that a contract is removed as a bar by prepetition major changes in the *nature*, as distinguished from the *size*, of the em-

⁵² *Roddis Plywood & Door Co.*, 84 NLRB 309, and other cases similarly decided were overruled insofar as inconsistent.

⁵³ *Appalachian Shale Products Co.*, *supra*.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.* Compare *N. Sumergate & Sons*, 121 NLRB 667, where a contract was held not a bar because it "has not been equally applied to all employees; and regardless of whether the contract may purport [on its face] to cover all employees . . . the Intervenor has never in fact represented all the employees equally and without discrimination between union and nonunion members."

⁵⁶ *General Extrusion Co., Inc.*, 121 NLRB 1165.

ployer's operations continues in effect, with the added requirement that to remove the contract bar the change must have involved a considerable proportion of employees. The present rule contemplates changes in the nature of operations—

involving (1) a merger of two or more operations resulting in creation of an entirely new operation with major personnel changes; or (2) resumption of operations at either the same or a new location, after an indefinite period of closing, with new employees.

It was made clear, however, that a contract bar is not removed by— a mere relocation of operations accompanied by a transfer of a considerable proportion of the employees to another plant, without an accompanying change in the character of the jobs and the functions of the employees in the contract unit.

Also remaining in effect is the rule that— after a contract is removed as a bar because of [changes in operations], an amendment thereto embracing the changed operation or a new agreement will, subject to the rules relating to premature extension⁵⁷ . . . , serve as a bar to a petition filed after its execution.

Likewise the rule remains that a contract is removed as a bar by— the assumption of the operations by a purchaser in good faith who had not bound himself to assume the bargaining agreement of the prior owner of the establishment.

Applying the *General Extrusion* rules, the Board held in one case that, while the petition for a new plant was not barred by the parties' original contract executed when there was no representative and substantial employee complement, the petition was barred by an amendment to the contract made when the plant had more than 30 percent of the work complement and more than 50 percent of the job classifications in existence at the time of the hearing.⁵⁸ In another case, the Board held that the employer's petition was barred by a contract at a plant which later was consolidated with another plant.⁵⁹ Here, at least 30 percent of the two-plant complement had been employed when the contract was executed, and at least 50 percent of the plant job classifications were in existence at the time.

c. Duration of Contract

The new rules retain, and in some respects give greater scope to, the longstanding rule that a 2-year term is reasonable for contract-bar purposes.⁶⁰

⁵⁷ See *infra* p. 34.

⁵⁸ *Arvey Corp. (Transo Envelope Company Division)*, 122 NLRB 1640.

⁵⁹ *Bowman Dairy Co.*, 123 NLRB 707.

⁶⁰ Soon after the close of the fiscal year the Board announced that the term of a contract will be computed from its *effective date* rather than its execution date. *Benjamin Franklin Paint and Varnish Company Division of United Wallpaper, Inc.*, 124 NLRB No. 3.

The Board in the *Pacific Coast Association* case⁶¹ declined to increase the "reasonable duration" period as suggested by some interested parties. While recognizing a certain trend toward industry contracts of more than 2 years' duration, the Board pointed out that its revised contract-bar policy substantially reduces the opportunity of employees to redesignate bargaining representatives while a contract is in effect, and that an extension of the contract-bar period is therefore not warranted at this time.

(1) Uniform 2-Year Rule—Industry Test Abandoned

In the *Pacific Coast Association* case the Board announced that henceforth—

a valid contract having a fixed term or duration shall constitute a bar for as much of its term as does not exceed 2 years.⁶²

* * * * *

any contract having a fixed term in excess of 2 years shall be treated . . . as a contract for a fixed term of 2 years, notwithstanding the fact that a substantial part of the [particular] industry . . . may be covered by contracts for a longer term.

(2) Contracts of No Fixed Duration No Bar

The *Pacific Coast Association* case establishes a uniform rule that contracts of no fixed duration will not be held to constitute a bar for any period. This rule denies all contract-bar effect not only, as heretofore, to temporary stopgap agreements effective pending the negotiation and execution of a final or new agreement,⁶³ but also to contracts of indefinite duration, such as contracts which lack termination or duration provisions, as well as contracts terminable at will. Overruling earlier inconsistent cases⁶⁴ to this extent, the Board stated:

We believe that our contract-bar policy should rest on the fundamental premise that the postponement of employees' opportunity to select representatives can be justified only if the statutory objective of encouraging and protecting industrial stability is effectuated thereby. That objective is served where contracting parties have entered into mutual and binding commitments thereby reasonably insuring that for the duration of the agreement neither party will disrupt the bargaining relationship by unilaterally attempting to force changes in the conditions of employment upon the other. But to grant the protection of our contract-bar policy to parties which have not so committed themselves—either party being free at all times to dissolve the contract and exert economic pressure upon the other in support of bargaining demands—would be to abridge the statutory right of employees to select representatives without concomitant statutory justification.

⁶¹ *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990.

⁶² See, e.g., *Laundry Owners Association of Greater Cincinnati*, 123 NLRB 543.

⁶³ See, e.g., *John Liber & Co.*, 123 NLRB 1174.

⁶⁴ *Rohm & Haas Co.*, 108 NLRB 1285, and succeeding cases.

d. Terms of Contract

The Board reaffirmed the general rule that to bar a petition a collective-bargaining agreement must contain substantial terms and conditions of employment sufficient to stabilize the bargaining relationship of the parties.⁶⁵ However, the rule as restated specifically provides that a contract "will not constitute a bar if it is limited to wages only, or to one or several provisions not deemed substantial." This limitation overrules earlier cases, such as *Nash-Kelvinator*,⁶⁶ where a contract containing a wage agreement only and no other terms and conditions of employment was given contract-bar effect. In the Board's present view, "real stability in industrial relations can only be achieved where the contract undertakes to chart with adequate precision the course of the bargaining relationship, and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems."

(1) Union-Security Clauses

Existing rules for determining the effect of union-security clauses for contract-bar purposes were reexamined and revised in the *Keystone Coat* case⁶⁷ with a view to their simplification and clarification. The Board rejected the proposal of some interested parties to eliminate all consideration of union-security clauses in representation proceedings. The new rules for determining—"for contract-bar purposes only"—the sufficiency of union-security clauses pertain both to the qualification of a union to make a union-security agreement and to the conformity of union-security clauses with the limitations of the union-security proviso to section 8(a)(3).

(a) Qualification of contracting union

Under section 8(a)(3), a union may validly make a union-security agreement only if it has majority status in an appropriate unit, if its authority to do so has not been revoked during the preceding year in a section 9(e) election, and if the union is in compliance with the filing and non-Communist affidavit requirements of section 9(f), (g), and (h). In view of these limitations, the Board's new rules provide that a contract containing an otherwise valid union-security clause does not bar an election if—

1. A majority of the employees in the unit have voted within 1 year preceding the execution of the contract to rescind the authority of the union to make an agreement pursuant to Section 9(e)(1) of the Act; or,

2. The local union or its affiliated parent is not in compliance with the filing requirements of the Act.⁶⁸ For the purposes of these rules, a union is deemed

⁶⁵ *Appalachian Shale Products, supra.*

⁶⁶ *Nash-Kelvinator Corp.*, 110 NLRB 447

⁶⁷ *Keystone Coat, Apron & Towel Supply Co.*, 121 NLRB 880.

⁶⁸ See *E. W. Coslett & Sons*, 122 NLRB 961.

to be in compliance with the filing requirements of the Act if it meets any one of the following requirements:

- (a) It was in compliance at the time of the execution or renewal of the contract; or
- (b) It received a notice of compliance within the 12-month period preceding the execution or renewal of the contract; or,
- (c) It received a notice of compliance before the filing of the petition if initial steps to achieve such compliance were taken before the execution or renewal of the contract; or
- (d) It achieved compliance after the filing of the petition if initial steps to achieve compliance were taken before the execution of the contract and actual compliance was achieved within a reasonable period of time.⁶⁹

(b) Terms of union-security clause

The Board announced the basic rule that a contract is not a bar if it contains a union-security clause which—

- (1) does not on its face conform to the requirements of the Act;⁷⁰
- (2) has been found to be unlawful in an unfair labor practice proceeding.

Under the new rules consideration will no longer be given to contracts containing—

- (1) union-security provisions which do not expressly grant old nonmember employees the statutory 30-day grace period for joining the contracting union;⁷¹
- (2) clauses deferring the effectiveness of union-security provisions deemed invalid for bar purposes,⁷² or purporting to rescind or cure such clauses by amendment;
- (3) ambiguous union-security provisions which may be interpreted as either lawful or unlawful because the language is not clear or is in general terms.

(c) Model union-shop clause

In order to facilitate the drafting of union-security clauses which meet the foregoing tests, the following model clause was set forth:

It shall be a condition of employment that all employees of the Employer covered by this agreement who are members of the Union in good standing on

⁶⁹ See, e.g., *Boston Woven Hose and Rubber Co., Division of American Bitrite Co., Inc.*, 123 NLRB 501

⁷⁰ As examples of clauses which will be deemed invalid and as removing the contract as a bar, the Board enumerated clauses (1) requiring the employer to give preference on the basis of union membership in hire, tenure, seniority, wages, or other terms and conditions of employment (see *National Brassiere Products Corp.*, 122 NLRB 965), (2) delegating to a union unlawful control of hire, tenure, seniority, wages, or other terms and conditions of employment (see *US Chawcraft Mfg. Corp.*, 122 NLRB 1352); or (3) making a condition of employment the performance of any obligation of membership other than the payment of "periodic dues and initiation fees uniformly required" (see *National Brassiere Products Corp.*, *supra*)

In one case, a clause providing for a 60-day grace period for all employees but requiring payment of a work permit fee by new employees after 30 days was held invalid both because it imposed an obligation other than the payment of periodic dues and initiation fees uniformly required, and discriminated against new employees *National Brassiere Products Corp.*, *supra*. And a guard union's contract was held no bar because its union-security clause provided that "Any guard terminated for failure to join the Union shall not be rehired as a guard during the life of this agreement" (*Argonne National Laboratory*, 123 NLRB 375).

⁷¹ See *Cab Services, Inc., d/b/a Red and White Airway Cab Co.*, 123 NLRB 83, *Sanford Plastics Corp.*, 123 NLRB 1499.

⁷² See *National Brassiere Products Corp.*, *supra*.

the effective date of this agreement shall remain members in good standing and those who are not members on the effective date of this agreement shall, on the thirtieth day [or such longer period as the parties may specify] following the effective date of this agreement, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this agreement and hired on or after its effective date shall, on the thirtieth day following the beginning of such employment [or such longer period as the parties may specify] become and remain members in good standing in the Union.⁷³

(2) Checkoff Clauses

Under the new rules a contract is removed as a bar if it contains a checkoff clause which does not on its face conform to section 302 of the act.⁷⁴

In determining compliance with section 302, the Board gives effect to the section's construction by the Department of Justice, which is responsible for its enforcement. Thus, the Board held itself bound by the Department's construction that the term "membership dues" in section 302 includes initiation fees and assessments in addition to dues. A contract clause providing for the checkoff of "dues, initiation fees, etc." was therefore held valid for contract-bar purposes.⁷⁵

Regarding the section 302 requirement that individual checkoff authorizations be irrevocable for only a limited period, the Board has held that absence in a contractual checkoff clause of a specific reference to these requirements does not by itself render the clause defective for contract-bar purposes.⁷⁶

e. Change in Identity of Contracting Party—Schism—Defunctness

In the *Hershey Chocolate Corporation* case,⁷⁷ the Board reexamined various aspects of its policy of ignoring an outstanding contract and directing an election among the employees covered where a schism occurred in the contracting union's ranks or where the union had become defunct. Consideration was given to the factors necessary to warrant a finding that a schism exists; the type of election to be conducted in case of a schism, and the effect of such an election on the existing contract; the consequences of the assignment of the contract from one union to another; and the factors for determining defunctness.

⁷³ Where the effective date of the agreement is made retroactive, the execution date shall be substituted for the effective date. The clause is set forth in *Keystone Coat, Apron & Towel Supply Co.*, 121 NLRB 880. The language bracketed in the text was added as an amendment by the Board in the *Keystone* case Jan. 23, 1959.

⁷⁴ Sec. 302(c)(4) provides that an employer may deduct union membership dues from the wages of employees if "the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner"

⁷⁵ *Wm. Wolf Bakery, Inc.*, 122 NLRB 630. See also *Stewart Die Casting Division of Stewart Warner Corp.*, 123 NLRB 447.

⁷⁶ *Ibid.* See also *Zangerle Peterson Co.*, 123 NLRB 1027.

⁷⁷ *Hershey Chocolate Corp.*, 121 NLRB 901.

(1) Schism Rules

Based on the policy considerations set out in the *Hershey* decision, the following rules were established:

(a) Where a schism is found, an election will be directed whether or not the contracting representative is defunct.⁷⁸

(b) A schism warranting an election will be found to exist only where it arises from "a basic intraunion conflict," i.e., "any conflict over policy at the highest level of an international union, whether or not it is affiliated with a federation."⁷⁹

(c) Employee disaffiliation action at the local level—even though arising from a basic intraunion conflict—however will not be held to warrant an election unless the action was taken "at an *open meeting* called, without regard to any constitutional restrictions but with *due notice* to the members in the unit, for the purpose of taking disaffiliation action for reasons relating to the basic intraunion conflict,"⁸⁰ and unless the "action is taken within a reasonable period of time after the occurrence of the conflict⁸¹ and results in confusion *unstabilizing the bargaining relationship.*"

(d) "[U]nstabilizing confusion" will be found whenever "the disaffiliation action . . . results in the employer being confronted with two organizations each claiming with some show of right to be the organization previously chosen by the employees as their representative."⁸²

(e) Disaffiliation action of the above kind will be held to remove the contract bar whenever—though not only where—it is coextensive with the contract unit. In the case of joint representation by two or more locals, unstabilizing confusion will also be found if disaffiliation action is taken by the members of one or more of such locals and involves a substantial number of all the employees in the contract unit.⁸³

(2) Nature of Election—Effect on Contract

The Board⁸⁴ announced that it will adhere to the practice in schism cases to make no distinctions as to the type of petition; to permit unlimited intervention; to permit a severance election in a segment of the contract unit when otherwise appropriate; and to give the employees an opportunity to choose not to be represented. The majority of the Board declined to adopt a rule under which schism elections would be held only for the limited purpose of determining which of the organizations directly involved is entitled to

⁷⁸ The Board rejected the contention of certain interested parties that it has no statutory authority to direct an election on the basis of a schism when the contractual representative is not defunct.

⁷⁹ Local disaffiliation action unrelated to a basic intraunion conflict will no longer be held to warrant an election.

⁸⁰ See *Wm. Wolf Bakery, Inc.*, 122 NLRB 1163, where the asserted disaffiliation action was found not to have satisfied the *Hershey* requirement.

⁸¹ The Board will no longer follow *A. C. Lawrence Leather Co.*, 108 NLRB 546, and later cases, insofar as they imply that the time element is irrelevant in determining the existence of a schism.

⁸² The Board specifically makes clear that no election will be directed if disaffiliation action has not been taken, or did not result in confronting the employer with conflicting representation claims.

⁸³ See *St. Louis Bakery Employers Labor Council*, 121 NLRB 1548, overruling *Marshall Field & Co.*, 101 NLRB 512, and similar cases insofar as inconsistent.

⁸⁴ Member Jenkins dissenting.

administer the existing contract. A proposal to require the winning union in a schism election to assume the existing contract was also rejected, but without barring a voluntary assumption of the contract.

It was also made clear that when the elements of schism are present, assignment of the contract does not preserve it as a bar.

(3) Defunctness

The Board in the *Hershey* case reaffirmed the rule that a representative is deemed defunct, and its contract not a bar, if the representative "is unable or unwilling to represent the employees." However, it is made clear that "mere temporary inability to function does not constitute defunctness; nor is the loss of all members in the unit the equivalent of defunctness if the representative otherwise continues in existence and is willing and able to represent the employees."

In determining defunctness in nonschism situations, the Board will give consideration only to the status of the entity or entities which are signatories to the contract. Therefore, it is announced, "actions by an international union or intermediate body evidencing its willingness and ability to assume the representative functions of a local which is no longer capable of performing such functions will be deemed relevant to the issue of defunctness only if such international union or intermediate body is a party signatory to the contract."

f. Effect of Rival Claims and Petitions, and Conduct of Parties

In the *Deluxe Metal Furniture* case⁸⁵ the Board reexamined those aspects of the contract-bar rule relating to the timeliness and sufficiency of rival claims and petitions and the effect of the conduct of the parties regarding their contract.

(1) Substantial Representation Claims

The Board considers it desirable to retain the rule that a contract does not bar a petition if it was executed at a time when the employer was confronted with a substantial representation claim of a rival union. As stated by the Board, a contract bar will not be found—where an incumbent union continues to claim representative status, or where a nonincumbent union has refrained from filing a petition to establish its representative status in reliance upon the employer's conduct indicating that recognition had been granted or that a contract would be obtained without an election.

(2) Unsupported Claims—10-Day Rule Abandoned

In view of growing familiarity of unions and employees with Board practices relative to the proper timing of petitions, and par-

⁸⁵ *Deluxe Metal Furniture Co.*, 121 NLRB 995.

ticularly in view of the concurrent adoption of certain new rules,⁸⁶ the Board believes that the protection of the employees' free choice no longer needs the *General Electric X-Ray* rule⁸⁷ that an unsupported claim followed by a petition within 10 days precludes a contract executed during the 10-day period from becoming a bar. The *X-Ray* rule is therefore eliminated and no weight will henceforth be given to unsupported claims.

(3) Timeliness of Petitions

Several new rules were adopted whose purpose is to preserve to a greater degree the stability of contractual relations and at the same time to facilitate ready ascertainment of the proper time for filing of petitions.⁸⁸

Generally, a petition will be held untimely if (1) filed on the same day a contract is executed; or (2) filed prematurely, i.e., more than 150 days before the terminal date of an outstanding contract; or (3) filed during the 60-day "insulated" period immediately preceding that date. To be timely in relation to a contract of more than 2 years' duration, a petition must be filed not more than 150 days, nor less than 60 days, before the end of the first 2 years of the contract term or after the expiration of the 2-year period.⁸⁹

(a) Petition filed on day contract executed

Under the new rules, a petition will be held barred by a contract executed on the day it is filed if the contract is effective immediately or retroactively and the employer has not been informed at the time of execution that a petition has been filed. The employer's lack of knowledge of the filing of a petition is not relevant where it is filed on the day preceding the day of the contract's execution.⁹⁰

The cutoff time for the purpose of these rules is midnight. A contract signed after midnight is not a bar even though it is the result of continuous bargaining.

⁸⁶ See *infra*.

⁸⁷ *General Electric X-Ray Corp*, 67 NLRB 997

⁸⁸ The timeliness of a petition is determined on the basis of its receipt in the Board's regional office. As heretofore, where pertinent, "the filing date of the original petition is controlling (1) where it is later amended, if the employers and the operations or employees involved were contemplated by or identified with reasonable accuracy in the original petition, or the amendment does not substantially enlarge the character or size of the unit or the number of employees covered, and (2) where a favorable ruling is made on a petitioner's appeal from a Regional Director's dismissal of a petition, or a motion for reconsideration of a Board decision." See also *Sutherland Paper Co.*, 122 NLRB 1284. Compare *The Evans Pipe Co.*, 121 NLRB 15.

⁸⁹ *The Steck Co.*, 122 NLRB 12

⁹⁰ *Anheuser-Busch, Inc.*, 116 NLRB 186 (Twenty-second Annual Report, p 24), was overruled insofar as inconsistent.

(b) Premature petitions

Under the new rules, a petition is premature and will be dismissed if it is filed more than 150 days before the terminal date of an outstanding contract.⁹¹

A premature petition does not become timely where the parties to the outstanding contract give notice to modify or actually modify substantive provisions of the contract, whether or not it contains a modification clause and regardless of the scope of any such clause.⁹²

However, a hearing on a premature petition will be directed if information submitted by the petitioner and an investigation based thereon tend to show that the existing contract is not a bar for such reasons as schism, defunctness, illegal union security, etc. If the case reaches the Board for decision during the 90-day period preceding the expiration date of the contract, the petition will not be dismissed.⁹³

The 150-day rule does not apply where an outstanding contract is found to have ceased to be effective in practice because of the seasonal nature of the industry involved.⁹⁴

(c) Sixty-day insulated period

In order to afford parties to an expiring contract an opportunity to negotiate and execute a new or amended agreement without the disrupting effect of rival petitions, the Board will now dismiss all petitions⁹⁵ filed during the 60-day period immediately preceding and including the expiration date of an existing contract,⁹⁶ regardless of whether or not the contract contains an automatic renewal clause and regardless of the length of the renewal period.⁹⁷

⁹¹ In allowing a maximum of 150 days from the terminal date of an existing contract for filing a petition the Board overruled cases establishing a shorter period as well as cases honoring premature petitions because of the proximity of the outstanding contract's renewal or expiration date. See cases cited in footnote 8 of the *Deluxe Metal* decision; see also Twentieth Annual Report, pp. 27-28.

⁹² In stating this rule the Board cited *Western Electric Co.*, 94 NLRB 54.

⁹³ See *St. Louis Independent Packing Co.*, 122 NLRB 887, where a hearing had been held on a petition which was premature in relation to the end of the first 2 years of the outstanding contract's duration, and where the Board's decision issued after the 90th day preceding the end of the 2-year period.

⁹⁴ See also *Cooperativa Azucarera Los Canos*, 122 NLRB 817; compare *South Porto Rico Sugar Co., d/b/a Central Guanica*, 100 NLRB 1309, where an outstanding contract was held no bar because it covered for the most part seasonal employees and the employer's operations had ceased for the year.

⁹⁵ The rule applies to every kind of petition including employer petitions. *Nelson Name Plate Co.*, 122 NLRB 467.

⁹⁶ The Board overruled *De Soto Creamery and Produce Co.*, 94 NLRB 1627, and *Robertson Brothers Department Store, Inc.*, 97 NLRB 258 (Sixteenth Annual Report, pp. 79-80; Seventeenth Annual Report, p. 50), insofar as these cases gave effect to the 60-day contract termination notice provision of sec. 8(d). This provision was held to require that petitions filed during the 60-day pretermination period be barred by a new contract executed during the 60-day period and before the filing of the petition.

⁹⁷ The Board has made clear that, unlike the 150-day rule, the 60-day insulated period rule applies regardless of the seasonal nature of the contracting employer's business. See *Nelson Name Plate Co.*, *supra*.

Under the new rule—

All petitions filed more than 60 days but not over 150 days before the terminal date of any contract will be timely. A petition filed during the 60-day insulated period will be dismissed as untimely, regardless of any conduct of the parties during that 60-day period. If the contract contains no automatic renewal clause or the parties have forestalled automatic renewal and no new or amended agreement has been executed within the 60-day period, a petition will be timely if filed after the terminal date of the old contract and before the execution or effective date of any new contract, whichever is later. However, a petition filed subsequent to the 60-day insulated period, but on or after the effective date of a contract executed within that 60-day period, will be untimely. The foregoing will apply to any contract with a fixed term whether or not it contains an automatic renewal clause and regardless of the period specified therein for automatic renewal. The 60-day insulated period will not change the automatic renewal date specified in the contract or make fixed-term-only contracts automatically renewable. Where the contract is one of "unreasonable duration," the insulated period will be the last 60 days of the reasonable period. If the automatic renewal clause specifies a period other than 60 days, the parties thereto will be bound by their own agreement for purposes of forestalling renewal, but the timeliness of a petition will be keyed to the 60-day period.

The 60-day rule does not apply where the contract is not a bar for other reasons under the Board's contract-bar rules.⁹⁸

The effect of the 60-day insulated period on the Board's "premature extension" rule is noted below at page 34.

The purpose of the 60-day insulated period is to make the time for filing petitions definite and thereby to avoid disruption of labor relations during a contract term as much as possible. As pointed out by the Board, the rule requires all potential petitioners to have their petitions on file at least 61 days before the terminal date of the contract or run the risk that a contract executed during the 60-day insulated period will foreclose another petition for the new contract's term. Moreover, the rule will prevent "overhanging rivalry and uncertainty during the bargaining period, and will eliminate the possibility for employees to wait and see how bargaining is proceeding and use another union as a threat to force their current representative into unreasonable demands."

(d) Forestalling automatic renewal

In the case of an automatically renewable contract—as in the case of a fixed-term contract⁹⁹—a petition is untimely if filed during the 60-day insulated period preceding the contract's expiration date. Whether automatic renewal of the contract was forestalled is, under the new rule, relevant only for the purpose of a petition filed after the contract's expiration date.

⁹⁸ *National Brassiere Products Corp.*, 122 NLRB 965; *Stewart Die Casting Division of Stewart Warner Corp.*, 123 NLRB 447.

⁹⁹ *Supra*, p. 30

Regarding automatic renewal, the new rules provide that—

Any notice of a desire to negotiate changes in a contract received by the other party thereto immediately preceding the automatic renewal date provided for in the contract will prevent its renewal for contract-bar purposes, despite provision or agreement for its continuation during negotiations, and regardless of the form of the notice.

However, as heretofore, timely notice to amend will be held to forestall automatic renewal¹ irrespective of (1) inaction of the parties in the face of a contractual requirement that certain action be taken within a specified time; (2) rejection of the notice; or (3) withdrawal of the notice.

(i) *Untimely notice*

The Board's *Deluxe Metal* decision eliminates the rule that a party receiving a late notice under an automatic renewal clause may by conduct waive the untimeliness and treat the contract as though timely notice had been given.² While following belated, and therefore ineffective, notice the parties may otherwise terminate the renewed contract, the fact of such termination becomes relevant only in connection with the timeliness of a petition filed after the 60-day insulated period. Even in case of such termination the 60-day period preceding the contract's normal terminal date applies. For the purpose of determining the timeliness of a petition filed after the normal 60-day period, a contract terminated following belated notice, and not superseded by a new agreement arrived at during the protected period, will be treated the same as a contract for a fixed term or as one whose renewal was forestalled. A written agreement which, after termination, reinstates the old automatically renewable contract will be treated as a new contract.

(ii) *Notice under modification clause*

The new rules provide that:

When a contract contains separate modification and automatic renewal clauses each of which provides for notification at approximately the automatic renewal date, or the modification clause provides for notification at any time and notice is given shortly before the automatic renewal date of the contract, the notice will be treated as one to forestall automatic renewal.³

However, an exception will be made and renewal will not be held forestalled where a modification notice is given under a contract which provides specifically that the contract is to renew itself notwithstanding notice to modify.

¹ The rule that abandonment of the administration of a contract precludes the contract's automatic renewal is retained.

² *Carter's Ink Co.*, 109 NLRB 1042; *Superior Sleeprite Corp.*, 106 NLRB 228; *Wisconsin Telephone Co.*, 65 NLRB 368, and similar cases are reversed in this respect.

³ To the extent that such cases as the following are inconsistent with this rule, they are hereby overruled: *Helmco, Inc.*, 114 NLRB 1585; *Griffith Rubber Mills*, 114 NLRB 712; *Eagle Signal Corp.*, 111 NLRB 1006.

The new rule thus treats all notices given under separate modification clauses at approximately the renewal date as notices to forestall automatic renewal, unless very strict contractual provisions are met.⁴

(e) Effect of midterm modification

The new rules also establish greater uniformity in according contract-bar effect to agreements containing midterm modification clauses. As announced in the *Deluxe Metal Furniture* case—

[No] midterm modification provision, regardless of its scope . . . nor any action pursuant thereto short of actual termination, will remove a contract as a bar, except where a notice is given immediately prior to the automatic renewal date⁵ of such a contract.

The rule applies equally even though the modification clause provides for unilateral termination by notice if agreement is not reached, or for permission to strike or lock out in support of any demand made during modification negotiations and the right to terminate thereafter.⁶

The Board believes that this new rule properly eliminates the necessity of scrutinizing the scope of a modification clause, the breadth of notice given, and the actions of the parties for the purpose of determining the parties' intent regarding termination and its effect on the contract-bar issue. In the Board's view, the inclusion of a clause conditioning termination of the contract which is being renegotiated on such intermediate steps must be taken as evidencing the parties' intent to resort to termination only as a last resort, if at all, rather than an intent to terminate as soon as one or more of the conditions have been met.

(f) Termination of contract

As heretofore, a contract which has been terminated will not be held to bar a petition. However, it was made clear in *Deluxe Metal* that termination of a contract during the 60-day insulated period does not affect the untimeliness of a petition filed during the 60-day period.

A contract will be deemed terminated for contract-bar purposes if terminated by mutual assent, or pursuant to its terms, or if a notice of termination or cancellation is given because of breach of a basic contract provision such as a no-strike pledge.

⁴ In connection with the exception to the rule, see *Mallinckrodt Chemical Works*, 114 NLRB 187; *Michigan Gear & Engineering Co.*, 114 NLRB 208. See also Twenty-first Annual Report, pp. 46-47.

⁵ This exception conforms to the notice rule discussed under (d) (ii), *supra*.

⁶ Such cases as *Ketchikan Pulp Co.*, 115 NLRB 279, and *General Electric Co.*, 108 NLRB 1290, are overruled.

g. Premature Extension of Contract

The Board adheres to the general rule that a prematurely extended contract will not bar a petition which is timely in relation to the original contract's terminal date. However, in view of the *Deluxe Metal*⁷ requirements, a petition to be timely must be filed over 60 days, but not more than 150 days, before the original contract's terminal date. If so filed, the petition is timely in relation to the extended contract.⁸

As announced in *Deluxe Metal*,⁹ a contract will be considered prematurely extended if during its term the parties extend its term by an amendment or a new contract. But the extension will not be held premature when made "(1) during the 60-day insulated period preceding the terminal date of the old contract;¹⁰ (2) after the terminal date of the old contract if notice by one of the parties forestalled its automatic renewal or it contained no renewal provision; or (3) at a time when the existing contract would not have barred an election because of other contract-bar rules."¹¹

h. List of Leading Cases and Cases Overruled

(1) Leading Cases on Revised Contract-Bar Rules

- Appalachian Shale Products Co.*, 121 NLRB 1160
American Can Company, 123 NLRB 438
The Cessna Aircraft Company, 123 NLRB 855
Cooperativa Azucarera Los Canos, 122 NLRB 817
Deluxe Metal Furniture Company, 121 NLRB 995
East Tennessee Packing Company, 122 NLRB 204
General Extrusion Company, 121 NLRB 1165
Hershey Chocolate Corporation, 121 NLRB 901
Keystone Coat, Apron & Towel Supply Company, 121 NLRB 880
Pacific Coast Association of Pulp and Paper Manufacturers, 121 NLRB 990
St. Louis Bakery Employers Labor Council, 121 NLRB 1548
St. Louis Independent Packing Company, A Division of Swift and Company, 122 NLRB 887
The Steck Company, 122 NLRB 12

⁷ *Deluxe Metal Furniture Corp.*, *supra*, footnote 85.

⁸ See *Pacific Coast Association of Pulp & Paper Manufacturers*, 121 NLRB 990; *Sequin Lumber & Supply Co.*, 123 NLRB 1097.

⁹ See also *Pacific Coast Association of Pulp and Paper Manufacturers*, *supra*.

¹⁰ *Republic Steel Corp.*, 84 NLRB 483, and *De Soto Creamery*, 94 NLRB 1627, and similar cases, are modified in this respect.

For an application of the rule see *Republic Aviation Corp.*, 122 NLRB 998. Here a 3-year contract had been prematurely extended. No petition was filed during the 60-150-day period before the expiration of the original contract's initial 2-year term. The extended contract having thus become a bar, the petition filed during the extended contract's 60-day insulated period was held untimely.

¹¹ For instance, where the original contract had been in effect for more than 2 years, or contained illegal union-security provisions

(2) Cases Specifically Overruled or Modified

Anheuser-Busch, Inc., 116 NLRB 186
Carter's Ink Company, 109 NLRB 1042
De Soto Creamery and Produce Company, 94 NLRB 1627
Eagle Signal Corporation, 111 NLRB 1006
Marshall Field & Company, 101 NLRB 512
General Electric Company, 108 NLRB 1290
General Electric X-Ray Corporation, 67 NLRB 997
Griffith Rubber Mills, 114 NLRB 712
Helmco, Inc., 114 NLRB 1585
Ketchikan Pulp Company, 115 NLRB 279
A. C. Lawrence Leather Company, 108 NLRB 546
Nash-Kelvinator Corporation, 110 NLRB 447
Natona Mills, 112 NLRB 236
Oswego Falls Corp., 110 NLRB 621
Republic Steel Corporation, 84 NLRB 483
Robertson Brothers Department Store, Inc., 97 NLRB 258
Rodd's Plywood & Door Company, 84 NLRB 309
Rohm & Haas Company, 108 NLRB 1285
Superior Sleeprite Corporation, 106 NLRB 228
Wisconsin Telephone Company, 65 NLRB 368

5. Other Election Bars—Waiver.

The Board follows the rule that a contract in which a union agreed not to seek representation of certain employees bars a petition by the contracting union for the particular employees during the life of the agreement. The rule—known as the *Briggs Indiana*¹² rule—was applied in the past whenever the asserted agreement clearly obligated the contracting union not to represent the employees involved, and the asserted waiver was not merely in the form of a clause excluding the employees from the contract's coverage. The rule was restated during the past year in the *Cessna Aircraft* case¹³ with certain qualifications, as follows:

A union which agrees by contract not to represent certain categories of employees during the term of a collective-bargaining agreement, may not during that period seek their representation. However, this rule will be applied only where the contract itself contains an *express* promise on the part of the union to refrain from seeking representation of the employees in question or to refrain from accepting them into membership; such a promise will not be implied from a mere unit exclusion, nor will the rule be applied on the basis of an alleged understanding of the parties during contract negotiations. Where

¹² *Briggs Indiana Corp.*, 63 NLRB 1270 (1945).

¹³ *The Cessna Aircraft Co.*, 123 NLRB 855.

an international union is a party to a contract containing a provision within the meaning of this rule, the rule will be applied to any locals of the international as well as to the international itself, and where a local is a party to such a contract, this rule applies to any other local of the same international union. The rule is inapplicable to a contract by a *certified* union which contains a provision not to represent certain of the employees in the certified unit.

6. Impact of Prior Determinations

In order to promote the dual statutory objectives of (1) guaranteeing employees their freedom to select bargaining representatives and (2) stabilizing labor relations, certain administrative and legislative limitations on representation proceedings have been established.

It has been the Board's longstanding general practice to treat a certification as binding for at least a year. Moreover, in order to protect a certified bargaining relationship from disturbance during the 1-year period, the Board has dismissed petitions filed before the end of the year.¹⁴ In one case this year, the Board rejected the petitioner's contention that the *Centr-O-Cast* dismissal rule should not be applied to a premature petition because the certified parent federation had voluntarily withdrawn from bargaining and transferred its representative status to the petitioning international.¹⁵ It was made clear that the private transfer, without notice of disclaimer to the Board, indicated "a lack of regard for the establishment of a stable bargaining relationship which the *Centr-O-Cast* rule is designed to encourage." An exception to the 1-year rule was therefore held not justified.

Supplementary to the Board's 1-year rule is the provision of section 9(c)(3) which prohibits the Board from holding an election during the 12-month period following a valid election in the same employee group.¹⁶ The 12-month period runs from the date of balloting, not from the date of certification.¹⁷ A representation election under section 9(c) does not preclude a union-shop deauthorization election under section 9(e) within less than 12 months since the representation election.¹⁸

¹⁴ *Centr-O-Cast & Engineering Co*, 100 NLRB 1507, see also *Sumner Williams, Inc*, 122 NLRB 349.

¹⁵ *Sumner Williams, Inc.*, *supra*.

¹⁶ See *Thiokol Chemical Corp., Redstone Division*, 123 NLRB 888, where the Board held that sec 9(c)(3) did not require exclusion, from the overall unit, of an electricians' group which had rejected representation by another union in a separate consent election held less than 12 months earlier. It was pointed out that the new election was not to be held in the same "unit or subdivision" involved in the consent election.

¹⁷ *R. L. Polk & Co.*, 123 NLRB 1171.

¹⁸ *Southern Press*, 121 NLRB 1080.

7. Unit of Employees Appropriate for Bargaining

Section 9(b) requires the Board to decide in each representation case whether, "in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."¹⁹ This section also imposes certain limitations on the unit placement of professional employees,²⁰ craft employees,²¹ and plant guards.²² Section 9(c) (5) precludes the Board from deciding that a bargaining unit is appropriate solely on the basis of the extent to which the employees involved have been organized.

A bargaining unit may include only "employees" within the definition of section 2(3).²³ The Board also adheres to the practice to decline certification of a unit composed of a single employee.²⁴

The following sections discuss the more important cases decided during fiscal 1959 which deal with factors considered in unit determinations, particular types of units, and treatment of particular categories of employees or employee groups.

a. Factors Considered

The appropriateness of a bargaining unit is primarily determined on the basis of the common employment interests of the group involved. In making unit determinations, the Board also has con-

¹⁹ Unit determinations also have to be made in refusal-to-bargain cases, as no violation of the relevant section of 8(a) or (b) can be found unless the bargaining representative involved had a majority status in an appropriate bargaining unit at the time of the alleged refusal to bargain.

²⁰ Under sec. 9(b)(1) the Board may not "decide that any unit is appropriate . . . if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit" See, for instance, *Continental Can Co*, 122 NLRB 1550; *Westinghouse Electric Corp*, 123 NLRB 133.

²¹ Under sec 9(b)(2) the Board may not "decide that any craft unit is inappropriate . . . on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation"

²² Under sec. 9(b)(3) the Board may not decide that a unit is appropriate "if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises" This section further provides that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." The Board held that this does not preclude a production employee who is temporarily transferred to guard duties from voting in a production and maintenance unit See *Huntley-Van Buren Co*, 122 NLRB 957

²³ See *Krist Gradis*, 121 NLRB 601, rejecting a contention that the crew members of the employer's vessels were not "employees" among whom a Board election was proper.

²⁴ See *Louis Rosenberg, Inc.*, 122 NLRB 1450 However, a majority of the Board pointed out that a one-man unit nevertheless is not inherently inappropriate under sec 9(a) and an individual is not foreclosed from bargaining with his employer through an outside representative. Members Bean and Jenkins dissented from the finding that a union-security agreement covering a single employee was valid.

tinued to give particular weight to any substantial bargaining history of the group.

The wishes of the employees concerned, as ascertained in self-determination elections, are taken into consideration where (1) specifically required by the act,²⁵ or (2) in the Board's view, representation of an employee group in a separate unit or a larger unit is equally appropriate, or (3) the question of a group's inclusion in an existing unit rather than continued nonrepresentation is involved.²⁶

Extent of organization may be a factor but, under section 9(c)(5), it cannot be given controlling weight.²⁷

The Board has consistently declined to determine the appropriateness of a bargaining unit on the basis of the petitioning union's territorial jurisdiction.²⁸

A prior determination of a bargaining unit is not controlling where factors on which it was based have ceased to exist.²⁹ Nor does the Board consider itself bound by a unit established by agreement of the parties for a Board election.³⁰

b. Craft and Quasi-Craft Units

Requests for the establishment of craft units, or the severance of craft or craftlike groups from existing larger units, continue to require determinations as to whether the *American Potash* requirements³¹ are met. These are that: (1) A craft unit must be composed of true craft employees having "a kind and degree of skill which is normally acquired only by undergoing a substantial period of apprenticeship or comparable training";³² (2) a noncraft group, sought to be severed, must be functionally distinct and must consist of employees who, "though lacking the hallmark of craft skill," are "identified with traditional trades or occupations distinct from that of other employees . . . which have by tradition and practice acquired craftlike characteristics";³³ and (3) a representative which seeks to sever a craft or quasi-craft group from a broader existing unit must

²⁵ See footnotes 20 and 21.

²⁶ See Twenty-third Annual Report, pp 31-32

²⁷ See, e.g., *The Life Insurance Company of Virginia*, 123 NLRB 610; *Whittaker Controls Division of Telecomputing Corp.*, 122 NLRB 624, and 123 NLRB 708.

²⁸ *Paxton Wholesale Grocery Co.*, 123 NLRB 316; see also *Operating Engineers Local No. 3 (California Association of Employers)*, 123 NLRB 922.

²⁹ See, e.g., *General Electric Co.*, 123 NLRB 1193.

³⁰ Generally, the Board does not accord controlling weight to units previously established as the result of consent-election agreements. See *Humble Oil and Refining Co.*, 115 NLRB 1485, 1487, *Sperry Gyroscope Co.*, 94 NLRB 1724, 1725. See also *Plastic Film Co., Inc.*, 123 NLRB 1635. Compare *The Purdy Co.*, 123 NLRB 1630, where no weight was accorded a prior consent-election certification of an overall unit which the parties ignored by bargaining in separate units

³¹ *American Potash and Chemical Corp.*, 107 NLRB 1418

³² *Ibid.* at p. 1423

³³ *Ibid.* at p. 1424

have traditionally devoted itself to serving the special interests of the type of employees involved.³⁴

Under the foregoing rules, craft status and, the consequent right to separate representation was recognized in the case of metal spinners at an aluminum metalware manufacturing plant who had to undergo a minimum of 3 years of apprenticeship and whose terms and conditions of employment were unlike those of other employees;³⁵ employees engaged in printing textiles with the use of "surface printing" machines, and found to be members of the same printers craft as rotogravure printers;³⁶ and rubber printing plate makers of a business machine manufacturer who served a 5-year apprenticeship before acquiring journeyman status.³⁷ In one case,³⁸ welders at an aircraft manufacturing plant were likewise held craftsmen for severance purposes because their skills and duties were similar to those of the welders found to be craftsmen in *Hughes Aircraft*.³⁹ Included in the craft voting group here was a model builder who spent at least 50 percent of his time in aircraft welding. Research, flight test shop, and flight instrument mechanics, who spent less than 50 percent of their time in welding, were excluded from the welders' voting group.

As heretofore, such functionally distinct groups as powerhouse⁴⁰ and boilerhouse⁴¹ employees were held severable on a departmental basis.

Regarding the "traditional representative" requirement in severance cases,⁴² the Board had occasion to reiterate its holding in the *Friden* case⁴³ that a union newly organized for the sole purpose of representing a particular craft may be as much a craft union as a long established union.⁴⁴ Thus, newly formed international unions, which were affiliated with a federation of international craft unions, were held to have "traditional" status since they had been organized for the sole purpose of representing a particular craft and were autonomous, having their own constitution, bylaws, officers, and resources.⁴⁵ The Board also noted that the international had chartered five locals each of which limited its membership to the particular craft. Similarly, a severance petitioner was held properly qualified to represent a powerhouse department where the union had been

³⁴ *Ibid.* at p 1422, 1424

³⁵ *Tramac Metalcrafts, Inc.*, 121 NLRB 1368

³⁶ *Plastic Film Co., Inc.*, 123 NLRB 1635.

³⁷ *The National Cash Register Co.*, 121 NLRB 408

³⁸ *Lockheed Aircraft Corp.*, 121 NLRB 1541

³⁹ *Hughes Aircraft Co.*, 117 NLRB 98

⁴⁰ *General Electric Co.*, 123 NLRB 884.

⁴¹ *Dana Corp.*, 122 NLRB 365.

⁴² The "traditional union" test applies only where severance of a craft or traditional department from an existing broader unit is requested *Plastic Film Co., Inc.*, 123 NLRB 1635.

⁴³ *Friden Calculating Machine Co., Inc.*, 110 NLRB 1618 (1954)

⁴⁴ *Vickers, Inc.*, 122 NLRB 155.

⁴⁵ *Vickers, Inc.*, *supra*, *Dana Corp.*, 122 NLRB 365.

formed by employees in the proposed unit with its own constitution, bylaws, and officers, although it had only one local chapter and had not entered into any contracts with employers.⁴⁶

c. Multiemployer Units

In determining whether the employees of a group of employers may properly be represented in a requested multiemployer unit, rather than in single-employer units, the Board is guided by the bargaining pattern of the group and the intent of the individual employers in the group as evidenced by the extent of their participation in joint bargaining. It was again pointed out that: "Essential to any finding that a multiemployer unit is appropriate are: (1) a controlling history of bargaining on a multiemployer basis for a substantial period of time, and (2) an unequivocal manifestation by the individual employers of a desire to be bound in future collective bargaining by group rather than individual action."⁴⁷

(1) Bargaining History

An employer group may be found to have engaged in joint bargaining even though they had no formal organization.⁴⁸ Nor is it relevant that the group includes both employers who are and who are not members of an existing formal association.⁴⁹ And a finding that an effective multiemployer bargaining history exists is not precluded by the circumstance that joint negotiations are followed by the signing of individual uniform contracts, rather than the execution of a single document,⁵⁰ or that the individual employers do not consider themselves bound until they have signed their individual copy of the uniform contract.⁵¹ Similarly, it is immaterial that the members of an employer group sign a joint agreement separately rather than delegate authority to sign to a joint representative.⁵² Nor has it been held decisive that in addition to the joint agreement there are local agreements on strictly local matters, or that each employer in the group handles its own grievances.⁵³

(2) Intent of Employer

The Board has held that an intent of members of an employer group to be bound by joint bargaining is indicated by participation

⁴⁶ *General Electric Co.*, 123 NLRB 884

⁴⁷ *American Publishing Corp.*, 121 NLRB 115

⁴⁸ *Belleville Employing Printers*, 122 NLRB 350, *The Evans Pipe Co.*, 121 NLRB 15, *Neville Foundry Co., Inc.*, 122 NLRB 1187.

⁴⁹ *American Publishing Corp.*, *supra*.

⁵⁰ *Krist Gradis*, 121 NLRB 601, *The Evans Pipe Co.*, *supra*; *Neville Foundry Co.*, *supra*.

⁵¹ *Belleville Employing Printers*, *supra*

⁵² *American Publishing Corp.*, *supra*; *Krist Gradis*, *supra*.

⁵³ *The Evans Pipe Co.*, *supra*.

in such bargaining for a substantial period of time and uniform adoption of the agreements resulting therefrom,⁵⁴ or by presentation of a joint position in bargaining and signing of the resulting contract as a single document by all participating employers.⁵⁵

In the case of one employer group, the Board found that a binding joint agreement was contemplated even though not every employer participated in the negotiations to the same extent and some failed to attend any meeting.⁵⁶ The Board noted particularly that there was no prior history of individual bargaining, negotiations resulted in a single contract containing all the terms and conditions covering the operations of all the employers, all communications were directed to and handled centrally, all employers were notified and kept informed of pending negotiations, and all employers executed the agreement without modification.

However, mere adoption of an areawide agreement by an employer who never participated in group negotiation and never authorized any agent to negotiate on his behalf was held not to have made the employer part of a multiemployer bargaining unit.⁵⁷ And an employer who was a member of an association for purposes other than collective bargaining, and consistently bargained on an individual basis, was excluded from a multiemployer unit composed of association members.⁵⁸

(3) Withdrawal From Multiemployer Unit

Employees will not be included in an existing multiemployer unit if it is shown that their employer has effectively withdrawn from multiemployer bargaining. It was again pointed out that an employer "may properly withdraw from an existing multiemployer unit provided it clearly evinces at an appropriate time its intention to pursue an individual course of bargaining."⁵⁹ Applying this test, the Board gave no effect to an employer's asserted withdrawal where his attempts to withdraw after the first 6 months of a 2-year contract were untimely, and he had not unequivocally indicated his intention to abandon group bargaining.⁶⁰

In one case, the Board excluded from a multiemployer unit employers who had resigned from their association after the last bargaining session in which they had participated.⁶¹ Another employer who had been expelled for nonpayment of dues also was excluded. In view of the termination of their association membership and the

⁵⁴ *Krist Gradiš, supra.*

⁵⁵ *American Publishing Corp., supra.*

⁵⁶ *Ibid.*

⁵⁷ *Texas Cartage Co., 122 NLRB 999.*

⁵⁸ *Laundry Owners Association of Greater Cincinnati, 123 NLRB 543* See also *Krist Gradiš, supra*, footnote 50.

⁵⁹ *American Publishing Corp., supra.*

⁶⁰ *Ibid.*

⁶¹ *Laundry Owners Association of Greater Cincinnati, supra.*

association's refusal to represent them, the Board gave no effect to the employer's statement at the representation hearing that they wished to participate in the association's next contract negotiations. In another case, a multiemployer unit was held no longer appropriate where the members of the group and the joint bargaining representative were found to have abandoned multiemployer bargaining before the hearing in the case.⁶² Here, the intervening bargaining representative, which opposed the petition for a single-employer unit, and members of the employer group had entered into separate agreements. The union had participated in a separate election involving the employees of one member without raising the multiemployer unit issue; and before the hearing it had approached another employer in the group about bargaining separately for his employees. In concluding that the multiemployer unit had ceased to exist, the Board also noted that before the hearing neither the union nor any of the former members of the employer group took steps to resume joint bargaining.

However, the mere disbandment of an employer association which had represented its members in labor relations was held not to affect the continued appropriateness of the existing multiemployer unit where there was no evidence that the members of the employer group intended to substitute individual bargaining for joint bargaining.⁶³

d. Individuals Excluded From Bargaining Unit by the Act

A bargaining unit may include only individuals who are "employees" as defined in section 2(3) of the act. The major categories expressly excluded from the term "employee" are agricultural laborers, independent contractors, and supervisors. In addition, the statutory definition excludes domestic servants or anyone employed by his parent or spouse,⁶⁴ or persons employed by an employer subject to the Railway Labor Act, or by any person who is not an employer within the definition of section 2(2).

The statutory exclusions have continued to require determinations as to whether the employment functions or relations of particular employees precluded their inclusion in a proposed bargaining unit.⁶⁵

(1) Agricultural Laborers

A continuing rider to the Board's appropriation act requires the Board to determine "agricultural laborer" status so as to conform

⁶² *Neville Foundry Co., Inc.*, *supra*.

⁶³ *Independent Motion Picture Producers Association, Inc.*, 123 NLRB 1942.

⁶⁴ See *Bridgeton Transit*, 123 NLRB 1196, where the Board excluded from the proposed unit the sons of parents who owned all but two of the shares of the employer's capital stock.

⁶⁵ The tests for determining an individual's status are the same for the purpose of his unit placement under sec. 9, and for unfair labor practice purposes under sec. 8.

to the definition of the term "agriculture" in section 3(f) of the Fair Labor Standards Act. Application of the term by the Department of Labor in administering the Fair Labor Standards Act is taken into consideration.⁶⁶

The only case calling for application of the term "agricultural" during the past year involved laborers employed by a test laboratory to raise and care for experimental fowl.⁶⁷ The Board excluded from the unit the laborers who raised fowl on the laboratories' farm, but included laborers who cared for the livestock in the laboratories and also performed general maintenance work. The employees raising the fowl were held to be agricultural employees because section 3(f) of the Fair Labor Standards Act defines "agriculture" as including "the raising of livestock . . . and any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations. . . ." But the duties of the employees in the laboratory relating to the fowl were held to be an incident to the employer's research and testing operations rather than farming.⁶⁸

(2) Independent Contractors

In determining whether an individual is an independent contractor rather than an employee, and therefore must be excluded from a proposed bargaining unit, the Board has consistently applied the "right-of-control" test. This test is based on whether the person for whom the individual performs services has retained control not only over the result to be achieved but also over the manner in which the work is to be performed. The question arose in only two representation cases.⁶⁹ Both involved drivers who were found to be employees rather than independent contractors. In the case of truckdrivers who owned and operated their own trucks but leased them to the employer, an employer-employee relationship was held indicated by the fact that the owner-drivers' work was subject to the same direction as that of the employer's other drivers. Both types of drivers received the same wages and benefits, with truck insurance provided by the employer and deductions made for taxes and other purposes.⁷⁰ Also, the employer was given "full and complete right to the exclusive possession, use, and control" of the trucks. In an-

⁶⁶ See Twenty-third Annual Report, p 39; Twentieth Annual Report, p. 47, footnote 44; Nineteenth Annual Report, p 50, Eighteenth Annual Report, p 24.

⁶⁷ *Dr. Salsbury's Laboratories, Inc*, 122 NLRB 559.

⁶⁸ Compare *Golden Rod Broilers*, 122 NLRB 1100, an unfair labor practice case where poultry processing employees were held not agricultural employees and not excluded from the act's protection.

⁶⁹ In one unfair labor practice case, involving the independent-contractor status of an insurance company's debit agents, the Board made clear that a prior consent-election agreement did not foreclose litigation of the person's employee status. It was pointed out that excluded status under sec. 2(3) cannot be waived. *United Insurance Co.*, 122 NLRB 911.

⁷⁰ *Standard Trucking Co.*, 122 NLRB 761.

other case, certain bakery driver-salesmen were found to be employees even though the drivers, when hired, were told that they would operate as independent contractors, and they made their own arrangements for gasoline, oil, and truck repairs.⁷¹ These factors, in the Board's view, were outweighed by the employer's extensive control over the drivers' relationship and their operations which in some respects paralleled those at another plant of the employer where the drivers' employee status was conceded.

(3) Supervisors

The supervisory status of an individual under the act depends on whether he possesses authority to act in the interest of his employer in the matters and the manner specified in section 2(11), which defines the term "supervisor."⁷²

Supervisory authority which comes within the statutory definition but is exercised only sporadically will not be held to require the employee's exclusion from the bargaining unit.⁷³ Nor is mere nominal authority, such as may be reflected solely by an employee's job description, sufficient to warrant exclusion.⁷⁴ Also, the Board has disregarded a prehearing directive purporting to confer supervisory functions on certain employees where the new status was not borne out by the employees' revised job descriptions.⁷⁵

If the status of a person with apparent supervisory authority is challenged, other record facts are taken into consideration in resolving the issue. Thus, for instance, the supervisory status of employees who regularly and responsibly directed certain work during a part of each day was held further indicated by the fact that they attended meetings of supervisors or that the employer had publicly designated them as supervisors and that the employees were aware of the designation.⁷⁶ Another factor which may be indicative of the actual status of an employee category is the ratio of supervisors to rank-and-file employees in the department or plant.⁷⁷

⁷¹ *Serv-U's Bakers of Oklahoma*, 121 NLRB 84.

⁷² Sec 2(11) reads: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment" In view of the statutory definition, supervisory status is not to be equated with managerial status See *Howard Cooper Corp.*, 121 NLRB 950.

⁷³ *Brezner Tanning Corp.*, 121 NLRB 822; *Cities Service Refining Corp.*, 121 NLRB 1091.

⁷⁴ *West Virginia Pulp and Paper Co.*, 122 NLRB 738; *Northern Chemical Industries, Inc.*, 123 NLRB 77

⁷⁵ *Connecticut Light & Power Co.*, 121 NLRB 768.

⁷⁶ *U. S. Radium Corp.*, 122 NLRB 468; *Ray Patin Productions, Inc.*, 121 NLRB 1172.

⁷⁷ See *West Virginia Pulp and Paper Co.*, 122 NLRB 738, *The Cincinnati Transit Co.*, 121 NLRB 765 See also *Westinghouse Air Brake Co.*, 123 NLRB 859, where the Board declined to consider an anticipated ratio based on increased business volume.

e. Employees Excluded From Unit by Board Policy

The Board has followed the policy of excluding from bargaining units employees who possess or have access to confidential information regarding the employer's labor relations,⁷⁸ and managerial employees, i.e., employees in executive positions with authority to formulate and effectuate management policies.⁷⁹

8. Conduct of Representation Elections

Section 9(c)(1) provides that if a question of representation exists the Board must resolve it through an election by secret ballot. The election details are left to the Board. Such matters as voting eligibility, timing of elections, and standards of election conduct are subject to rules laid down in the Board's Rules and Regulations and in its decisions.

a. Voting Eligibility

A voter must have employee status in the voting unit both on the applicable payroll date and on the date of the election.⁸⁰ But, as specified in the Board's usual direction of election or election agreement, this does not apply in the case of employees who are ill or on vacation or temporarily laid off, or employees in the military service who appear in person at the polls. Strikers have been held eligible to vote if they were entitled to reinstatement. Strikers not entitled to reinstatement were expressly precluded from voting by section 9(c)(3) of the 1947 act before its amendment shortly after the close of fiscal 1959.⁸¹

⁷⁸ Compare *Seattle Automobile Dealers Association*, 122 NLRB 1616, where the Board held that an office secretary was not, as asserted, a confidential employee, because she did not presently act in a confidential capacity to any official who handled or effectuated labor relations policies.

⁷⁹ See Twenty-third Annual Report, pp. 42-43. See also *Weaver Motors*, 123 NLRB 209, where an employee with power to pledge the employer's credit in ordering materials was excluded from the unit as a managerial employee. Compare *The Connecticut Light & Power Co.*, 121 NLRB 768, where the company's load dispatchers were held not to have managerial functions.

⁸⁰ *Post Falls Lumber Company*, 122 NLRB 157.

⁸¹ Labor-Management Reporting and Disclosure Act of 1959, Title VII-Amendments to the Labor Management Relations Act, 1947, as amended, sec. 702, provides that: "Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike."

Under the old sec 9(c)(3), in force during fiscal 1959, replacements of economic strikers, rather than the strikers, were held eligible to vote. See *Manhattan Adhesives Corp.*, 123 NLRB 1096, *Epstein Harris Mfg. Co.*, 123 NLRB 299. Economic strikers whose jobs had been effectively abolished likewise were held ineligible to vote. *Atlantic-Pacific Mfg. Corp.*, 121 NLRB 783, *Farmers Union Creamery Assn.*, 122 NLRB 151. For factors considered in determining whether strikers were replaced permanently, see *The Mastic Tile Corp. of America*, 122 NLRB 1528; *California Spray-Chemical Corp.*, 123 NLRB 1224.

Temporarily laid-off employees are permitted to vote, provided they have, on both the eligibility and election dates,⁸² a reasonable expectancy of reemployment in the foreseeable future.⁸³ The expected reemployment must relate to an employee category within the voting unit.⁸⁴ Where employees have been laid off for lack of work and there is no definite prospect of improved business conditions, they will not be held eligible because of such factors as their contractual reemployment rights,⁸⁵ or the continuation of their seniority rights for a specified period,⁸⁶ or because other laid-off employees were recalled for reasons other than a business upturn.⁸⁷

Eligibility to vote also depends on the employee's tenure during the eligibility period.⁸⁸ Thus, the voting eligibility of temporary employees depends upon their status on the date of eligibility and the nature of their prospects for future employment.⁸⁹ Temporary employees who are employed on the eligibility date, and whose tenure remains uncertain, are eligible to vote.⁹⁰

(1) Seasonal or Intermittent Employees

In the case of industries where employment is intermittent or irregular, eligibility is adjusted to the particular circumstances. Thus, stevedores whose employment was seasonal and intermittent were held eligible to vote if they worked 50 hours or more at any time from the start of a specified season to the payroll period immediately preceding the notice of election, provided their names appeared on at least one daily payroll during the season preceding the eligibility date established for the election.⁹¹ Longshoremen in order to vote in a scheduled election were required to have worked for the employer at least 700 hours during a specified contract year, and at least 20 hours in each full month between the end of that year and date of the direction of election.⁹² Musicians in the motion picture industry, whose employment was irregular, were held entitled to vote if they were employed in any of several units for 2 or more days during the year preceding the date of the direction of election.⁹³

⁸² See *Wyman Gordon Co.*, 123 NLRB 1007. Here the Board held that challenged laid-off voters, who had no expectation of reemployment on the eligibility date, could not be considered eligible because of an unexpected change in business conditions which resulted in the voters' reemployment within 2 months after the election. Compare *Wells Aluminum Corp.*, 121 NLRB 1010, held distinguishable by the Board.

⁸³ See, e.g., *The Sheffield Corp.*, 123 NLRB 1454; *S. S. Pierce Co.*, 1234 NLRB 804; *Chester Cable Corp.*, 123 NLRB 615, *Northwest Plastics, Inc.*, 121 NLRB 815

⁸⁴ *J. Heber Lewis Oil Co., Inc.*, 123 NLRB 1115

⁸⁵ *Leach Corp., Inet Division*, 121 NLRB 772.

⁸⁶ *Northwest Plastics, Inc.*, 121 NLRB 815; see also *Vickers, Inc.*, 122 NLRB 155; and *Sylvania Electric Products, Inc.*, 122 NLRB 201

⁸⁷ *Crane Carrier Corp.*, 121 NLRB 756.

⁸⁸ See *Belcher Towing Co.*, 122 NLRB 1019.

⁸⁹ See *Lloyd A. Fry Roofing Co.*, 121 NLRB 1433

⁹⁰ *Ibid.*

⁹¹ *Toledo Marine Terminals, Inc.*, 123 NLRB 583.

⁹² *E. W. Coslett & Sons*, 122 NLRB 961.

⁹³ *Independent Motion Picture Producers Assn., Inc.*, 123 NLRB 1942.

Student motorcoach operators of a transportation company were found to be applicants rather than employees and therefore not eligible to vote.⁹⁴

Generally, eligibility is determined on the basis of the employer's payroll for the period which immediately precedes the date of the direction of election. Since it is the Board's policy to make the franchise available to the largest possible number of eligible voters, elections in seasonal industries are held during peak seasons. The date of the election is left to the regional director and eligibility is determined on the basis of the payroll immediately preceding the date of his notice of election.⁹⁵

b. Timing of Elections

In accordance with long-established policy, the Board has continued to direct that under ordinary circumstances elections be held within 30 days from the date of the direction of election. But where an immediate election would occur at a time when there is no representative number of employees in the voting unit—because of such circumstances as a seasonal fluctuation in employment or a change in operations—a different date will be selected in order to accommodate voting to the peak or normal work force. Thus, in seasonal industries, the election will be timed so as to occur at or near the first peak season following the direction of election.⁹⁶ In the case of an expanding unit, the election date will be made to coincide with the time when a representative number of the contemplated enlarged work force is employed.⁹⁷ But an election will not be postponed because of possible changes in operations which are wholly speculative.⁹⁸

(1) Effect of Unfair Labor Practice Charges

The Board has adhered to the practice not to postpone an election because of unfair labor practice charges which the charging party has waived as a basis for objections to the election,⁹⁹ or which have been dismissed by the regional director¹ and may be pending on appeal before the General Counsel.² In one case, the Board held

⁹⁴ *Tamiami Trail Tours, Inc.*, 123 NLRB 1501.

⁹⁵ See, e.g., *Camp and Felder Compress Co.*, 121 NLRB 871; *Tropicana Products, Inc.*, 122 NLRB 121

⁹⁶ See, e.g., *Tropicana Products, Inc.*, *supra*; *Toledo Marine Terminals, Inc.*, 123 NLRB 583.

⁹⁷ Compare *Oroply Corp.*, 121 NLRB 1067, where unit expansion was held not to justify postponement because it was shown that virtually the full employee complement would be employed at the normal election date.

⁹⁸ *National By-Products Co.*, 122 NLRB 334

⁹⁹ *O.K. Van & Storage Co.*, 122 NLRB 795

¹ *Phillips Petroleum Co.*, 122 NLRB 1351.

² *Atlantic-Pacific Mfg. Corp.*, 121 NLRB 783.

that where unfair labor practice charges were filed only 2 days before the election it was within the regional director's discretion to proceed with the election after a preliminary investigation of the union's charges, and to arrange for the impounding of the ballots pending disposition of the charges.³

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. Any party to an election who believes that the standards were not met may, within 5 days, file objections to the election with the regional director under whose supervision it was held. The regional director then makes a report on the objections. Exceptions to this report may be filed with the Board. The issues raised by such objections, and exceptions if any, are then finally determined by the Board.⁴

(1) Mechanics of Election

Election details, such as the time, place, and notice of an election, are left largely to the regional director. The Board does not interfere with the regional director's broad discretion in making arrangements for the conduct of elections except where the discretion has been abused. The test is whether the employees had an adequate opportunity to cast a secret ballot.

While the selection of the time and place for an election is within the regional director's discretion, the parties must be given adequate notice of the election⁵ to insure the requisite opportunity to vote.⁶ In one case, the election was set aside because the election notice did not reflect the eligibility date required by the Board's amended direction of election.⁷ Here, the erroneous eligibility date mentioned in the notice antedated the employment of some qualified voters and the number of employees involved was sufficient to affect the election results. Conversely, the Board declined to invalidate an election because of defects to which no objection was made before or during the election. The Board noted that the requirements of reasonable notice were met, the conduct of a fair election was not adversely affected, and the result of the election was not influenced in any degree.⁸

³ *Korber Hats, Inc.*, 122 NLRB 1000.

⁴ The procedures for filing objections and exceptions and for their disposition are set out in sec. 102.69 of the Board's Rules and Regulations, Series 7.

⁵ See *Korber Hats, Inc.*, *supra*, where the Board reiterated that a regional director's failure to consult with the parties as to the place of the election is not *per se* prejudicial.

⁶ See *Manhattan Adhesives Corp.*, 123 NLRB 1096.

⁷ *Lakeview Mining Co.*, 123 NLRB 440.

⁸ *Continental Baking Co.*, 122 NLRB 1074.

The employees' voting opportunity was held to have been impaired so as to invalidate the election where the polls did not open until about 45 minutes after the scheduled time.⁹ Noting that the large number of nonvoters could have affected the results of the election,¹⁰ the Board found that there was doubt and uncertainty as to the results of the election and that a new election was necessary.¹¹

The holding of an election on the employer's property while a strike was in progress and the plant was being picketed was held not to have impaired the validity of the election.¹² In the Board's view, "location of the polling place behind a picket line is not of itself prejudicial to the fair conduct of an election."¹³

While utmost care must be taken to preserve the secrecy of the ballot by properly guarding blank ballots and ballot boxes at all times, an election will not be set aside because of minor irregularities which in no way could have made possible improper access to them.¹⁴

(2) Interference With Election

An election will be set aside if it was accompanied by conduct which, in the Board's view, created an atmosphere of confusion or fear of reprisals and thus interfered with the employees' free and untrammelled choice of a representative guaranteed by the act.¹⁵ In determining whether specific conduct amounted to such interference, the Board does not attempt to assess its actual effect on the employees but concerns itself with whether it is reasonable to conclude that the conduct tended to prevent a free expression of the employees' choice.¹⁶

An election will be set aside because of prejudicial conduct whether or not the conduct is attributable to one of the parties. The determinative factor is that conduct has occurred which created a general

⁹ *G. H. R. Foundry Division, Dayton Malleable Iron Co.*, 123 NLRB 1707.

¹⁰ The Board declined to rely on postelection statements from eligible voters as to their subjective reasons for not voting.

¹¹ Compare *O. K. Van & Storage Co.*, 122 NLRB 795, where a new election was held not warranted by the asserted fact that it was begun late and that the voting booth was dismantled before the scheduled closing time. The Board pointed out that the Board agent and the observers remained at the polling place and no eligible voters were shown to have been prevented from voting.

¹² *Korber Hats, Inc.*, 122 NLRB 1000.

¹³ *Ibid.*

¹⁴ See *Crown Drug Co.*, 123 NLRB 336; *S. S. Kresge Co.*, 121 NLRB 374; *O. K. Van & Storage Co.*, *supra*.

¹⁵ In order to prevent confusion and turmoil at the time of the election, the Board has specifically prohibited electioneering speeches on company time during the 24-hour period just before the election (*infra*, pp 50-51), as well as electioneering near the polling place during the election. See *Doughboy Plastic Production, Inc.*, 122 NLRB 338; *Delaware Mills, Inc.*, 123 NLRB 943, footnote 3.

¹⁶ See *Allied Plywood Corp.*, 122 NLRB 959. See also *Plant City Welding and Tank Co.*, 123 NLRB 1146, footnote 21.

atmosphere in which a free choice of a bargaining representative was impossible.¹⁷

(a) Preelection speeches—the 24-hour rule

In order to insure an atmosphere conducive to a free election, the Board has prohibited participating parties from making preelection speeches on company time and property to massed assemblies of employees within 24 hours before the time scheduled for an election.¹⁸ In those cases where the 24-hour rule was shown to have been violated, the Board has consistently set aside the election.¹⁹ However, inadvertent extension of an employer's speech a few minutes into the 24-hour preelection period was held not to justify setting aside the election.²⁰ In one case, the Board declined to consider conversations during the 24-hour period as a prohibited extension of the employer's speech.²¹ It was pointed out that the postadjournment conversations, initiated entirely by the employees, constituted merely permissible preelection talk, normally to be expected after a speech. Since the 24-hour rule is designed to avoid the "unwholesome and unsettling effect"²² of last-minute election speeches on company time, it is—as pointed out by the Board—inapplicable to other legitimate campaign media such as distribution of literature²³ or the posting of signs in the plant soliciting a pronoun vote.²⁴ Solicitation by a union agent of individual employees at their work stations to attend a union meeting and requests that they vote for the union were held not to contravene the rule.²⁵

(i) Twenty-four-hour rule in "mail-in" elections

Consideration was given during the past year to the necessity of establishing a 24-hour no-speech rule to govern "mail-in" elections.²⁶ Being of the view that the reasons for barring last-minute speeches in the usual type of election obtain also in "mail-in" elections, the Board announced the following rule in the *Oregon Washington* case: Henceforth, the Regional Director will give the parties written notice setting forth the time and date on which "mail in" ballots will be dispatched to the

¹⁷ See *Monarch Rubber Co., Inc.*, 121 NLRB 81, where an election was set aside because a newspaper advertisement, for which the employer was not responsible, threatened the employees with loss of their jobs and loss of benefits if the petitioning union won the election.

¹⁸ *Peerless Plywood Co.*, 107 NLRB 427 (1953).

¹⁹ See, e.g., *The Tetrad Co., Inc.*, 122 NLRB 203; *Rainfair, Inc.*, 123 NLRB 1519.

²⁰ *Granite State Veneer, Inc.*, 123 NLRB 1497.

²¹ *WATE, Inc.*, 123 NLRB 301.

²² *Peerless Plywood Co.*, *supra*. See also *Oregon Washington Telephone Co.*, 123 NLRB 339.

²³ *Citrus Division, Kraft Foods Div., National Dairy Products Corp.*, 122 NLRB 1318; *Doughboy Plastic Production, Inc.*, 122 NLRB 338; *U.S. Radium Corp.*, 122 NLRB 468.

²⁴ *Fisher Radio Corp.*, 123 NLRB 879

²⁵ *Globe Motors, Inc.*, 123 NLRB 30. See also *The American Sugar Refining Co.*, 123 NLRB 207.

²⁶ *Oregon Washington Telephone Co.*, 123 NLRB 339.

voters, and also setting forth a terminal time and date by which the ballots must be returned to the Regional Office. Such notice will be given the parties at least 24 hours before the time and date on which the ballots will be dispatched by the Regional Office. Employers and unions alike will be prohibited from making election speeches on company time to massed assemblies of employees within the period set forth in the notice—i.e., from the time and date on which the “mail in” ballots are scheduled to be dispatched by the Regional Office until the terminal time and date prescribed for their return. Violations of this rule by employers or unions will cause an election to be set aside whenever valid objections are filed.

(b) Use of sample ballots

The Board has continued in effect its rule against the use of reproductions of the Board’s official ballot as campaign propaganda, and to set aside an election where the rule has been violated. “The abuse which the rule is designed to eliminate is the possible implication of U.S. Government endorsement of any party to an election.”²⁷ The rule is violated even though the document used is not an exact reproduction. Thus, a reproduction which was partial, but retained verbatim the usual instructions to the voters including that for returning the ballot to the Board agent if spoiled, was held to contain the very danger the Board’s rule seeks to avoid.²⁸ The rule was again held violated where four large placards with the reproduction of the official sample ballot, with the letter “X” in the “Neither” box, were posted in clear view of all voters.²⁹

(c) Election propaganda

In order to insure the right of employees to select or reject collective-bargaining representatives in an atmosphere which is conducive to the free expression of the employees’ wishes, the Board will set aside elections which were accompanied by propaganda prejudicial to such expression. However, in view of the large number and the nature of objections to elections filed, the Board has frequently had occasion to make clear that it will not police or censure the parties’ election propaganda. In the case of campaign representations, it will generally be left to “the good sense of the employees to determine which are true and which are false insofar as they may affect the validity of the election.”³⁰ For, as pointed out by the Board,³¹ employees “who vote in such elections are well aware that the parties in hotly contested representation elections, like those in hotly contested political elections, frequently make alle-

²⁷ *Custom Molders of P. R. and Shaw-Harrison Corp.*, 121 NLRB 1007.

²⁸ *Ibid.* Compare *The Glidden Co.*, 121 NLRB 752, where omission of all references to the “official” nature of the ballot, and to the Government and its agents, was held to have satisfied the Board’s rule. See also *Paula Shoe Co., Inc.*, 121 NLRB 673.

²⁹ *Pyramid Mouldings, Inc.*, 121 NLRB 788.

³⁰ See *Celanese Corporation of America*, 121 NLRB 303.

³¹ *Ibid.*

gations during the campaign which would not be made by a disinterested historian." Thus, it is the Board's policy to set aside an election only if there are "elements of gross fraud, coercion, or forgery."³² As stated in *Celanese*, an election also will be set aside in the case of a material misrepresentation of fact where the employees were likely to give it particular weight because it came from a party with special knowledge or in an authoritative position to know the true facts, and where no other party had sufficient opportunity to correct the misrepresentation before the election.³³

(d) Campaign tactics

As in the case of prejudicial propaganda, an election will be set aside if the Board finds that campaign tactics resorted to by a party impaired the employees' free choice.

The Board has consistently held that a free election is impossible where the employer has endeavored to influence the results by the device of interviewing a substantial number of his employees, individually or in small groups, away from their work stations and at such places of authority as the office of a superior, for the purpose of urging them to reject a participating union. The fact that the employer's remarks during such interviews are free from coercive promises or threats is immaterial.³⁴ However, where such interviews in the employer's office were not accompanied by personal attempts to dissuade the employees from voting for a participating union, or to persuade them to reject union representation, the interviews were held not to have interfered with the election.³⁵ The same ruling was made where the interviews occurred, not in a place of managerial authority but in an area where the employees were accustomed to be,³⁶ and involved relatively large groups.³⁷ For, as again stated by

³² See *Craft Manufacturing Co.*, 122 NLRB 341. Thus, an election was set aside where a union's preelection handbills misrepresented to the employees in the voting unit that the union's election would result in immediate benefits under a national agreement which, in fact, was not applicable to the plant involved *Bowman Biscuit Co.*, 123 NLRB 202. The Board here held that this misrepresentation lowered the campaign standards to a level which prevented a free election.

³³ See, for instance, the following cases where objections based on allegedly untrue preelection statements were overruled because the facts stated were not peculiarly within the party's knowledge, could be refuted by the opponent before the election, and could be evaluated by the employees themselves: *Paula Shoe Co., Inc.*, 121 NLRB 673 (handbills setting forth the reasons for petitioner's filing and later withdrawing unfair labor practice charges against the employer); *The General Fireproofing Co.*, 123 NLRB 830 (petitioner's statements regarding the employer's bonus payment to the plant manager and the employees' low wages); *The Baltimore Luggage Co.*, 123 NLRB 1289 (misstatements and exaggerations); *Fisher Radio Corp.*, 123 NLRB 879 (employer statements regarding the petitioner's conduct, the company's seniority system, and other matters).

³⁴ *Jasper Wood Products Co., Inc.*, 123 NLRB 28, *Columbus Division, Colonial Stores, Inc.*, 121 NLRB 1384.

³⁵ *Arizona Television Co.*, 121 NLRB 889

³⁶ *Crane Carrier Corp.*, 122 NLRB 206.

³⁷ *Tuttle & Kift*, 122 NLRB 848 (28 to 48 employees).

the Board:³⁸ "It is the isolation of individuals, or of small groups of employees . . . from the bulk of their fellow workmen into the locus of managerial authority which supports the inference that company expressions of antiunion sentiment in these circumstances borders too close upon coercive influence over their choice later expressed in the election."

In one case, an election was set aside because of the competitive bidding for attendance at the preelection meetings of two rival unions.³⁹ The Board here held that the progressive increase in the rates paid for attendance, which at one point reached 8 hours' regular pay for a 3-hour meeting, so lowered election standards that expression of a free choice by the employees was impossible. It was immaterial under the circumstances, according to the Board, whether or not the payments were contingent upon voting for any particular union.

However, the holding of an eve-of-election party for employees at the petitioning union's expense was found to contain no element of coercion and to be within the area of permissible electioneering.⁴⁰

(e) Threats, promises, and concessions

As heretofore, elections were set aside where attempts had been made to influence the results by threats of reprisals or promises of benefits. Thus, no free choice between two rival unions was held possible where the employer had made it clear not only that failure to vote for the preferred union would have economic repercussions because of loss of its union label, but also that in that event the plant would be moved to another locality.⁴¹ An advertisement in a local newspaper, threatening employees with loss of their jobs⁴² and loss of employment benefits, was held to have engendered fear of reprisals which invalidated the election, even though the employer was not responsible for the advertisement.⁴³ A free election was held manifestly impossible where employees had been threatened with a shorter workweek, withholding of the Christmas bonus, and the closing

³⁸ *Tuttle & Kist, supra.*

³⁹ *Teletype Corporation*, 122 NLRB 1594.

⁴⁰ *Lloyd A. Fry Roofing Co.*, 123 NLRB 86.

⁴¹ *Benjamin Electric Mfg. Co.*, 122 NLRB 1517. Compare *Rold Gold of California, Inc.*, 123 NLRB 285, where the employer's campaign letters, while vigorously urging the employees to vote for one of two competing unions, were held not to have prevented a free election since they were not accompanied by any threats or promises, or material misrepresentations.

⁴² Manifestly, the unlawful discharge of a union leader shortly before an election interferes with a free choice and warrants the setting aside of the election. See, e.g., *Nebraska Bag Co.*, 122 NLRB 654.

⁴³ *Monarch Rubber Co., Inc.*, 121 NLRB 81.

of the plant in case of a union victory.⁴⁴ Elections were also set aside because of an employer's preelection promise of a wage increase,⁴⁵ and an announcement of an increase on the eve of the election where the employer did not sustain his burden of showing that the timing of the announcement was governed by considerations other than to influence the outcome of the election.⁴⁶

The Board, however, had occasion to make clear again that preelection statements with economic implications which only represent the employer's legal position will not be held to invalidate the ensuing election.⁴⁷

⁴⁴ *Shovel Supply Co.*, 121 NLRB 1485.

⁴⁵ *Ore-Ida Potato Products, Inc.*, 121 NLRB 40.

⁴⁶ *International Shoe Co.*, 123 NLRB 682.

⁴⁷ *The Guilberson Corp.*, 121 NLRB 260; *Aeronca Manufacturing Corp.*, 121 NLRB 777; *Universal Producing Co.*, 123 NLRB 548; *WATE, Inc.*, 123 NLRB 301.

III

Unfair Labor Practices

The Board is empowered by the act "to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce."¹ 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 1959 fiscal year which involve novel questions or set new precedents.

A. Unfair Labor Practices of Employers

1. Interference With Section 7 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(a),² or (2) any other conduct which independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights.

The cases where employers were charged with independent 8(a)(1) violations presented the usual pattern of conduct designed to prevent union organization or penalize union adherence of employees. The cases involved no unusual or novel situations but were again concerned with such occurrences—alone or in varying combinations—as open

¹ Sec. 8 was substantially amended effective Nov. 13, 1959, by title VII of the Labor-Management Reporting and Disclosure Act of 1959 enacted Sept. 14, 1959, Public Law 86-257, 73 Stat. 519.

² Violations of these types are discussed in subsequent sections of this chapter.

or veiled threats of reprisals,³ promises of economic benefits,⁴ or concessions,⁵ intended to forestall employee participation in, or prevent the success of, organizational activities; solicitation of individual employees to withdraw their union support;⁶ and the promotion of repudiation petitions.⁷ Conduct of the foregoing types was likewise held violative of section 8(a)(1) where the purpose was bringing about rejection of a bargaining representative in an impending Board election.⁸ The cases decided during the past year also included other types of 8(a)(1) violations of a recurring nature. Thus, some cases involved unlawful surveillance of union activities and meetings.⁹ Interrogation of employees individually as to their union sympathies and activities was again held to have interfered with the employees' organizational rights, where it did not come within the *Blue Flash* doctrine¹⁰ of permissible interrogation, because it served no legitimate purpose and occurred in a context of union hostility as evidenced by the manner in which it was carried out and by concurrent violations of the act.¹¹ Polling of employees as to their union connections likewise was held unlawful where it was accompanied by coercive conduct such as threats of loss of employment in case of successful organization, and had the manifest purpose of

³ For threats of discharge see, e.g., *Hoffman-Taff, Inc.*, 123 NLRB 1462; threats to shut down operations, *Sanford Dress Corp.*, 123 NLRB 1106, *General Industries, Inc.*, 121 NLRB 1608, *New England Upholstery Co., Inc.*, 121 NLRB 234.

⁴ *American Life & Accident Insurance Co. of Kentucky*, 123 NLRB 529; *Marcus Bros.*, 123 NLRB 33, *Waycross Machine Shop*, 123 NLRB 1331, *Angus Manufacturing Co., Inc.*, 123 NLRB 1919.

⁵ *Hoffman-Taff, Inc.*, *supra*; *Ivy Hill Lithograph Co.*, 121 NLRB 831; but see *Jackson Tile Manufacturing Co.*, 122 NLRB 764, where a wage increase, granted while a representation petition was pending, was held not violative of sec. 8(a)(1) because it was contemplated before the filing of the petition and conformed to the employer's existing wage policy.

⁶ *Nebraska Bag Co.*, 122 NLRB 654; *Dan River Mills, Inc., Alabama Division*, 121 NLRB 645. Noncoercive solicitation of individual strikers to return to work, however, is not *per se* unlawful, and will be held to constitute a proper exercise of the right to operate the business during a strike. *Editorial "El Imparcial," Inc.*, 123 NLRB 1585. Such solicitation has been held unlawful only where it constituted an integral part of a course of coercive conduct, or where it was calculated to undermine the strikers' bargaining representative and to substitute individual bargaining for collective bargaining. See *Webb Wheel Division, American Steel & Pump Corp.*, 121 NLRB 1410.

⁷ See *Marcus Bros.*, 123 NLRB 33; *American Life & Accident Insurance Co. of Kentucky*, 123 NLRB 529.

⁸ See, e.g., *Stowe-Woodward, Inc.*, 123 NLRB 287; *Angus Manufacturing Co., Inc.*, 123 NLRB 1919; *Nebraska Bag Co.*, 122 NLRB 654; but compare *Ore-Ida Potato Products, Inc.*, 123 NLRB 1037.

In consolidated proceedings involving objections to an election and unfair labor practice charges based on the same conduct, the Board sets the election aside if the alleged conduct is found to constitute 8(a)(1) interference. See, e.g., *New England Upholstery Co., Inc.*, 121 NLRB 234. For conduct which invalidates an election irrespective of whether or not it also constitutes an unfair labor practice see ch. II, sec. 8c(2)).

⁹ See *American Steel Building Co., Inc.*, 123 NLRB 1363; *Rockwell Manufacturing Co., Inc.*, 123 NLRB 1066; *Dan River Mills, Inc., Alabama Division*, 121 NLRB 645.

¹⁰ *Blue Flash Express, Inc.*, 109 NLRB 591, 593 (1954).

¹¹ See *Ballas Egg Products, Inc.*, 121 NLRB 873; *California Compress Co., Inc.*, 121 NLRB 1388; *Rockwell Manufacturing Co., Du Bois Division*, 121 NLRB 288; *O. M. Gifford & Sons*, 122 NLRB 1428; *Hudson Pulp and Paper Corp.*, 121 NLRB 1446.

undermining the union organizing.¹² Section 8(a)(1) was held violated in the same sense where an employer, in an atmosphere charged with threats, held an election of its own while a representation proceeding was pending before the Board.¹³

a. Prohibitions Against Union Activities

Some cases were concerned with whether company rules curtailing or prohibiting union activities unlawfully interfered with the employees' organizational freedom. A violation of section 8(a)(1) was found where, shortly after a union organizational drive began, a rule was put into effect prohibiting, under penalty of discharge, distribution of all union literature on the company's property at all times.¹⁴

Section 8(a)(1) was also held violated where an employer's rule against the distribution of literature of any kind on company property was made to extend to the distribution of union literature on the company's parking lot.¹⁵ The Board pointed out that, while distribution of literature by employees may be prohibited during non-working hours in the plant proper, in the interest of keeping the plant clean and orderly, the same considerations are not controlling in the case of company parking lots. According to the Board, it was necessary for the employer to show a valid reason for the application of its no-distribution rule here. No such showing having been made, the prohibition of distribution of union literature on the parking lot by employees¹⁶ was held to have unreasonably impeded the employees' right of self-organization.

In another case, the employer was held to have interfered with the right of employees to engage in proper organizational activity by instructing them on the day of a Board election to remove their union buttons.¹⁷ The Board noted that there were no special circumstances requiring a rule against displaying union insignia in order to maintain discipline and uninterrupted production. On the other hand, a "no-solicitation" rule by which unauthorized persons, including union representatives, were prohibited from boarding the employer's tugs, was found valid under established Supreme Court

¹² *California Compress Co., Inc.*, *supra*; *American Life & Accident Insurance Co. of Kentucky*, 123 NLRB 529.

¹³ *Brown & Root Caribe, Inc.*, 123 NLRB 1817.

¹⁴ *Time-O-Matic, Inc.*, 121 NLRB 179. Members Rodgers and Bean concurred in the trial examiner's view that no remedial order was required in this case.

¹⁵ *Rockwell Manufacturing Co., Du Bois Division*, 121 NLRB 288.

¹⁶ The Board noted that *N.L.R.B. v. The Babcock & Wilcox Co.*, 351 U.S. 105, distinguishes the right of employees to distribute union literature on company parking lots from the rights of nonemployees

¹⁷ *Nebraska Bag Co.*, 122 NLRB 654.

doctrine.¹⁸ According to the Board, the Supreme Court's ruling that nonemployee union representatives may be barred from coming on the employer's property "if reasonable efforts by the union through other available channels of communication will enable it to reach the employees . . . and if the [employer] does not discriminate against the union . . . , applies not only in the case of union literature distribution but also in the case of union solicitation." Here, the Board noted, the challenged prohibition did not diminish the union's ability to communicate with the employees and did not discriminate against the union by allowing other solicitation, and no showing was made that the employer was discriminatorily motivated in establishing the rule.¹⁹ In another case, again citing the Supreme Court's *United Steelworkers (Nutone; Avondale)* decision,²⁰ the Board held that under the circumstances it was not a violation of section 8(a)(1) for the employer to prohibit organizing activities during working hours, even though the employer continued in effect a rule permitting other solicitations if permission were granted by a supervisor.²¹

b. Interference With Board Proceedings

In two cases, the Board found that the respective employers violated section 8(a)(1) by interfering with the participation of employees as witnesses in unfair labor practice proceedings involving their employer. The evidence in one case showed that an employee was questioned regarding statements he had made to a Board field examiner during an interview, and was warned that the company's officials would "see and hear" witnesses at the hearing.²² It also appeared that employees were instructed to deny discussion by their foremen of the union at departmental meetings. The Board held that this conduct was calculated to obstruct its investigation of the charges against the employer and had the effect of depriving employees of vindication by the Board of their statutory rights.²³ In the second case, the statutory rights of employees were held to have been similarly infringed by the employer's threats of immediate discharge or disciplinary action for failure to report their interviews

¹⁸ *Bludworth Construction Co., Inc.*, 123 NLRB 385, citing *NLRB v. Babcock and Wilcox*, 351 U.S. 105, Twenty-first Annual Report, pp. 123-125; *N.L.R.B. v. United Steelworkers of America, CIO (Nutone, Inc.)*, and *N.L.R.B. v. Avondale Mills*, 357 U.S. 357; Twenty-third Annual Report, pp. 106-107.

¹⁹ Members Rodgers and Bean were of the view that under the Supreme Court's *Babcock & Wilcox* decision the validity of the exclusion of nonemployee organizers is to be tested solely on the basis of availability of other channels of communication, and that "discriminatory motivation" is not an additional factor to be considered.

²⁰ 357 U.S. 357, *supra*.

²¹ *Carolina Mirror Corp.*, 123 NLRB 1712.

²² *Jackson Tile Manufacturing Co.*, 122 NLRB 764.

²³ The Board found no occasion to consider whether the conduct also violated the specific provision of sec. 12 of the act imposing criminal sanctions for willful interference with the Board's processes.

with a Board agent or their signing statements, or for failure to cooperate fully with the employer's attorney in his investigation of the pending case.²⁴

2. Employer Domination or Support of Employee Organization

Section 8(a) (2) makes it unlawful for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." The section provides, however, that an employer may permit employees to confer with him during working hours without loss of pay.

a. Domination of Labor Organization

A labor organization is considered dominated within the meaning of section 8(a) (2)²⁵ if the employer has interfered with its formation and has assisted and supported its administration to such an extent that the organization must be regarded as the employer's creation rather than the true bargaining representative of the employees. This, according to the Board, was the case where an employer not only "furnished the original impetus for the organization" but where he also dictated "the nature, structure, and functions of the organization," and where the organization remained without constitution and bylaws, had no membership requirement, charged no dues, and had no treasury.²⁶ Conversely, the circumstances attending an employer's assistance to a favored outside union in achieving majority status among the employees were held not to warrant the further finding that the organization was employer dominated.²⁷ The Board pointed out that the assisted union was nevertheless an established labor organization with a constitution, a treasury of its own, and independently selected officers; the employer did not attempt to control the union's organization and functioning; and certain supervisory employees appointed as temporary officers were replaced by properly elected permanent officers, whereupon no management representatives took part in the union's internal affairs.

b. Assistance and Support

The section 8(a) (2) cases involving interference with labor organizations, short of domination, were based on such conduct as

²⁴ *Lloyd A. Fry Roofing Co.*, 123 NLRB 647.

²⁵ The distinction between domination and lesser forms of employer interference with labor organizations is of importance for remedial purposes. See *infra*, p. 61

²⁶ *Wall Tube & Metal Products Co.*, 122 NLRB 13. See also *The Multi-Color Co.*, 122 NLRB 429, and *Jackson Tile Manufacturing Co.*, 122 NLRB 764, where the Board adopted the trial examiner's finding of employer domination of the organizations involved. See also *General Molds & Plastics Corp.*, 122 NLRB 182, as to the employer's initial domination of an inside organization.

²⁷ *General Molds & Plastics Corp.*, *supra*.

employer assistance of unions in establishing themselves in the plant and attaining majority status,²⁸ or support whether by granting exclusive recognition to a union when it did not represent a majority of the employees²⁹ or by financial assistance.³⁰ In one case, the employer was held to have rendered unlawful assistance by permitting the union's officials to solicit checkoff authorizations from applicants during hiring.³¹ As discussed more fully below, unlawful assistance and support in many cases occurred in the form of contractual recognition and arrangements.

(1) Assistance Through Contract

Under the Board's *Midwest Piping* doctrine,³² an employer who is faced with conflicting rival union claims violates section 8(a) (1) and (2) if he recognizes and enters into a contract with one of the contending unions. During fiscal 1959, the Board again reaffirmed the rule,³³ but it eliminated the *Gibson*³⁴ exception to the rule, which was to the effect that, despite rival claims, an employer may contract with an incumbent union which actively represents its employees. Regarding the *Gibson* exception, the Board announced:

After full consideration of all the implications of the *Gibson* exception, we have decided to overrule that case. We now hold that upon presentation of a rival or conflicting claim which raises a real question concerning representation, an employer may not go so far as to bargain collectively with the incumbent (or any other) union unless and until the question concerning representation has been settled by the Board. This is not to say that the employer must give an undue advantage to the rival union by refusing to permit the incumbent union to continue administering its contract or processing grievances through its stewards.

It was made clear, however, that—

the *Midwest Piping* doctrine does not apply in situations where, because of contract bar or certification year or inappropriate unit or any other established reason, the rival claim and petition does *not* raise a real representation question.

Section 8(a) (2) was again held violated where an employer entered into a contract with a union which did not have majority

²⁸ See *Dixie Bedding Manufacturing Co.*, 121 NLRB 189; *General Molds & Plastics Corp.*, *supra*.

²⁹ See *Dixie Bedding Manufacturing Co.*, *supra*.

³⁰ See, e.g., *Dixie Bedding Manufacturing Co.*, *supra*, where the employer paid the initiation fees and 1 month's dues for employees who had signed up with the assisted union before a certain date. See also *ABC Machine and Welding Service*, 122 NLRB 944.

³¹ *Alaska Salmon Industry, Inc.*, 122 NLRB 1552.

³² *Midwest Piping and Supply Co., Inc.*, 63 NLRB 1060. Recently reaffirmed, see *Novak Logging Co.*, 119 NLRB 1573 (1958); Twenty-third Annual Report, pp. 60-61.

³³ *Shea Chemical Corp.*, 121 NLRB 1027. Member Bean dissented from the application of the *Midwest Piping* rule under the circumstances of the case.

³⁴ *William D. Gibson Co.*, 110 NLRB 660.

status among the employees, either granting recognition as exclusive bargaining representative³⁵ or providing union security.³⁶ Illegal support was likewise found where employers agreed to illegal hiring provisions benefiting the contracting union. Thus, section 8(a)(2) was held violated by an agreement whereby the employer granted a union the right to name supervisory gang foremen who, in turn, were subject to the union's control in performing hiring and placement functions.³⁷ The same contract was found to further violate section 8(a)(2) also by an unlawful requirement that, as a condition of employment, employees designate the union as their bargaining representative and pay a certain percentage of their wages to it.³⁸

c. Remedies in Section 8(a)(2) Cases

The Board has continued to require employers found to have unlawfully assisted and supported labor organizations to withhold recognizing and cease dealing with the assisted union and giving effect to any contract with it "unless and until [it] shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election."³⁹ In the case of employer-dominated labor organizations, which are deemed incapable of ever fairly representing employees, the Board has also continued to direct the usual, complete disestablishment of the dominated organization.⁴⁰ In the cases where the employer was a party to an illegal union security or hiring agreement or other contractual arrangement under which employees were required to pay dues, fees, assessments, or other exactions, the Board has generally required that the employees be appropriately reimbursed⁴¹ by the employer, where he alone is a

³⁵ See *Bernhard Altmann Texas Corp.*, 122 NLRB 1289.

³⁶ *Lively Photos, Inc.*, 123 NLRB 1054, *Sierra Furniture Co.*, 123 NLRB 1198.

³⁷ *Houston Maritime Association, Inc.*, 121 NLRB 389.

³⁸ To the same effect, *Paula Shoe Co., Inc.*, 121 NLRB 673.

³⁹ The quoted language of the remedial provisions in assistance cases was adopted during the preceding fiscal year in connection with the establishment of remedial elections in cases of assistance of labor organizations which were not in compliance with the filing and non-Communist affidavit requirements of sec. 9(f), (g), and (h), and for that reason were not entitled to certification under sec. 9. (See Twenty-third Annual Report, pp. 61, 62-63.) After the close of fiscal 1959, the Labor-Management Reporting and Disclosure Act of 1959, Title II, Sec. 201, repealed subssecs. (f), (g), and (h) of sec. 9 of the 1947 National Labor Relations Act, thus obviating the necessity for special remedial provisions.

⁴⁰ See *Wall Tube & Metal Products Co.*, 122 NLRB 13; *Jackson Tile Manufacturing Co.*, 122 NLRB 764; *The Multi-Color Co.*, 122 NLRB 429; *General Molds & Plastics Corp.*, 122 NLRB 182.

⁴¹ In view of the provision of sec. 10(b) of the act that a complaint may not be based on any unfair labor practice occurring more than 6 months before charges were filed and served, reimbursement is limited to the period beginning 6 months before the filing and service of the charge.

respondent before the Board,⁴² or by the employer and the contracting union, jointly and severally, where both are respondents.⁴³

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, the "union security" proviso to this section permits an employer to make an agreement with a labor organization requiring that the employees join the union on or after the thirtieth day⁴⁴ and maintain union membership as a condition of continued employment.

a. Discrimination for Protected Activities

To establish a violation of section 8(a)(3), a complaining employee must show that he was discriminated against in his employment because of the exercise of rights guaranteed by section 7⁴⁵ and not because of conduct outside the statutory protection. This raises questions as to whether particular conduct was of a protected kind,⁴⁶ and whether the employer, knowing that the employee engaged in the particular protected conduct,⁴⁷ in fact discriminated against the employee because of that conduct rather than for some other reason. The necessary finding that the employer's discrimination encouraged or discouraged union membership within the meaning of section

⁴² See, e.g., *ABC Machine and Welding Service*, 122 NLRB 944; *Honolulu Star Bulletin, Ltd.*, 123 NLRB 395.

⁴³ See, e.g., *A. Custer, Inc.*, 122 NLRB 1242; *Dirie Bedding Manufacturing Co.*, 121 NLRB 189; *Honolulu Star Bulletin, Ltd.*, 123 NLRB 395; *Progressive Kitchen Equipment Co., Inc.*, 123 NLRB 992. For further discussion of the so-called *Brown-Olds* reimbursement remedy (115 NLRB 594), see the sections dealing with sec. 8(a)(3) and 8(b)(2) violations arising from illegal union-security and hiring practices, pp. 74, 96-97, *infra*.

⁴⁴ Reduced to 7 days in the building and construction industry by the 1959 amendments to the act. See sec. 8(f) of the amended act.

⁴⁵ Sec. 7 protects the right of employees to organize for collective-bargaining purposes, and to engage "in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." The section likewise protects the employees' rights to refrain from any or all such activities, except where subject to a valid union-security agreement.

⁴⁶ See *Honolulu Star Bulletin, Ltd.*, 123 NLRB 395, where an employee was held protected in furthering his candidacy for union office by circulating a campaign release among the incumbent union's members in which he criticized existing relations between the employer and the union.

⁴⁷ The requisite knowledge of the employer regarding the employee's concerted or union activities need not be shown by direct evidence but may be inferred by such circumstances as the smallness of the plant, timing of the discriminatory action, simultaneous action against all active union employees, or remarks and statements in connection with the discriminatory action. See *Waese Plow Welding Co., Inc.*, 123 NLRB 616; *Cosco Products Co.*, 123 NLRB 766. If the essential element of the employer's knowledge of the complaining employee's union activity has not been supplied, the discrimination charges will be dismissed. See *American Dredging Co.*, 123 NLRB 139.

8(a)(3) does not depend on the employer's motive, or on whether actual encouragement or discouragement occurred, but solely on whether the discrimination tended to influence the employees' acquisition, maintenance, or retention of union membership.⁴⁸

(1) Loss of Statutory Protection

Employees lose their statutory protection if they engage in misconduct while participating in union or other concerted activities.⁴⁹ The employer may then deny them continued employment. But a mere belief that employees were guilty of serious misconduct, even though entertained in good faith, does not relieve the employer of liability under section 8(a)(3) if it is shown that actually no such misconduct was committed.⁵⁰ In such situations, the Board has adhered to the *Rubin Bros.* rule⁵¹ that an employer's good-faith belief of misconduct becomes irrelevant if the General Counsel proves at the unfair labor practice hearing that in fact no misconduct occurred.⁵²

Where relevant, the employer's good faith must be clearly shown. Thus, good faith was held not established where no connection was shown between any identified striker and specific conduct of sufficient gravity to warrant denial of reinstatement.⁵³ All the employer showed, the Board noted, was "that many things happened during the strike many of which are common to strikes and picketing generally, which [the employer] was convinced must have been done by the strikers to harass it."⁵⁴

In one case, the Board dismissed discrimination charges upon finding that the respondent employer discharged the complaining employees in the honest belief that they had engaged in an unprotected strike rather than a protected strike as alleged in the complaint.⁵⁵ The record in the case did not show that the discharged employees had engaged in any kind of concerted activity.

(a) Effect of grievance procedure on strike against unfair practices

One case involved the question whether unfair labor practice strikers were entitled to the statutory protection although the col-

⁴⁸ See *Crosby Chemicals, Inc.*, 121 NLRB 412; *News Syndicate Company, Inc.*, 122 NLRB 818, footnote 12.

⁴⁹ See *Talladega Foundry & Machine Co.*, 122 NLRB 125, where strikers were held not entitled to reinstatement because they had physically restrained supervisors from entering a struck plant, and threatened bodily harm to employees if they entered the plant, and had prevented trucks from being unloaded.

⁵⁰ See *Friend Lumber Co.*, 121 NLRB 62.

⁵¹ *Rubin Bros. Footwear, Inc.*, 99 NLRB 610. The Board has expressed disagreement with the views of the Fifth Circuit Court of Appeals which denied enforcement in the *Rubin* case, 203 F. 2d 486.

⁵² *Wichita Television Corp., Inc., d/b/a KARD-TV*, 122 NLRB 222.

⁵³ *Ibid.*

⁵⁴ *Wichita Television Corp., Inc., supra.*

⁵⁵ *Kennecott Copper Corp.*, 121 NLRB 801.

lective-bargaining agreement to which they were subject contained a no-strike clause.⁵⁶ The trial examiner concluded that under the Supreme Court's decision in the *Mastro Plastics* case⁵⁷ the complaining employees could not be validly discharged, because the no-strike agreement here, not containing an explicit waiver of the employees' right to strike against unfair labor practices, applied only to economic strikes. The Board disagreed and held that the employer did not violate the act by discharging the nine employees who struck in protest of the illegal discharge of one of their number. The Board construed *Mastro Plastics* as requiring an explicit waiver only under the circumstances presented by the contractual provision there, but not in the present situation. Noting that in *Mastro* "the union in general language waived its right to strike for any cause *during the entire term of the contract*," the Board went on to say:

In view of the drastic implications of construing this agreement as a license for the Employer to commit unfair labor practices during that period, even to the point of destroying the union, without fear of any economic retaliation by the union, the Board and the Court were reluctant to adopt such construction without more compelling language. Here, however, the Union agreed by way of limitation on its right to strike, that it would not strike over grievances, including discharges, until after it had exhausted the grievance procedure provided in its contract. Since . . . the processing of a grievance could be completed in about 5 days, the Union was in effect merely agreeing to suspend any strike action over a grievance for 5 days from the date that the grievance arose. Unlike the union in the *Mastro Plastics* case, the instant Union did not jeopardize its very existence by renouncing self-help against unfair labor practices for a substantial period of time. Accordingly, we believe that the considerations which led the Board and the Court to require an "explicit" waiver of the right to strike against unfair labor practices are not applicable here. . . .

The Board concluded that the strike clause here was sufficiently clear to outlaw unfair labor practice strikes, and that the strike, being in breach of contract, was unprotected.

b. Forms of Discrimination

Section 8(a)(3), except for its union-security proviso, forbids an employer to encourage or discourage union membership by any discrimination in employment. The various forms of discrimination against employees encountered during fiscal 1959 again involved unlawful discharges, layoffs, transfers, reduction in pay, or refusals to hire. The cases dealing with such violations presented for the most part only evidentiary questions. Cases which called for decision of other issues arising from the nature of alleged discrimination, or pertaining to the relief required to remedy the particular form of discrimination, are discussed below.

⁵⁶ *Mid-West Metallic Products, Inc.*, 121 NLRB 1317.

⁵⁷ *Mastro Plastics Corp., et al. v. N.L.R.B.*, 350 U.S. 270; Twenty-first Annual Report, pp. 121-122.

(1) Lockout

Two cases furnished the occasion for restatement of the principles which govern the determination whether a lockout during bargaining negotiations in anticipation of a strike, while presumptively unlawful, is justified by special circumstances. One case involved a lockout by a single employer,⁵⁸ and in another case the Board was again concerned with a lockout by the nonstruck members of an employer group in a “whipsawing” situation.⁵⁹

In *Quaker State Oil* the employer first threatened to shut down, and later did shut down, part of its operation while negotiations for a new contract were in progress, because of an asserted fear of a sudden strike which would endanger vital, and potentially dangerous, operating units. Since a showing was made that the employer’s action was intended to force abandonment of contract demands and acceptance of the employer’s proposals, the burden was held to be on the employer to establish reasonable grounds for its fear of a strike. A majority of the Board⁶⁰ found that this burden was not sustained and that the employer’s action was unlawful, violating sections 8(a)(1), 8(a)(3), and 8(a)(5). The majority rejected the employer’s contention that the union’s no-strike assurances were insufficient in view of its strike-threat strategy during past negotiations, and “quickie” strikes at plants of other employers. The majority of the Board held that the company’s alleged fears were not well founded because “the union offered . . . prompt and unequivocal assurances, both orally and in writing, that no strike was imminently contemplated, particularly as none had been authorized under intra-union procedures.” It was further pointed out that the union offered to waive its right to strike for 90 days by agreeing to an extension of the then-expiring contract for such period. Regarding the union’s alleged past practices, the majority noted that “the strike action taken on those occasions was not in violation of any commitments given by the Union to the affected employers,” and when striking the respondent employer before, the union did so “with responsible regard for the safety of the plant.” Because of what the majority considered sincere no-strike assurances on the part of the union, no merit was found in the employer’s further reliance on the fact that the union’s right to strike under the statutory 60-day notice requirement⁶¹ matured on the expiration date of the current contract. In the majority’s opinion, “the mere expiration of the statutory 60-day notice to strike does not deprive unions or the employees they repre-

⁵⁸ *Quaker State Oil Refining Corp*, 121 NLRB 334.

⁵⁹ *Great Falls Employers Council, et al*, 123 NLRB 974.

⁶⁰ Members Rodgers and Jenkins dissenting.

⁶¹ Sec. 8(d) provides, among other things, that where there is in effect a collective-bargaining agreement, the parties may not resort to lockouts or strikes during the 60-day period following notice of intent to modify or terminate the existing contract.

sent of their right to use the bargaining table . . . or relegate them to economic warfare." Nor, according to the majority, had an impasse in negotiations been reached which justified a belief that further bargaining was futile and that a sudden strike was imminent.

In the *Great Falls* case the Board reaffirmed the principle announced in the *Buffalo Linen* case⁶² that members of a multiemployer unit may resort to a temporary lockout to preserve the unit from disintegrating as the result of the common bargaining representative's tactic of striking only one member of the unit. In view of the presence of such a "whipsaw" strike in the *Great Falls* case, the lockout action taken by the respondent members of the employer group involved was held lawful because it was defensive rather than retaliatory. For, as pointed out by the Supreme Court in *Buffalo Linen*,⁶³ whipsawing presents a strike threat which "*per se* constitutes the type of economic operative problem at the plants of the nonstruck employers which legally justifies their resort to a temporary lockout of employees."

(a) Partial lockout

Following the initial, privileged lockout in the *Great Falls* case, the respondent employers temporarily rehired the locked-out employees, laying them off again as soon as each of them had had sufficient employment to disqualify him for State unemployment compensation.⁶⁴ A majority of the Board⁶⁵ held that this partial lockout was no longer defensive but in retaliation against the concerted, union-directed efforts of the locked-out employees to procure unemployment compensation. The special circumstances pleaded by the employer, in the view of the majority, did not involve the kind of unusual economic loss against which an employer may protect himself by locking out employees. The respondent employers contended that, since it was uncertain whether State authorities would treat lockout as a disqualifying "labor dispute," they themselves had to take disqualifying action. Absent disqualification of the locked-out employees, it was argued, receipt of compensation by them would directly result in increasing the employers' tax contribution to the unemployment reserves (because of the prevailing experience rating formula), and in turn would compel the employers to subsidize the

⁶² *Buffalo Linen Supply Co.*, 109 NLRB 447, affirmed *sub nom. N.L.R.B. v. Truck Drivers Local Union No. 449, et al.*, 353 U.S. 87.

⁶³ 353 U.S. 87, at 97.

⁶⁴ The applicable State law denied unemployment benefits for any week in which a claimant has received employment exceeding one 8-hour day and wages exceeding \$15. It also denied benefits where unemployment is due to a work stoppage arising from a labor dispute not caused by unfair labor practices, provided the claimant is found to participate in or to finance the labor dispute, or is directly interested in it, or is in a grade or class of workers involved in the dispute

⁶⁵ Members Rodgers and Jenkins dissenting.

union's strike. Rejecting the contrary views of the dissenting members,⁶⁶ the majority held that even if such consequences ensue they are not "those special circumstances which the Board has held, in other cases, entitle an employer to lockout in order to protect his business from unusual economic loss."

(2) Discontinuance or Change of Operations

The discharge or layoff of employees, ostensibly because of the employer's abandonment of a department or change in operating methods, violates section 8(a)(3) if the change was in fact for the purpose of getting rid of union employees, rather than for economic reasons.⁶⁷ Thus, in one case the discharge of seven employees following the discontinuance of the department where they had worked was found unlawful.⁶⁸ Here, the employer failed to substantiate its claim that the closing of the department was economically necessary. On the other hand, the evidence showed that the department was discontinued and its employees were discharged as the final step in the employer's antiunion campaign. This was apparent from, among other things, the fact that the employer contracted out the abandoned operations under a lease arrangement which indicated that it was but a temporary expedient. In view of the fact that the employer had actually abandoned the particular phase of its business or relinquished its control over the farmed-out operation, the Board's order, in addition to providing for back pay, directed the employer to resume operation of the department where the discriminatees had been employed under the circumstances prevailing before the discriminatory discharges. However, the Board's order further provided that in case of availability of substantially equivalent positions in other departments for the discriminatees, the employer may offer them the positions without reopening the discontinued department.

In another case, an employer, engaged in the trucking business, was found to have similarly violated the act by discharging truck-drivers, who were known or suspected union adherents, after an ostensible changeover to an owner-operator system.⁶⁹ The change in

⁶⁶ Members Rodgers and Jenkins believed that it was the respondent employer's recognized right and duty to preserve the State's unemployment fund for the benefit of the class of employees preferred by the statute, *viz.*, "persons unemployed through no fault of their own." In their view, the locked-out employees here were not in this class, the lockout having been "deliberately precipitated and anticipated by the Union when it ordered the strike . . ." Moreover, according to the dissenters, the respondent employers were legitimately concerned with the possible effect of unemployment payments to the locked-out employees. It was pointed out that under the State's "reserve-ratio" plan each employer's contribution to the compensation fund is directly related to his own unemployment experience. Hence, the dissenting members noted, the employers might be placed in the anomalous position of supporting, through their own contributions, workers on strike against them.

⁶⁷ See, for instance, *Tee-Pak, Inc.*, 123 NLRB 458.

⁶⁸ *Drennon Food Products Co.*, 122 NLRB 1353.

⁶⁹ *T. Mitchko, Inc.*, 123 NLRB 1117.

operating method was found to be only a temporary expedient. For, the Board noted, the discharged drivers were given no advance notice of the change in operation; they were given an opportunity to purchase the employer's decrepit equipment at prices and on conditions they were expected to reject; and the employer had made threats which betrayed his hostility to unionization. Moreover, within a month the employer discontinued the owner-operator method on a regular basis.

(3) Union Security

The union-security proviso to section 8(a) (3) permits employers and unions to enter into and enforce agreements requiring union membership as a condition of employment under specified conditions and restrictions.⁷⁰

(a) Validity of union-security agreements

An employer may validly enter into a union-security agreement only with a labor organization which is the bona fide majority representative of the employees in an appropriate bargaining unit.⁷¹ Nor is a union-security agreement valid if made with a bargaining representative whose authority to make such an agreement has been revoked in an election pursuant to section 9(e). The union-security proviso of the act, before its amendment on September 14, 1959,⁷² further required that a union at the time of entering into such an agreement must be in compliance with the non-Communist affidavit and filing provisions of section 9 (f), (g), and (h).⁷³

(i) Agreement with individual representative

During fiscal 1959, the Board was faced with the question whether an employer could validly enter into a union-security agreement with an individual who had been certified under section 9(c) as the statutory bargaining agent of an employee unit.⁷⁴ The question turned on whether the individual with whom the employer contracted was a "labor organization" for the purpose of the union-security proviso of section 8(a) (3) and as such was entitled, and subject, to its privileges and obligations. A majority of the Board held that the definition of "labor organization" in section 2(5), construed in the light

⁷⁰ The union-security proviso of sec. 8(a)(3) has been modified by Public Law 86-257, of Sept. 14, 1959, 73 Stat. 519, insofar as sec. 705 makes specific provision for contracts in the building and construction industry.

⁷¹ The execution, maintenance, or enforcement of a union-security agreement with a union which does not have such majority status violates sec. 8(a)(3). *Sierra Furniture Co.*, 123 NLRB 1198; *Lively Photos, Inc.*, 123 NLRB 1054. But see footnotes 44 and 73 as to the provisions of Public Law 86-257, Sept. 14, 1959, 73 Stat. 519.

⁷² Public Law 86-257, 73 Stat. 519.

⁷³ See, e.g., *Philadelphia Woodwork Co.*, 121 NLRB 1642. Subsecs. (f), (g), and (h) of sec. 9 of the National Labor Relations Act (1947) were repealed by title II, sec. 201(e) of Public Law 86-257, 73 Stat. 519.

⁷⁴ *The Grand Union Co.*, 123 NLRB 1665.

of its legislative history, is sufficiently broad to encompass an individual designated, as the one here, as bargaining representative,⁷⁵ and that such an individual is subject to all of the provisions of section 8 of the act, including the responsibilities of section 8(b).⁷⁶ The majority further concluded that, being a "labor organization" in the statutory sense, the individual's agreement with the employer was valid if, in addition to having statutory majority status, he also was in compliance with the then in force affidavit and filing requirements of section 9 (f), (g); and (h).⁷⁷ Those requirements in the majority's view were applicable to an individual representative, and since the certified individual here had not complied the employer violated section 8(a)(3) by making the union-security agreement here.

(ii) Agreement covering one employee

A majority of the Board in one case agreed with the trial examiner's conclusion that an employer's union-shop agreement covering a single employee was not unlawful.⁷⁸ The majority rejected the view that its holding was in conflict with the Board's longstanding policy not to certify a one-man unit. Adherence to this policy, according to the majority, does not mean that such a bargaining unit is inherently inappropriate, since section 9(a) of the act does not require "the interpretation that an individual employee is foreclosed from bargaining with his employer, if he so desires, through an outside representative."

(b) Terms of agreement

The proviso to section 8(a)(3) sanctions only agreements which provide for union security within the prescribed limits. These are that employees may not be compelled to acquire union membership until after 30 days "following the beginning of [their] employment, or the effective date of [the] agreement, whichever is later," and that no employee may be discharged under the terms of a union-security agreement for reasons other than the failure to tender regular dues or initiation fees.

Whether union-security clauses conform to the statutory limitations may depend not only on the express terms of the collective-bargaining agreement in which they are contained, but also on the

⁷⁵ The majority expressed its disagreement with the conclusion of the District of Columbia Circuit Court of Appeals in *Bonnaz, Hand Embroiderers, etc. v. N.L.R.B.*, 230 F. 2d 47, that a certified individual was not a labor organization within the meaning of secs. 2(5) and 8(b)(4)(C) of the act.

⁷⁶ Member Jenkins, while concurring in the unfair labor practice finding here (*infra*), disagreed with the conclusion that an individual representative is a "labor organization" for the purposes of the act.

⁷⁷ As to the recent repeal of this section, see footnote 73, *supra*.

⁷⁸ *Louis Rosenberg, Inc.*, 122 NLRB 1450.

intended incorporation by reference of rules contained in the contracting union's constitution, bylaws, or working rules. Thus, in one case, it was found that the incorporation of union working rules in a collective-bargaining contract resulted in the establishment of unlawful closed-shop conditions, which in turn pointed up the illegality of the contract's union-security provisions.⁷⁹ Insofar as the working rules were made part of the contract "except as changed in, or in conflict with [it]," the Board held that there were no provisions in the contract which effectively neutralized the unlawful working rules. The Board said:

It is now well established that a general savings clause does not make valid an otherwise invalid union-security provision. Such a clause is ineffective "because it does not state which provisions are suspended, and does not tell an unlearned employee which provisions are to be stricken. . . ."⁸⁰

A majority of the Board⁸¹ here further held that the contract's union-security provisions themselves were unlawful in that they required new nonmember employees to signify their intention of joining the union within 30 days of their employment. Unlike the dissenting Board Member, the majority construed the provision as precluding the hiring of persons unwilling to signify an advance intent to join the union, and as therefore exceeding the maximum union security permitted by the act.⁸²

(c) Illegal enforcement of union-security agreement

As again pointed out by the Board, "the only obligation an employee has under the compulsion of the proviso to Section 8(a)(3) of the act, is to pay dues for the period of employment with the employer who is a party to the contract and during the term of the contract."⁸³

Thus, the act was held violated where an otherwise valid union-security agreement was enforced so as to compel the payment of dues by employees for periods when they may have been members of the contracting union but were not employees of the contracting employer.⁸⁴ In another case, the employer was held to have violated section 8(a)(3) by discharging employees at the request of their union when the employer had reasonable grounds for believing that

⁷⁹ *Argo Steel Construction Co.*, 122 NLRB 1077. The Board here also found, contrary to the trial examiner, that the respondent company, formerly a partnership, was a *de facto* member of the employer association which contracted with the union here, and as such was a party to the agreement.

⁸⁰ See also *Honolulu Star Bulletin, Ltd.*, *infra*.

⁸¹ Member Bean dissenting.

⁸² The majority also found that the illegal conditions created by the work rules and union-security agreements were further buttressed by a contract clause providing for travel and other expenses in favor of employees referred by the union at the request of the employer.

⁸³ *Montgomery Ward & Co.*, 121 NLRB 1552.

⁸⁴ *Ibid.*; *Marcus Bros.*, 123 NLRB 33.

the request was not based on the employees' nonpayment of their regular dues and fees, but was motivated by the employees' efforts to oust the union and bring in another union.⁸⁵ An employee, in yet another case, was found to have been unlawfully discharged under a union-security agreement for not paying back dues which were held to be in the nature of a fine for nonattendance at a union meeting rather than bona fide dues.⁸⁶ The Board pointed out that while a distinction in dues payments is permissible if based upon "reasonable general classification,"⁸⁷ the back dues obligation here, which depended on attendance of union meeting, clearly did not have a reasonable basis. One employer was held to have unlawfully discharged an employee because he had reasonable grounds for believing that the union's discharge request was not based on the employee's dues delinquency but upon his refusal to sign a new checkoff authorization.⁸⁸

The discharge of an employee under the terms of a maintenance-of-membership agreement was held to have been unlawful where the respondent employer and the union had failed to sustain their burden of showing affirmatively that the employee was a member of the contracting union on the critical date.⁸⁹

(4) Discriminatory Employment Practices

The cases under section 8(a)(3) presented again situations where individual employees were denied employment because they were unacceptable to the union with which the employer had hiring relations,⁹⁰ and where employers were parties to discriminatory hiring arrangements.

As in the case of union security, the existence of illegal arrangements may be shown by specific contract clauses or by the conduct of the parties. Thus, a hiring agreement was found illegal because it incorporated the union's general laws which required that only union members were to be hired in a specified department.⁹¹ The Board rejected a contention that the contract could not be held unlawful in view of a savings provision to the effect that only "the general laws . . . not in conflict with federal . . . law or this contract,

⁸⁵ *Puerto Rico Dry Dock & Marine Terminals*, 123 NLRB 1298.

⁸⁶ *National Automotive Fibres*, 121 NLRB 1250.

⁸⁷ See *The Electric Auto-Lite Co.*, 92 NLRB 1073, 1077; *Food Machinery and Chemical Corp.*, 99 NLRB 1430, 1431.

⁸⁸ *American Screw Co.*, 122 NLRB 485.

⁸⁹ *Montgomery Ward & Co.*, *supra*.

⁹⁰ Sec. 8(a)(3) violations were found for instance where employers, acceding to union demands, denied employment to individuals because they were not members of the union (*Philadelphia Woodwork Co.*, 121 NLRB 1642; *E & B Brewing Co.*, 122 NLRB 354), or were objectionable to it for reasons such as bringing suit against the union to regain membership (*Pacific Maritime Association*, 123 NLRB 559), or where a "permit" man was discharged in order to make room for a "card" man (*Combined Century Theaters, Inc.*, 123 NLRB 1759).

⁹¹ *Honolulu Star Bulletin, Ltd.*, 123 NLRB 395.

shall govern," and that any illegal provisions of the general laws have become a "nullity. . . ." ⁹² The Board again made clear that "where a contract otherwise contains unlawful provisions, a general 'savings clause' which does not specify which provisions are intended to be ineffective, will not purge such provisions of their illegal character." The Board in the *Honolulu Star* case also pointed out that, even if certain provisions of the challenged contract could be read so as to produce a legal result, the burden of analyzing the terms of the agreement was on the contracting parties and should not be placed on the employees. The Board stated:

As between the Employer and the Union on the one hand and the employees on the other, the former are far better equipped to make such a determination. And, if the Employer and the Union are unable to predict which provisions of the contract may be violative of the Act, the employees certainly could not be expected to do so.

In the absence of an express agreement the existence of an unlawful arrangement may be revealed by the actual hiring practices of the parties. Thus, one employer in the *Nassau and Suffolk Contractors'* case ⁹³ was found to have had an unlawful closed-shop or preferential hiring arrangement although it had no written agreement with the union. It was shown that it was the employer's practice to call the union for help, and to inquire from the union whether it could hire applicants without job referrals from the union. Moreover, the evidence showed that upon learning that one employee had been expelled from the union, the employer discharged the employee after calling the union hall.

In connection with exclusive hiring-hall arrangements, the Board has adhered to the *Mountain Pacific* ⁹⁴ rule that in the absence of the specific safeguards there set out, such arrangements will be held discriminatory, and that an employer is responsible for the manner in which the hiring hall is operated "solely by reason of being party to such an agreement." ⁹⁵

In a number of cases discriminatory hiring was the result of delegation by the employer of the hiring function to union-appointed hiring foremen. As pointed out by the Board ⁹⁶—

provisions of an agreement between an employer and a union which establish an exclusive hiring arrangement constitute an inherent and unlawful encour-

⁹² Compare pp. 69-70, *supra*.

⁹³ *Nassau and Suffolk Contractors' Association, Inc., et al.*, 123 NLRB 1393.

⁹⁴ *Mountain Pacific Chapter of the Associated General Contractors, Inc.*, 119 NLRB 883; Twenty-third Annual Report, pp. 85-86

⁹⁵ See *Galveston Maritime Association, Inc.*, 122 NLRB 692. The agreement here was held further unlawful in that it required applicants for employment to fill out a form designating the union as their bargaining representative and to agree to pay a percentage of their wages to the union "as compensation for services rendered." The employer facilitated the collection of the wage percentages on behalf of the union. See also *Los Angeles-Seattle Motor Express, Inc.*, 121 NLRB 1629.

⁹⁶ See *Houston Maritime Association, Inc.*, 121 NLRB 389

agement of union membership if they confer unfettered control over the hiring process to the union, but not if they merely confer authority with respect to the hiring process subject to safeguards which the Board deems essential.

Thus, maritime employers were held to have violated section 8(a) (3) by agreeing to a rule which obligated them to select gang foremen from lists submitted by the union without in any manner limiting the union's discretion in making up the list.⁹⁷ Gang foremen, who had supervisory status, in turn had effective initial authority with respect to the hiring and placement of employees. The Board pointed out that, being subject to the control of the union, gang foremen did not exercise this authority solely as agents of the employers, and that, in view of its control, the union in fact had power over the hiring and placement of employees. By agreeing to the gang foremen rule, the Board concluded, the employers "have virtually divested themselves of their hiring and placement functions and have abdicated such functions to the respondent union."

Section 8(a) (3) was held similarly violated by the foreman clauses of an employer's collective-bargaining contract which incorporated the union's general laws.⁹⁸ This contract obligated the employer to select foremen from among union members and to delegate to them complete authority to hire and discharge employees. Under the union's general laws, foremen, in turn, were obligated to hire only union members.⁹⁹

In addition to maintaining a contractual arrangement of the same type, the employer in one case was found to have further violated section 8(a) (3) by operating apprenticeship and competency systems under which the power of "impartial examiners" to approve prospective journeymen was exercised by persons under the control of a union.¹

The Board also had occasion to reiterate that under the rule established in the *Pacific Intermountain* case² it is unlawful for an employer to delegate to a union control of the seniority of employees.³ The agreement with which the Board was concerned, like the one in the *P.I.E.* case, provided that "Any controversy over the seniority standing of any employee . . . shall be referred to the Union for settlement."⁴ The employer here was found to have further violated

⁹⁷ *Ibid.*

⁹⁸ *Honolulu Star Bulletin, Ltd.*, 123 NLRB 395.

⁹⁹ For other cases involving unlawful delegation to a union of the employer's hiring authority, see *United States Steel Corp (American Bridge Division)*, 122 NLRB 1324; *Consolidated Western Steel Division—United States Steel Corp.*, 122 NLRB 859.

¹ *News Syndicate Co., Inc.*, 122 NLRB 818

² *Pacific Intermountain Express Co.*, 107 NLRB 837.

³ *Kramer Bros Freight Lines, Inc.*, 121 NLRB 1461.

⁴ Compare *Armour & Co.*, 123 NLRB 1157, where a majority of the Board held that there was no delegation of "complete control over seniority" within the *Pacific Intermountain* case, but merely an acceptance by the employer of the union's choice of one of two equally valid constructions of an ambiguous contract clause. Member Rodgers dissented.

section 8(a)(3) by discriminatorily enforcing the contractual seniority provisions by crediting certain employees with seniority based on the length of their union membership rather than service seniority which was greater than that of other employees.

c. Remedial Provisions

Generally, the Board has continued to require affirmatively that illegal union-security and hiring practices be remedied by reimbursement of employees for moneys exacted as a condition of employment. The Board made clear during the past year that the *Brown-Olds*⁵ reimbursement remedy is applicable to all closed-shop agreements and exclusive hiring-hall agreements which do not provide the *Mountain Pacific*⁶ safeguards, "whether or not proof of actual exaction of payments is established."⁷ Reimbursement, according to the Board, is required because "the existence of an unlawful contract is sufficient in and of itself to establish the element of coercion in the payment of moneys by employees pursuant to the requirement of [an illegal] contract."

Regarding reimbursement the Board further ruled:⁸

In cases in which the union alone is named respondent party to an exclusive hiring-hall or closed-shop contract, the union shall be liable for all sums paid by employees of all employers covered under such contract found unlawful by the Board. In cases involving multiemployer contracts in which the contracting union and one or more employers are named respondent parties to the contract, the union's liability for reimbursement of sums unlawfully exacted also shall extend to all employees covered under such contract found unlawful; each named employer respondent shall be liable jointly and severally with the union for the reimbursement of sums paid by its own employees. Although a collective-bargaining contract may extend to employees of more than one employer, the limitation upon the liability of a particular employer derives from the fact that an employer participates in a contract only to the extent its own employees are involved. On the other hand, a union which maintains contractual relations with one or more employers participates to the full extent of the contract's coverage. Accordingly, it would seem reasonable and logical that a union's liability for reimbursement extend to all employees of all employers unlawfully coerced by the union's contract into paying moneys to the union.

4. Refusal To Bargain in Good Faith

Section 8(a)(5) makes it an unfair labor practice for an employer to refuse to bargain in good faith about wages, hours, and other conditions of employment with the representative selected by a

⁵ *J. S. Brown-E. F. Olds Plumbing & Heating Corp.*, 115 NLRB 594.

⁶ *Supra*, p. 72.

⁷ *Nassau and Suffolk Contractors' Association, Inc., et al.*, 123 NLRB 1393. *Farnsworth and Chambers, Inc.*, 122 NLRB 300, and *Rochester Davis-Fetch Corp.*, 122 NLRB 269, were overruled insofar as inconsistent.

⁸ *Nassau and Suffolk Contractors' Association, supra*.

majority of the employees in an appropriate unit. The duty to bargain arises when the employees' majority representative⁹ requests the employer to recognize it and to negotiate about matters which are subject to bargaining under the act.

a. Representative's Majority Status

An employer violates section 8(a)(5) if he refuses to recognize a bargaining agent whose majority status has been established. The Board held that the majority status of a union which the tally of ballots showed to have won an election was sufficiently established to make it unlawful for the employer to grant a wage increase unilaterally, even though certification of the union by the Board was held up pending disposition of objections to the election.¹⁰

Where the representative's majority status has been certified under section 9(c), the Board's certificate must be honored for at least a year except in unusual circumstances.¹¹ After the certification year, or in the absence of a certification, an employer who doubts the majority status of a representative may condition recognition upon demonstration of its majority in a Board election.¹² However, as pointed out again by the Board,¹³ the right of an employer to insist upon a Board-directed election is not absolute but depends on the employer's good faith. If the purpose of the insistence upon an election was to undermine the representative's standing, the employer will be found to have violated section 8(a)(5), provided it appears at the unfair labor practice hearing that the representative in fact had majority status at the time.¹⁴ The Board also held in one case that an employer who did not have a good-faith doubt regarding the representative's majority status could not lawfully insist upon a

⁹ "The term 'representatives' includes any individual or labor organization" Sec 2(4) of the act. The term "labor organization," as defined in sec. 2(5), includes any organization in which employees participate and which exists, at least in part, for the purpose of bargaining collectively with employers on behalf of employees.

¹⁰ *Tampa Crown Distributors, Inc.*, 121 NLRB 1622.

¹¹ See *Ray Brooks v. N.L.R.B.*, 348 U.S. 96; *Stoner Rubber Co., Inc.*, 123 NLRB 1440.

¹² As to withdrawal of recognition after expiration of the certification year, see *Stoner Rubber Co., Inc.*, 123 NLRB 1440, reaffirming *Celanese Corp. of America*, 95 NLRB 664. The Board here took occasion to point out again that:

After the lapse of the certification year, the certification creates only a presumption of continued majority. This presumption is rebuttable. Proof of majority is peculiarly within the special competence of the union. It may be proved by signed authorization cards, dues checkoff cards, membership lists, or any other evidentiary means. An employer can hardly prove that a union no longer represents a majority since he does not have access to the union's membership lists and direct interrogation of employees would probably be unlawful as well as of dubious validity. Accordingly, to overcome the presumption of majority the employer need only produce sufficient evidence to cast serious doubt on the union's continued majority status. The presumption then loses its force and the General Counsel must come forward with evidence that on the refusal-to-bargain date the union in fact did represent a majority of employees in the appropriate unit. [Footnotes omitted.]

¹³ See *United Butchers Abattoir, Inc.*, 123 NLRB 946.

¹⁴ *Dan River Mills, Inc.*, 121 NLRB 645; *F. M. Reeves and Sons, Inc.*, 121 NLRB 1280.

Board election merely because the representative had previously filed a petition for certification. It was pointed out that the union abandoned the representation proceeding because of the employer's unfair labor practices and then renewed its request for recognition on the basis of other clear proof of majority.¹⁵

A representative's right to have its majority status determined in an unfair labor practice proceeding is limited in one respect under the rule established in the *Aiello* case¹⁶ and reaffirmed during the past year. In *Aiello*, the Board held that where a union has resorted to a representation election with knowledge that the employer has engaged in unfair labor practices which may jeopardize the union's success, the union may not, after losing the election, initiate a section 8(a)(5) proceeding to establish its majority status. The reason is that "a representation proceeding and an unfair labor practice proceeding alleging refusal to bargain are mutually inconsistent."¹⁷ The representation proceeding is based on the existence of a question of representation which must be resolved by an election, while the refusal-to-bargain charge is based on the allegation that the union has majority status and that, therefore, no representation question exists. It was pointed out that, by withholding 8(a)(5) charges in such a situation, the union circumvents the Board's practice of not conducting an election while such an unfair labor practice charge is pending, and causes the Board to hold an election which is futile because of the employer's conduct which the union knows would prevent a fair election.

However, in the two cases where the employers invoked the *Aiello* rule as a bar to a finding that they violated section 8(a)(5), the Board found that there was no abuse of its processes, and that the circumstances did not warrant dismissal of the unions' refusal-to-bargain charges. Thus, the Board noted in one case,¹⁸ the union filed charges before the election, rather than after, and it obtained permission to withdraw its representation petition. The union therefore made a timely determination of which course of action it would follow and made no attempt to abuse the Board's processes. Nor, according to the Board, was it an abuse of its processes for the union in the other case¹⁹ to delay the withdrawal of its petition for certification until 1 day before the complaint based on its 8(a)(5) charges issued. The Board held that the union here did not improperly pursue its election remedy, but merely awaited completion of the investigation of its charges before making a final choice of remedy. No hearing or election had been held on the petition.

¹⁵ *United Butchers Abattoir, Inc.*, 123 NLRB 946.

¹⁶ *Aiello Davy Farms*, 110 NLRB 1365, Twentieth Annual Report, pp 92-93

¹⁷ *Dan River Mills, Inc.*, 121 NLRB 645.

¹⁸ *Dan River Mills, Inc.*, *supra*.

¹⁹ *United Butchers Abattoir, Inc.*, *supra*.

An employer who is subject to a Board order remedying an 8(a)(5) violation must comply with the order by bargaining in good faith with the employees' representative. Having done so, he may then refuse to bargain further on the ground of loss of majority by the representative.²⁰ One case presented the question whether an employer under order remedying both an 8(a)(5) violation and an 8(a)(3) discrimination violation could question the union's majority status once it had bargained to a contract but before all of the provisions of the order on the discrimination had been fully satisfied.²¹ The Board adopted the trial examiner's conclusion that bargaining to a contract did not as a matter of law relieve the employer of the duty to bargain, but the partial noncompliance with the 8(a)(3) provisions, not being of the employer's own making, did not preclude the employer from asserting loss of majority as a valid defense to its refusal to bargain further with the union.

b. Appropriateness of the Bargaining Unit

Section 8(a)(5) does not require an employer to bargain in a unit which is inappropriate.²² However, the Board made clear that an employer who refused to bargain on the ground that the unit requested is inappropriate acts at his peril and will be held to have violated the act if the unit sought is in fact appropriate.²³ A like conclusion was reached in the earlier *Tom Thumb* case,²⁴ where it was pointed out that this risk of an employer is fully counterbalanced by the burden on the union to show that it has uncoerced majority status, that the proposed bargaining unit is appropriate, and that a proper bargaining demand has been made and refused.

c. The Request To Bargain

The duty to bargain under section 8(a)(5) arises upon a proper request by the employees' representative. The request is sufficient if it clearly implies a desire to bargain in the statutory sense.²⁵ The request also must adequately describe the proposed bargaining unit. But an employer will not be heard to defend its refusal to bargain by a belated assertion that it was in doubt as to the intended scope

²⁰ See *Squirrel Brand Co., Inc.*, 104 NLRB 289.

²¹ *Darlington Veneer Co., Inc.*, 123 NLRB 197.

²² The principles governing the determination of the appropriateness of bargaining units are discussed in ch. II of this report, and the corresponding chapters of earlier reports.

²³ *United Butchers Abattoir, Inc.*, 123 NLRB 946.

²⁴ *Tom Thumb Stores*, 123 NLRB 833. In this case a majority of the Board (Chairman Leedom dissenting) overruled *Safeway Stores, Inc.*, 110 NLRB 1718; *Chalet, Inc.*, 107 NLRB 109, and earlier similar cases, insofar as inconsistent.

²⁵ See *Ivy Hill Lithograph Co.*, 121 NLRB 831, where the Board rejected a contention that the union's letter was ambiguous because it only expressed a desire to be recognized as collective-bargaining representative of certain workers and asked for a conference to discuss wages and working conditions

and composition of the unit. The Board noted that "an employer who was prepared to bargain in good faith with his employees' representative, but who had such doubt, would have requested the Union to remove from his mind any genuine uncertainty. . . ." ²⁶

But a request for a unit which is clearly inappropriate need not be honored. Thus, no violation was found where the employer refused to bargain because the request for a unit combining production and maintenance personnel and office clericals contravened established Board policy.²⁷ Also, a request addressed to a single member of a multiemployer unit was held not a sufficient demand to bargain in the appropriate unit.²⁸

The unit requested by a bargaining representative must substantially coincide with the unit found appropriate in the unfair labor practice proceeding. But a minor variance between the requested unit and the one found by the Board will not be held to validate an employer's refusal to bargain. Thus, exclusion from a proposed production unit of a working night watchman and two maintenance employees was held not to have altered the essential nature of the requested unit so as to result in a variance justifying the employer's refusal to bargain.²⁹

In one case, the Board rejected the employer's contention that it was not required to bargain because of substantial changes in the unit for which the union had been certified while the business was operated by the employer's predecessor.³⁰ The purchaser of the truck sales and service business here discontinued the former parts department, resulting in the layoff of two of the partsmen. This, according to the Board, did not change the certified unit sufficiently to justify the employer's refusal to recognize the certified union.

d. Subjects for Bargaining

The statutory bargaining duty extends to all matters pertaining to "rates of pay, wages, hours of employment, or other conditions of employment."³¹ Regarding such matters, the employer, as well as the employees' representative, must bargain in good faith, although the statute does not require "either party to agree to a proposal or require the making of a concession."³²

In matters which are not subject to mandatory bargaining, insistence by an employer upon their inclusion in a collective-bargaining

²⁶ *Ivy Hill Lithograph Co., supra*

²⁷ *Page Aircraft Maintenance*, 123 NLRB 159.

²⁸ *Lyon Van & Storage Co.*, 123 NLRB 734.

²⁹ *United Butchers Abattoir, Inc.*, 123 NLRB 946.

³⁰ *Alamo White Truck Service, Inc.*, 122 NLRB 1174. The Board here also reaffirmed the rule that a certification runs with the employing industry and that a change of ownership does not absolve a successor from the duty to bargain with the certified union.

³¹ Secs. 8(d) and 9 of the act.

³² Sec. 8(d).

agreement violates section 8(a)(5), regardless of the employer's good faith.³³ Applying this principle, the Board held that an employer violated the statutory duty to bargain by insisting as a condition of signing of a contract that it include a clause providing that liability for violation of the contract's no-strike clause should extend to the full resources of the complaining union's parent international.³⁴ Similarly, an employer was held in violation for insisting that the local union post a \$100,000 performance bond or, in the alternative, that the contract be signed also by its parent international.³⁵ In each case, the clauses insisted upon were held not mandatory subjects for collective bargaining because they had no relation to "wages, hours, and other conditions of employment."

Conversely, in the absence of a showing of bad faith, an employer's insistence upon a "no-strike" clause binding all employees in the bargaining unit, and upon limitation of the contract term to the union's certification year were held no violation.³⁶ It was pointed out that both a no-strike clause and the term of a contract have long been recognized as matters of mandatory bargaining. Regarding the limited contract term, the Board reiterated that where an employer has a well-founded doubt as to the bargaining representative's majority status, based on a majority-supported decertification petition, he may legitimately bargain for a contract not to exceed the current certification year.

(1) Waiver of Right To Bargain

An employer may be relieved of his duty to bargain about matters concerning "rates of pay, wages, hours of employment, and other conditions of employment," if in the course of negotiations the employees' representative has waived, or bargained away, the right to bargain about a particular subject. But the Board again made clear that it will give effect only to a waiver made in "clear and unmistakable" terms, and will not readily infer a waiver.³⁷ Occasion for the restatement of this principle arose from the employer's contention that abandonment by the union of its demand for inclusion of a workload clause in the current contract left the employer free to increase the workload unilaterally and then to grant a general wage increase therefor. A majority of the Board³⁸ found that the record indicated no intent on the part of the union to waive bargaining on workload, but rather showed that the union was the "unwilling victim" of the employer's removal of the subject from the bargaining

³³ See *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342. Twenty-third Annual Report, pp. 104-106.

³⁴ *North Carolina Furniture, Inc.*, 121 NLRB 41.

³⁵ *Cosco Products Co.*, 123 NLRB 766.

³⁶ *Lloyd A. Fry Roofing Co.*, 123 NLRB 647.

³⁷ *Beacon Piece Dyeing and Finishing Co., Inc.*, 121 NLRB 953.

³⁸ Member Bean dissenting.

table. Accordingly, the majority declined to imply a waiver "simply because a union has abandoned a bargaining demand in return for other concessions."

Nor, in the view of the majority, was this situation comparable to that in the *Speidel* case,³⁹ where the complaining union was found to have acquiesced in the employer's persistently maintained position that its bonus payments were a "management prerogative" rather than a subject of bargaining. The majority found no evidence that the employer here ever took the position, either in the past or in the latest negotiations, that the workload was a "management prerogative" on which it reserved the right to act unilaterally, or that the union had acquiesced in treating workloads as "management prerogative." Declining to construe abandonment of a contract demand under these circumstances as a waiver, the majority pointed out that, more often than not, an employer will resist a proposed contract provision on its merits, and not because he seeks to retain unilateral control and the union which made the proposal will trade it off in return for other concessions without any thought of relinquishing its statutory bargaining rights regarding the subject. To read into the normal collective-bargaining process a "management prerogative" position by the employer, and a corresponding waiver by the union, according to the majority, would be contrary to established waiver doctrine, and it would deprive the union of a statutory right it never intended to relinquish while giving the employer a right of unilateral action it never intended to acquire. Rejecting such a waiver theory, the majority went on to say that:

[I]t would encourage employers to firmly resist inclusion in contracts of as many subjects as possible, with a view to resistance giving them a right of unilateral action thereafter on all subjects excluded from the contract, thereby impeding the collective-bargaining process and creating an atmosphere which inevitably would lead to more strikes; . . .

[A]nd . . . it would discourage unions from presenting *any* subject in negotiations, for a simple refusal by the employer to agree to the demand on the subject would leave the union in the unhappy dilemma of either giving up the demand and thereby losing its bargaining rights on the subject, or striking in support of the demand—this too would seriously impede the collective-bargaining process and lead to more strikes.

The majority also rejected the further contention that, since the union was shown to have waived its right to bargain on individual merit wage increases, it must be held to have thereby also relinquished its right to bargain on the general wage increase which the employer granted in return for the increased workload. It was pointed out that, in view of the manifest difference between the subject of the union's waiver and the subject of the employer's unilateral

³⁹ *Speidel Corp.*, 120 NLRB 733; Twenty-third Annual Report, pp 73-74.

action, the waiver of one clearly could not be held to be a waiver of the other. Contrary to the trial examiner, the majority also held that the employer was not relieved of its duty to bargain because the workload issue was subject to arbitration under the contractual grievance procedure. As noted by the majority, the Board has consistently held that the statutory collective-bargaining requirement is not satisfied by the substitution of the grievance procedure of a contract, unless the contractual grievance provisions, unlike those here, contain a waiver "expressed in clear and unmistakable terms."⁴⁰

Another case presented the related question of an employer's duty to bargain during the term of a contract on matters not covered by the contract.⁴¹ Finding that the employer's refusal to bargain here violated section 8(a)(5), the Board reaffirmed the rule that:

[A]lthough a subject has been discussed in precontract negotiations and has not been specifically covered in the resulting contract, the employer violates Section 8(a)(5) of the Act if during the contract term he refuses to bargain, or takes unilateral action with respect to the particular subject, unless it can be said from an evaluation of the prior negotiations that the matter was "fully discussed" or "consciously explored" and the union "consciously yielded" or clearly and unmistakably waived its interest in the matter.

The Board went on to say:

To hold that, without regard to the nature of precontract negotiations, the mere discussion of a subject not specifically covered in the resulting contract removes the matter from the realm of collective bargaining during the contract term would be to place a premium (a) upon an employer's ability to avoid having the subject included in the contract, despite his knowledge of the union's position that it was a bargainable matter and not within his unilateral control; and (b) upon the union's ability to have the subject specifically referred to in the contract by engaging—if necessary—in a strike.

To so circumscribe the employer's bargaining obligation during a contract term, in the Board's view, would be to equate a trade agreement to an ordinary private commercial contract, and would disregard "the familiar concept of collective bargaining as a continuing and developing process by which the relationship between an employer and the representative of his employees is to be molded."⁴² Again distinguishing the *Speidel* case,⁴³ the Board noted that here, unlike in *Speidel*, the union had consistently challenged the employer's position that a certain matter—commission system of paying advertising solicitors—was a management prerogative. At the final

⁴⁰ The opinion of the dissenting member that the complaint should be dismissed is based solely on the view that the union had waived its right to bargain in the matters in which the employer took unilateral action.

⁴¹ *The Press Co., Inc.*, 121 NLRB 976.

⁴² The Board cited *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U.S. 521, 525, where the Court stated that "It is of the essence of collective bargaining that it is a continuous process. Neither the conditions to which it addresses itself nor the benefits to be secured by it remain static."

⁴³ *Supra*, footnote 39.

bargaining session the union made clear that, while not pressing the incorporation of a commission clause in the contract, it was not acquiescing in the employer's position and it reserved the right to take legal action should the employer act unilaterally in the matter.

e. Violation of Duty To Bargain in Good Faith

The cases under section 8(a)(5) in some instances turned on the recurring question whether the employer bargained only ostensibly and not with a bona fide intent to reach agreement,⁴⁴ but several involved questions as to whether the employers unlawfully interfered with the bargaining process by such actions as unilateral changes in terms of employment, refusal to furnish information to which the employees' bargaining representative was entitled, and lockout of employees while negotiations were pending.

(1) Unilateral Action

Section 8(a)(5) is violated where an employer unilaterally effects changes in the employees' terms or conditions of employment in derogation of the obligation to bargain collectively with the employees' statutory representative. Thus, the employer in one case was held to have refused to bargain in good faith when, following the union's request for a meeting, it reduced working hours without notifying the union.⁴⁵ Even assuming economic justification, the Board pointed out, the employer's action was "manifestly inconsistent with the principle of collective bargaining."⁴⁶

However, the employer's duty to refrain from unilateral action may be suspended by a bona fide impasse in bargaining negotiations. In such a situation, the employer may unilaterally institute terms previously proposed to and rejected by the bargaining representative.⁴⁷ Nor will unilateral action be held to have been unlawful if the union is shown to have in fact acquiesced in the employer's conduct.⁴⁸

One case turned on the question whether the employer, who had a good-faith doubt regarding the continuing majority status of the union after the certification year expired, acted lawfully not only in withdrawing recognition from the union but also in unilaterally

⁴⁴ The Board reiterated in one case that the mere shifting of position during negotiations is not *per se* violative of sec. 8(a)(5). *Stoner Rubber Co., Inc.*, 123 NLRB 1440.

⁴⁵ *Homer Gregory Co., Inc.*, 123 NLRB 1842.

⁴⁶ The Board quoted the Supreme Court's decision in *N.L.R.B. v. Crompton Highland Mills, Inc.*, 337 U.S. 217.

⁴⁷ *Great Falls Employers' Council, Inc., et al.*, 123 NLRB 974. The Board held that, where such an impasse has occurred, the employer's obligation to resume negotiations depends upon a proper request by the bargaining representative, "provided that such further negotiations would not be clearly futile."

⁴⁸ *Great Falls Employers' Council, Inc., et al., supra; Westinghouse Electric Corp.*, 122 NLRB 1466.

granting a wage increase.⁴⁹ The Board held that, under the *Celanese* rule,⁵⁰ the employer could properly withdraw recognition from the union. As to the wage increase, three members⁵¹ found no violation, but based their conclusions on different grounds. Members Rodgers and Bean, writing the main opinion, held that in granting the wage increase the employer acted at his peril and could be absolved of a violation of section 8(a)(5) solely because there was no showing that, contrary to the employer's belief, the union had in fact majority status. Chairman Leedom took the view that the legality of the wage increase depended upon the employer's overall good faith in its dealings with the union. Finding no evidence of bad faith, Chairman Leedom held that there was no basis for an unfair labor practice finding.⁵²

(2) Lockout During Bargaining Negotiations

In two cases, the Board made clear that a lockout of employees during bargaining negotiations, except under special circumstances, violates not only the provisions against discrimination for union activity,⁵³ but also the bargaining requirements of the act.⁵⁴ Such a lockout in aid of the employer's bargaining position, according to the Board, "subjects the union and the employees it represents to unwarranted and illegal pressure and creates an atmosphere in which the free opportunity for negotiations contemplated by section 8(a)(5) does not exist."⁵⁵

(3) Refusal To Furnish Bargaining Information

A concomitant of the employer's duty to bargain within the meaning of section 8(a)(5) is the duty to comply with the bargaining representative's request for information which "is relevant for the purposes of administering a collective-bargaining agreement or for collective-bargaining purposes, where compliance with such a request would not be unduly burdensome."⁵⁶ Thus, an employer was held to have unlawfully withheld piece-rate information in its possession in the form of tally sheets which were maintained on a daily basis.⁵⁷ Refusals to furnish a copy of the company's group-insurance booklet and information concerning the cost of the insurance to the com-

⁴⁹ *Stoner Rubber Co., Inc.*, 123 NLRB 1440

⁵⁰ See *Celanese Corp. of America*, 95 NLRB 664; *supra*, p. 75.

⁵¹ Chairman Leedom and Members Rodgers and Bean.

⁵² Members Jenkins and Fanning, dissenting, held that the employer did not act in good faith in granting the wage increase and on that ground alone should be found to have violated sec. 8(a)(5).

⁵³ See pp. 65-66, *supra*.

⁵⁴ *Quaker State Oil Refining Corp.*, 121 NLRB 334; *Great Falls Employers' Council, Inc., et al.*, 123 NLRB 974.

⁵⁵ *Ibid.*

⁵⁶ *Tree Fruits Labor Relations Committee, Inc.*, 121 NLRB 516.

⁵⁷ *Ibid.*

pany,⁵⁸ and a refusal to supply specified wage data and personnel information,⁵⁹ were likewise held to have violated section 8(a)(5), as was a refusal to furnish shop rules.⁶⁰

While reaffirming the rule that an employer may not refuse to furnish data necessary to substantiate a claim of economic inability to meet bargaining demands,⁶¹ the Board declined to recognize an obligation to supply such information where the employer merely asserts unwillingness to grant economic demands, without claiming inability to pay.⁶²

Information, the right to which has been waived by the bargaining representative, need not be supplied if the bargaining representative later renews its request.⁶³ And if the union desires the information for a purpose not covered by its waiver, it must so indicate to place the employer under obligation to comply with the new request.⁶⁴

B. Union Unfair Labor Practices

Section 8(b) of the act specifically proscribes as unfair labor practices six separate types of conduct by unions or their agents. Cases decided during fiscal 1959 under subsections (1), (2), (3), (4), and (5) of section 8(b) are discussed below. No case came to the Board Members for decision involving subsection (6) which prohibits so-called "featherbedding" practices.⁶⁵

1. Restraint and 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 their right to engage in or refrain from concerted activities directed toward self-organization and collective bargaining.

⁵⁸ *Stowe-Woodward, Inc.*, 123 NLRB 287.

⁵⁹ *Cosco Products Co.*, 123 NLRB 766.

⁶⁰ *Stowe-Woodward, Inc.*, *supra*. Compare *The Berkline Corp.*, 123 NLRB 685, where a majority of the Board found that the union waived its right to shop-rule information and that the employer therefore did not violate sec. 8(a)(5) by withholding the information.

⁶¹ See *N.L.R.B. v. Truitt Mfg.*, 351 U.S. 149.

⁶² *Tennessee Coal & Iron Division, U.S. Steel Corp.*, 122 NLRB 1519.

⁶³ *The Berkline Corp.*, 123 NLRB 685. Members Bean and Fanning dissenting from the majority's waiver finding.

⁶⁴ *Ibid.* The majority in overruling the trial examiner also rejected his apparent view that there can be no waiver without a specific *quid pro quo*. According to the majority, "although a *quid pro quo* may be indicative of a waiver, it is not a prerequisite to finding a waiver."

⁶⁵ The amendments to the Labor Management Relations Act, 1947, Public Law 86-257, Sept. 14, 1959, in sec. 704 add two new unfair labor practices, one—sec. 8(b)(7)—pertaining to recognition or organizational picketing, and another—sec. 8(e)—prohibiting labor organizations and employers from entering into certain types of "hot cargo" agreements.

However, section 8(b)(1)(A) also provides that it "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." In turn, the Board has consistently held that the proviso does not permit a labor organization to enforce its internal rules so as to affect the hire or tenure of employees, and thereby to coerce them in the exercise of their statutory rights.⁶⁶

a. Forms of Restraint and Coercion

Section 8(b)(1)(A) is violated by conduct which independently restrains or coerces employees in their statutory rights without regard to whether the conduct also violates other subsections of 8(b). While employer violations of subsections (2) to (5) of section 8(a) have been held to constitute derivative violations of subsection (1), which prohibits interference with, restraint, and coercion of employees in their section 7 rights, the Board has adhered to the view that there is no like relation between subsection (1) and other subsections of 8(b). Thus, the trial examiner's refusal to find in one case that the respondent union's unlawful secondary boycott action also violated section 8(b)(1)(A) was sustained.⁶⁷

(1) Threats and Violence—Other Coercive Conduct

Some of the cases in which section 8(b)(1)(A) violations were found involved union liability for unlawful strike activities, such as assaults, threats of physical violence against employees, mass picketing, permitting pickets to carry heavy sticks and clubs, or interference with ingress and egress at the struck plant.⁶⁸ Assaults on company attorneys in one case were found to have violated section 8(b)(1)(A) in that they demonstrated to both striking and non-striking employees who witnessed the assaults, or were likely to learn of them, that they, too, would suffer similar reprisals if they did not support the strike.⁶⁹

⁶⁶ See, e.g., *American Screw Co.*, 122 NLRB 485.

⁶⁷ *Sheet Metal Workers International Assn., AFL-CIO (York Corp.)*, 121 NLRB 676. Member Bean found it unnecessary to pass upon the issue as the remedy for the violation would be the same in any event. The trial examiner here held that the *Curtis Brothers* (119 NLRB 232) and *Alloy Manufacturing* (119 NLRB 307) cases, which dealt with the coercive effect of minority picketing for recognition, were inapplicable. He further pointed out that *Ruffalo's Trucking Service* (119 NLRB 1268) did not require a different conclusion since there the respondent union's secondary picketing was found to have been coercive within the meaning of sec. 8(b)(1)(A) only because it was one of the means by which the minority union sought to obtain recognition.

⁶⁸ See, e.g., *Central Massachusetts Joint Board, Textile Workers Union of America, AFL-CIO (Chas. Weinstein Co., Inc.)*, 123 NLRB 590; *United Packinghouse Workers of America (R. L. Zeigler, Inc.)*, 123 NLRB 464; *United Hatters, Cap & Millinery Workers International Union, AFL-CIO (Louisville Cap Company)*, 123 NLRB 572; *Highway Truckdrivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Virginia-Carolina Freight Lines, Inc.)*, 123 NLRB 551.

⁶⁹ *United Packinghouse Workers of America (R. L. Zeigler, Inc.)*, *supra*.

Unions were found to have violated section 8(b)(1)(A) by such conduct as threats of loss of employment to employees for filing unfair labor practice charges,⁷⁰ or for failure to pay union dues for a period when they were not subject to the respondent's union-security agreement.⁷¹ One union was held to have violated section 8(b)(1)(A) by requiring employees, as a condition of employment, to pay a certain percentage of their wages to the union for later disbursement to union members only.⁷²

(2) Minority Union Activities⁷³

The Board during the past year adhered to the view first expressed in the *Curtis Brothers, Inc.* and *Alloy Manufacturing* cases⁷⁴ that a union coerces employees in their statutory rights if it exerts economic pressure upon an employer in order to be recognized as exclusive bargaining representative, notwithstanding its lack of majority status among the employees.⁷⁵

A majority of the Board also ruled during fiscal 1959 that section 8(b)(1)(A) is violated by a minority union which becomes party to a collective-bargaining agreement recognizing the union as the exclusive representative of the employees in the contract unit.⁷⁶ It was pointed out here that the act guarantees employees the right to be represented only by a majority representative, as well as the right to bargain independently and individually with their employer in

⁷⁰ *Local 138, International Union of Operating Engineers, AFL-CIO (Nassau and Suffolk Contractors Assn.)*, 123 NLRB 1393; *Local Union No. 450, International Union of Operating Engineers, AFL-CIO (Tellepsen Construction Co.)*, 122 NLRB 564

⁷¹ *Montgomery Ward & Co.*, 121 NLRB 1552.

⁷² *Houston Maritime Assn., Inc., and Master Stevedore Assn. of Texas*, 121 NLRB 389

⁷³ A majority of the Board has held that the new provisions concerning recognition and organizational picketing in sec. 8(b)(7), which were added by the 1959 amendments to the act, "merely amplify" the proscriptions of 8(b) regarding minority union picketing applied in the *Curtis* and *Alloy* cases *Local 208, International Brotherhood of Teamsters, etc. (Sierra Furniture Co.)*, 125 NLRB No. 20 (November 1959), footnote 6. Majority opinion by Chairman Leedom and Members Rodgers and Jenkins, Member Fanning dissenting. The amendments are contained in sec. 704(c), Public Law 86-257, enacted Sept. 14, 1959.

⁷⁴ *Drivers, Chauffeurs, and Helpers Local 639, International Brotherhood of Teamsters, etc. (Curtis Brothers, Inc.)*, 119 NLRB 232; *International Association of Machinists, Lodge 942, AFL-CIO (Alloy Manufacturing Co.)*, 119 NLRB 307; Twenty-third Annual Report, pp. 80-82. Compare the views of the courts of appeals denying enforcement of the Board's orders in those cases, either in whole or in part, *infra*, p. 127.

⁷⁵ *International Association of Machinists, Local Lodge No. 311 and District Lodge No. 94, AFL-CIO (Machinery Overhaul Co., Inc.)*, 121 NLRB 1176; *Jimmy Ray Rush, agent, Local 5367, United Steel Workers, etc. (Casper Mfg Co., Inc.)*, 123 NLRB 216; *United Hatters, Cap & Millinery Workers International Union, AFL-CIO (Louisville Cap Co.)*, 123 NLRB 572. Member Fanning, who joined the Board after issuance of the *Curtis* and *Alloy* decisions, has continued to disagree with the principles established by those cases.

Compare *Retail Clerks International Assn. (Montgomery Ward & Co.)*, 122 NLRB 1264. where the respondent union was held not to have violated the act under the *Curtis-Alloy* rule when it picketed one of the employer's stores for the purpose of enlisting customer support for the union's economic strike at other stores where it was the majority representative of the employer's employees.

⁷⁶ *Bernhard-Altman Texas Corp.*, 122 NLRB 1289; *United Transports, Inc.*, 123 NLRB 668; Member Fanning dissenting in both cases.

the absence of a majority representative. According to the majority of the Board, this right of employees to bargain individually if they so choose is impaired by an exclusive-recognition agreement with a minority union because such an agreement imposes upon the employees the duty to bargain only through the contracting union. The execution of such an agreement, in the majority's view, is therefore not only a violation of section 8(a)(1) and (2) on the part of the employer, but also a violation of section 8(b)(1)(A) on the part of the union. The union's violation in this type of situation has been remedied by enjoining the union from (1) acting as the exclusive bargaining representative of the contracting employer's employees until after it demonstrates majority status in a Board-conducted election, and (2) giving effect to the unlawful exclusive-recognition contract.⁷⁷

(3) Illegal Union-Security and Hiring Practices

The Board has continued to hold that a union which attempts to cause, or causes, an employer to violate the 8(a)(3) prohibition against discrimination contravenes the provisions not only of section 8(b)(2) but also of section 8(b)(1)(A) because such conduct necessarily has the effect of restraining or coercing employees in the exercise of their right to participate in or refrain from union activities. Thus, unions were again found to have violated section 8(b)(1)(A) by executing and maintaining union-security agreements which were unlawful because, for instance, the union did not have the requisite majority status;⁷⁸ by illegally enforcing union-security agreements against employees who had met, or were not subject to, statutory union-security obligations;⁷⁹ or by being parties to discriminatory hiring agreements and practices.⁸⁰ Like violations were found where unions caused the discharge, or other discrimination in hiring or employment, of employees who were unacceptable to the union for reasons unconnected with lawful union-security obligations.⁸¹

⁷⁷ *Bernhard-Allmann Texas Corp*, *supra*; *United Transports, Inc*, *supra*. See also *Adley Express Co*, and *Motor Transport Labor Relations, Inc.*, 123 NLRB 1372.

⁷⁸ *Lovely Photos, Inc. and Waldorf Pen Co., Inc.*, 123 NLRB 1054; *Sierra Furniture Co*, 123 NLRB 1198.

⁷⁹ *Montgomery Ward & Co, Inc*, 121 NLRB 1552, *American Screw Co.*, 122 NLRB 485; *Spector Freight System, Inc*, 123 NLRB 43.

⁸⁰ *Millwrights' Local 2232, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al. (Farnsworth & Chambers)*, 122 NLRB 300; *Local Union No 450, International Union of Operating Engineers, AFL-CIO (Tellepsen Construction Co.)*, 122 NLRB 564; *Galveston Maritime Assn, Inc, Houston Maritime Assn., Inc., et al.*, 122 NLRB 692; *Local 138, International Union of Operating Engineers, AFL-CIO (Nassau and Suffolk Contractors Assn)*, 123 NLRB 1393; *Local 363 a/w International Brotherhood of Boilermakers, etc (Anchor Welding & Manufacturing Co., et al)*, 123 NLRB 1877.

⁸¹ See, e.g., *American Screw Co.*, 122 NLRB 485; *Local Union No. 450, International Union of Operating Engineers, AFL-CIO (Tellepsen Construction Co.)*, 122 NLRB 564. *Galveston Maritime Assn., Inc., Houston Maritime Association Inc., et al.*, 122 NLRB 692; *Pacific Maritime Assn*, 123 NLRB 559; *Local 138, International Union of Operating Engineers, AFL-CIO (Nassau and Suffolk Contractors)*, 123 NLRB 1393.

2. Restraint and Coercion of Employers

Section 8(b)(1)(B) prohibits labor organizations from restraining or coercing employers in the selection of their bargaining representatives. Section 8(b)(1)(B) was found to have been violated by a local union which refused to administer its current contract, and to deal with an employer representative in grievance and strike matters, because the representative had formerly been associated with the union.⁸² As had been held under similar circumstances,⁸³ such a withdrawal from negotiations is "designed to exert some restraint or coercion . . . over and above a mere attempt at persuasion [of the employer]." The Board also held that the local union's International was equally liable for the unfair labor practice in that it had instructed the local to withdraw in accordance with the International's established policy not to deal with former union officers who represent employers.⁸⁴

3. Causing or Attempting To Cause Discrimination

Section 8(b)(2) prohibits labor organizations from causing, or attempting to cause, employers to discriminate against employees within the meaning of section 8(a)(3).

The numerous cases arising under this section during fiscal 1959 were, for the most part, again concerned with illegal union-security requirements, and unlawful hiring arrangements and practices which resulted in closed-shop conditions or otherwise conditioned employment opportunities on union membership or other union requirements.⁸⁵

a. Forms of Violations

To find that section 8(b)(2) was violated, the respondent union must be shown to have caused, or attempted to cause,⁸⁶ an employer to discriminate against employees for reasons prohibited by section 8(a)(3).⁸⁷ Unlawful employer discrimination will be attributed to

⁸² *International Ladies' Garment Workers' Union, etc. (Slate Belt Apparel Contractors Assn.)*, 122 NLRB 1390.

⁸³ *Paddock Pools of California, Inc.*, 120 NLRB 249.

⁸⁴ See also *International Typographical Union, AFL-CIO, and Local 38 (Haverhill Gazette Co.; Worcester Telegram Publishing Co., Inc.)*, 123 NLRB 806.

⁸⁵ For illegal employer participation in such practices, see the chapter on 8(a)(3) violations, pp. 68-74, *supra*.

⁸⁶ For cases involving illegal attempts to cause discrimination, see, e.g., *Local 432, Sheet Metal Workers International Association, et al. (Rountree Co.)*, 123 NLRB 1541; *Local 911, International Brotherhood of Teamsters, etc. (Wand Corp.)*, 122 NLRB 499.

⁸⁷ See, for instance, *Philadelphia Woodwork Co.*, 121 NLRB 1642 (discharge of an employee because of nonmembership in the respondent union; *Combined Century Theatres, Inc.*, 123 NLRB 1759 (discharge of an employee who was only a "permit" man and not a "card" man); *Pacific Maritime Association*, 123 NLRB 559 (denial of employment to an applicant who had brought suit to regain membership in the respondent union); *O. Rasmussen & Sons*, 122 NLRB 674 (refusal to employ a worker whose clearance had been prevented by the respondent union's denial of his request for a transfer from a sister local).

the labor organization charged with an 8(b)(2) violation, whether or not there is an illegal agreement,⁸⁸ if the union is shown to have made an effective request for the discrimination. A union's conduct in objecting to the employment of an employee for prohibited reasons may constitute an effective request, and therefore "cause" for his nonemployment, even though there are no accompanying threats of retaliation against the employer.⁸⁹

The Board had occasion to reaffirm its view that a union violates section 8(b)(2) by causing unlawful discrimination against employees by their immediate employer indirectly through pressure on another employer with whom the immediate employer has a sub-contract.⁹⁰

(1) Illegal Hiring Agreements and Practices

The Board has consistently held that a union violates section 8(b)(2)—as an employer violates section 8(a)(3)⁹¹—by being party to an agreement that requires expressly or in effect that preference in hiring be given to the contracting union's members,⁹² that non-member applicants obtain a work permit or clearance from the union as a condition of employment,⁹³ or that otherwise establishes hiring practices which result in closed-shop conditions.⁹⁴ The maintenance of such agreements, regardless of whether specific discrimination occurs, has been held to have the inevitable effect of unlawfully encouraging membership in the contracting union.⁹⁵ A find-

⁸⁸ *Local 392, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry (Schenley Distillers, Inc)*, 122 NLRB 613. See also *International Union of Operating Engineers, Little Rock Local 382-382A, AFL-CIO (Armco Drainage & Metal Products, Inc.)*, 123 NLRB 1833.

⁸⁹ *Local 392, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry (Schenley Distillers, Inc)*, *supra*

⁹⁰ *Local 911, International Brotherhood of Teamsters, etc (Wand Corp)*, 122 NLRB 499, Member Fanning dissenting

⁹¹ *Supra*, pp. 71-74.

⁹² *Crawford Clothes, Inc*, 123 NLRB 471.

⁹³ See, for instance, *Carpenters' District Council of Rochester and Vicinity (Rochester Davis-Fetch Corp.)*, 122 NLRB 269, *Local 715, United Brotherhood of Carpenters and Millwrights, AFL-CIO (Charles S. Wood and Co)*, 121 NLRB 543, *Morrison-Knudsen Co, Inc*, 122 NLRB 1147, *International Union of Operating Engineers, Little Rock Local 380-382A, AFL-CIO (Armco Drainage & Metal Products, Inc.)*, 123 NLRB 1833; *C. Rasmussen & Sons*, 122 NLRB 674

⁹⁴ *Indianapolis and Central Indiana District Council, United Brotherhood of Carpenters & Joiners of America, Local 60 (Mechanical Handling Systems, Inc)*, 122 NLRB 396, *Argo Steel Construction Co.*, 122 NLRB 1077, Member Bean dissenting in part.

⁹⁵ *C. Rasmussen & sons, supra*, *Crawford Clothes, Inc, supra*; *International Union of Operating Engineers, Little Rock Local 382-382A, AFL-CIO (Armco Drainage & Metal Products, Inc.)*, *supra*. Manifestly, a union which causes, or attempts to cause, discrimination in hiring on the basis of union requirements violates sec 8(b)(2), whether or not it acts pursuant to an agreement or understanding with the employer. See, e.g., *C. Rasmussen & Sons, supra*; *Indianapolis and Central Indiana District Council, United Brotherhood of Carpenters & Joiners, etc., Local 60 (Mechanical Handling Systems), supra*; *United States Steel Corp. (American Bridge Division)*, 122 NLRB 1324 (Member Bean dissenting in part), *Local Union No. 450, International Union of Operating Engineers, AFL-CIO (Tellespen Construction Co)*, 122 NLRB 564, *Hod Carriers, Building & Common Laborers Union of America, Local No. 324, AFL-CIO (Roy Price, Inc.)*, 121 NLRB 508; *Los Angeles-Seattle Motor Express, Inc*, 121 NLRB 1629; *United Construction Workers Div. of District 50, United Mine Workers (Jeffrey Mfg. Co)*, 122 NLRB 1,

ing that a union was party to an unlawful arrangement may be based on express provisions of the union's written contract with an employer,⁹⁶ as well as on oral agreements,⁹⁷ or on a tacit understanding evidenced by the parties' conduct.⁹⁸ The discriminatory purpose of clauses obligating an employer to hire the contracting union's members has been found indicated by the incorporation of union rules and regulations prohibiting members from working with suspended members, or from working with nonmembers, or providing for clearance procedures at the local and parent organization levels;⁹⁹ or the like incorporation in the contract of an International's general working rules designed to effectuate the employment of members only.¹

Union responsibility for the maintenance of illegal hiring agreements again was held not effectively suspended by so-called "savings clauses" purporting to nullify illegal contract provisions in general terms, without clearly identifying the provisions which were intended to be stricken.² Nor was a clause, ostensibly deferring the operation of an illegal preference system, held available as a defense where it was shown that the parties to the agreement continued to give preference in employment to the contracting union's members.³

Local 610, United Brotherhood of Carpenters and Joiners of America (Cameron Store Fixtures), 122 NLRB 476; *Local 432, Sheet Metal Workers International Association (Rountree Co.)*, 123 NLRB 1541.

⁹⁶ See, e.g., *Crawford Clothes, Inc.*, 123 NLRB 471.

⁹⁷ See, e.g., *C Rasmussen & Sons*, 122 NLRB 674; *Local 176, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Dimeco Construction Co)*, 122 NLRB 980.

⁹⁸ See, e.g., *International Union of Operating Engineers, Little Rock Local 382-382A, AFL-CIO (Armco Drainage & Metal Products, Inc)*, 123 NLRB 1833. See also *supra*, pp. 71-72.

⁹⁹ See, for instance, *Indianapolis and Central Indiana District Council, United Brotherhood of Carpenters & Joiners and Local 60 (Mechanical Handling Systems)*, 122 NLRB 396. Here, the Board noted that the local's parent constitution "provides for a clearance card committee to examine all clearance cards and recommend their acceptance to the Local; that the finances of the District Council were to be derived from the sale of working cards and permits, etc.; that the District Council has sole right to issue quarterly working cards to Locals for members 'together with such extra cards as may possibly be required in addition thereto, taking a receipt therefrom, and the Local Union shall be held strictly accountable therefor'; for the Council's right to full control over working cards with authority to revoke; that members coming into the district are required to procure working cards before seeking employment, that members of construction [sic] whether following trade actively or not, are required to secure working cards; that carpenters are subject to fine if the working card is not presented to the steward before going to work; and, the requirement of a foreman for every three journeymen—who must be a member in good standing and is charged with the responsibility of enforcing the trade rules."

¹ See *Argo Steel Construction Co*, 122 NLRB 1077. Here the working rules provided in part that "the foreman [being] the representative of the employer who shall issue instructions to the workmen" shall be a member in good standing or have made application for membership, that 50 percent of the employees on a job had to be members of the local, and that the remaining 50 percent could be members from other locals of the International; and that if not sufficient members were available, nonmembers had to have work permits from the union, and that qualified permit men had to become members of the union.

² *Argo Steel Construction Co*, *supra*. See also p. 70, *supra*.

³ *Local 1566, International Longshoremen's Association (Maritime Ship Cleaning and Maintenance Co)*, 122 NLRB 967.

In the absence of express contract terms, the maintenance of illegal employment arrangements in some cases was determined on the basis of the parties' actual practices. Thus, the existence of a preferential hiring arrangement requiring clearance by the respondent union was held apparent from the actions of the representatives of the respondent union and the employer in connection with the job application of an employee who had not been cleared.⁴ The Board concluded that the bilateral demands of the parties that the employee get straightened out at the union hall, accompanied by their references to their contract, could only be the result of a preexisting arrangement to which the parties adhered. The Board therefore held that the union here violated section 8(b)(2) both by causing the discrimination against the complaining employee, and by being party to an illegal hiring arrangement. In another case, the employer's denial of work to an employee before he had secured a work permit from the respondent union was found to have been attributable to the existence of a discriminatory work permit arrangement.⁵ The evidence here showed that the union steward had made known to the employees that he regarded work permits as a condition of employment, and that the employer, with the union's knowledge, had acceded to the work permit requirement over a period of 4 years. The employer's consistent action in another case in obtaining clearance from the respondent union in the hiring of employees again was held to have clearly resulted from the existence of a bilateral hiring arrangement rather than to have constituted a unilateral practice on the part of the employer.⁶

Illegal hiring arrangements frequently take the form of an undertaking by an employer to abide by union rules requiring union approval of hiring foremen who are union members and as such are obligated to hire only union members in good standing.⁷ In one case the respondent union's control over hiring was further implemented by apprenticeship and competency systems which were administered by union-controlled foremen.⁸ In the Board's view, this type of

⁴ *C. Rasmussen & Sons*, 122 NLRB 674. The employee here was a member of a sister local but had been unable to secure the transfer without which he could not be cleared under the respondent union's rules.

⁵ *Local 715, United Brotherhood of Carpenters and Millwrights, AFL-CIO (Charles S. Wood and Co.)*, 121 NLRB 543.

⁶ *International Union of Operating Engineers, Little Rock Local 382-382A, AFL-CIO (Armco Dramage & Metal Products, Inc.)*, 123 NLRB 1833.

⁷ See *Local Union No. 450, International Union of Operating Engineers, AFL-CIO (Tellepsen Construction Co.)*, 122 NLRB 564; *News Syndicate Co., Inc.*, 122 NLRB 818; *International Union of Operating Engineers, Local 150, AFL-CIO (Fluor Co.)*, 122 NLRB 1374; *United States Steel Corp. (American Bridge Division)*, 122 NLRB 1324, Member Bean dissenting in other respects.

⁸ *News Syndicate Co., Inc.*, *supra*. In another case the respondent union's demands for the establishment of apprenticeship and priority systems under the union's exclusive control were held to have constituted an unlawful "attempt to cause" discrimination within the meaning of sec 8(b)(2). *International Typographical Union, AFL-CIO, and Local 38 (Haverhill Gazette; Worcester Telegram Publishing Co., Inc.)*, 123 NLRB 806.

arrangement results in abdication by the employer of his hiring function to a supervisory employee who acts in a dual capacity, *viz.*, as the employer's agent in hiring personnel, and as agent for the union in enforcing the latter's restrictive hiring policies.⁹ However, where all that was shown was that an employer had a policy of affording members of the contractual representative of his employees preference in allocating extra employment, no 8(b)(2) violation on the part of the union was found.¹⁰ The fact that the employer's hiring foreman was a member of the union was held insufficient alone to make the union liable for the discrimination in favor of its members. Neither the parties' contract nor the union's constitution or rules placed the foreman here under an obligation to accord preference to the union's members. Nor was it shown that the foreman acted as agent for both the employer and the union in carrying out his duties.

(a) Exclusive hiring halls

The Board has adhered to the view that any exclusive hiring-hall agreement—i.e., an agreement obligating the employer to recruit all personnel through the union—unlawfully encourages union membership, unless the agreement meets the *Mountain Pacific*¹¹ standards by providing explicitly for the nondiscriminatory functioning of the hiring agreement, for the posting of nondiscrimination assurances, and for the employer's right to reject any employee referred by the union.¹² Thus, in each case under section 8(b)(2) where the respondent union was found to have been party to an exclusive hiring agreement which lacked the prescribed safeguards, the union was held to have thereby violated the act.¹³

⁹ *News Syndicate Co., Inc.*, *supra*; *United States Steel Corp (American Bridge Division)*, *supra*.

¹⁰ *Manhattan News Co.*, 121 NLRB 1287, Member Rodgers dissenting.

¹¹ *Mountain Pacific Chapter of the Associated General Contractors, Inc.*, 119 NLRB 883; Twenty-third Annual Report, pp 85-86. See also *N.L.R.B. v. Mountain Pacific Chapter of the Associated General Contractors, Inc.*, 270 F. 2d 425 (C.A. 9)

¹² See *Hod Carriers, Building & Common Laborers Union of America, Local No 324, AFL-CIO (Roy Price, Inc.)*, 121 NLRB 508. Under the *Mountain Pacific* standards, set out in *Joint Council of Teamsters No. 37, et al, International Brotherhood of Teamsters, etc. (Jones-Tompkins)* 122 NLRB 514; *Local Union No. 450, International Union of Operating Engineers, AFL-CIO (Tellepsen Construction Co.)*, 122 NLRB 564; and *Ganveston Maritime Assn., Inc, Houston Maritime Assn., Inc., et al*, 122 NLRB 692, an exclusive hiring-hall agreement to be valid must provide:

(1) Selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements

(2) The employer retains the right to reject any job applicant referred by the union

(3) The parties to the agreement post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement. . . .

¹³ See the cases cited in the preceding footnote; see also *C. Rasmussen & Sons*, 122 NLRB 674; *News Syndicate Co., Inc.*, 122 NLRB 818.

(2) Illegal Seniority Practices

Several cases under section 8(b)(2) arose from the maintenance and enforcement of contractual seniority clauses which either were discriminatory in themselves, or unlawfully delegated authority to determine seniority controversies to the contracting union.

In one case,¹⁴ a challenged seniority clause was held unlawful because of provisions that employees who transferred from the contracting union's bargaining unit to occupations represented by other unions lost their seniority in the former unit and could not retransfer to it with accumulated seniority in the event of a layoff. The seniority of such transferees could be restored only with consent of both contracting parties. No like restrictions were imposed on employees who transferred out of the contract unit to occupations not represented by other unions. Aside from being party to this agreement, the union was found to have further violated section 8(b)(2) by enforcing the seniority clause so as to cause several employees, who had transferred to another represented unit, to be laid off rather than to permit their retransfer into the contract unit on the basis of their overall seniority. The effect, according to the Board, was to penalize the employees for exercising their statutory right to be represented by a union of their own choosing, and to discourage membership in a union other than the contracting union. Section 8(b)(2) was held similarly violated by a union's being party to an agreement which provided that employees who transferred out of the contract unit must apply for withdrawal cards in order to retain their seniority.¹⁵ Under the union's constitution, eligibility to obtain such withdrawal cards was limited to union members. Enforcement of the clause against a transferee, so as to prevent his transfer back into the unit, was held to be a separate violation of section 8(b)(2).

The Board also had occasion to reiterate that maintenance of an agreement by an employer and a union which delegates to the union authority to settle seniority controversies violates both section 8(a)(3)¹⁶ and 8(b)(2) because of the presumption that the agreement "is intended to, and in fact will, be used by the union to encourage membership in the union."¹⁷ The occasion arose from the complaint

¹⁴ *International Association of Machinists, Aeronautical Industrial Dist Lodge 727 and Local Lodge 758, AFL-CIO (Menasco Mfg. Co.)*, 123 NLRB 627.

¹⁵ *Local 1417, International Association of Machinists, AFL-CIO (The Electric Auto-Lite Co., Mt. Vernon Foundry Division)*, 123 NLRB 1099

¹⁶ *Supra*, p. 73

¹⁷ *Kramer Bros Freight Lines, Inc.*, 121 NLRB 1461, quoting *Pacific Intermountain Express Co.*, 107 NLRB 837, 845. Compare *Armour & Co.*, 123 NLRB 1157, where a majority of the Board (Member Rodgers dissenting) found that the employer did not unlawfully delegate control over seniority by indicating to the respondent union that it would leave to the union the choice between two possible and equally valid constructions of an ambiguous seniority clause. And see *Crawford Clothes, Inc.*, 123 NLRB 471, where the Board found insufficient evidence of an agreement giving exclusive control over seniority to the respondent union.

of several employees that they were placed on a seniority list in accordance with the dates of their admission to the respondent union, rather than in accordance with contractual job seniority based on length of service. In finding that the union unlawfully caused the employer to discriminate in the complaining employees' seniority standing, a majority of the Board¹⁸ relied on (1) the un rebutted presumption that the union, having been delegated control over seniority, exercised its control in an unlawful manner, (2) the actual proof of the discriminatory enforcement of contractual seniority provisions, and (3) independent evidence indicating that the employer acted under union pressure rather than pursuant to ordinary business or other lawful considerations.

(3) Illegal Union Security

As in prior years, the cases under section 8(b)(2) dealing with union security involved agreements which failed to conform to the requirements of the proviso to section 8(a)(3),¹⁹ and instances of illegal enforcement of otherwise valid union-security clauses.

In one case, a clause requiring that new employees signify their intention of joining the contracting union within 30 days was held unlawful because it exceeded the maximum union security permitted by the proviso of section 8(a)(3), *viz*, a contractual requirement that employees join the union not less than 30 days following the beginning of their employment.²⁰ In some cases, union-security agreements were held to have been made and maintained in violation of section 8(b)(2) because the contracting union was not in compliance with the now repealed²¹ affidavit and filing requirements of section 9 (f), (g), and (h).²² As in the case of illegal hiring agreements,²³ the vice of maintaining an illegal union-security agreement is not cured by a general "savings clause" which purports to make inoperative illegal provisions of the contract without specifically stating which provisions are suspended.²⁴

¹⁸ Member Fanning dissenting.

¹⁹ After the close of the fiscal year, the National Labor Relations Act was amended by Public Law 86-257 (Sept. 14, 1959). The new law affects the former union-security proviso of sec. 8(a)(3) in two respects: (1) sec. 201(d) of the new law repeals subsecs. (f), (g), and (h) of sec. 9 of the old law and thereby eliminates the former affidavit and filing requirements as a condition to the validity of permissible union-security agreements; (2) sec. 705(d) of the new law amends sec. 8 of the old law by adding a new subsec (f) which permits certain agreements, not valid under the union-security proviso of sec. 8(a)(3), in the building and construction industry.

²⁰ *Argo Steel Construction Co.*, 122 NLRB 1077.

²¹ See p. 68, footnote 73.

²² See *Philadelphia Woodwork Co.*, 121 NLRB 1642; *Local 592, United Association of Journeymen & Apprentices of the Plumbing, etc. (Schenley Distillers, Inc.)*, 122 NLRB 613; *Union de Soldadores, Mecanicos, Montadores de Acero, etc. (Sucesores de Abarca, Inc.)*, 122 NLRB 1603.

²³ See p. 90, *supra*.

²⁴ See *Argo Steel Construction Co.*, 122 NLRB 1077; see also *Local 1566 (Maritime Ship Cleaning and Maintenance Co.)*, 122 NLRB 967.

Unions which were parties to union-security agreements were held to have violated section 8(b) (2) where it was shown that their requests for enforcement against employees were motivated by reasons other than the employees' delinquency in regular initiation fees or dues, the only reason sanctioned by the act. Thus, a union was found to have unlawfully brought about the discharge of an employee because of his refusal to pay a fine for nonattendance at a union meeting.²⁵ The employee here, when temporarily laid off, applied but was denied a union "withdrawal card" which, as in all cases of layoff, would have continued his membership without having to pay dues during the layoff period. The denial of a withdrawal card was due to the employee's loss of good standing in consequence of his failure to pay a fine for nonattendance at a union meeting. Not having a withdrawal card, the employee was charged with dues during the layoff, and not having paid them, the union obtained his discharge. The Board held that the employee's back dues were not "periodic dues . . . uniformly required" within the section 8(a) (3) proviso since they would not have accrued but for the failure to pay a nonattendance fine. It was pointed out that, while different classes of employees may be charged unequal dues, any distinction must be based on a general classification which is "reasonable."²⁶ A classification based upon failure to pay fines, the Board concluded, is not a reasonable classification.

Section 8(b) (2) was held similarly violated by a union which attempted to enforce its agreement requiring maintenance of membership in good standing against an employee who had lost such standing because of a violation of the union's rule against the holding of more than one job;²⁷ and by a union which utilized its union-security contract to obtain the discharge of employees, ostensibly for alleged nonpayment of dues, but in fact for participation in an opposition movement.²⁸ In one case,²⁹ following a remand by the Court of Appeals for the Ninth Circuit,³⁰ the Board held that the complaining employee's discharge for dues delinquency was brought about unlawfully by the respondent union after it had accepted the employee's belated tender and had thereby waived its right to request his discharge.³¹ The Board said: "The law is not so unconscionable as to sanction the forfeiture of a right where the party to whom the obligation was owing accepted performance of the obligation, simply because the performance was late."

²⁵ *National Automotive Fibres, Inc.*, 121 NLRB 1358.

²⁶ The Board cited *Electric Auto-Lite Co.*, 92 NLRB 1073, and *Food Machinery and Chemical Corp.*, 99 NLRB 1430

²⁷ *Local 1417, International Association of Machinists, AFL-CIO (The Electric Auto-Lite Co., Mt. Vernon Foundry Division)*, 123 NLRB 1099

²⁸ *Puerto Rico Dry Dock & Marine Terminals*, 123 NLRB 1298

²⁹ *Technicolor Motion Picture Corp.*, 122 NLRB 73

³⁰ *N.L.R.B. v. Technicolor Motion Picture Corp., and Local 683 of the International Alliance of Theatrical Stage Employees, etc.*, 248 F. 2d 348

³¹ *Technicolor Motion Picture Corp.*, 122 NLRB 73

b. Remedial Provisions

In remedying section 8(b) (2) violations the Board has generally directed the unions involved to cease and desist from their unlawful practices, and, in the case of illegal hiring and other discriminatory employment agreements and illegal union-security agreements, to refrain from making, maintaining, and enforcing such agreements.

Affirmatively, unions which had unlawfully caused discrimination against employees were directed—jointly with the employer where also a respondent—to make whole the discriminatees for losses sustained because of the discrimination. As noted in one case, however, it is the Board's policy normally not to require the payment of back pay by an agent of the union.³² Unions which were found to have been parties to illegal seniority practices were directed, jointly with the offending employers, to reimburse employees for losses of pay resulting from their lowered seniority standing,³³ or to give appropriate notice to the employer and the discriminatee that they do not object to the restoration of his rightful seniority.³⁴

In the cases involving illegal hiring and union-security agreements, the Board has had particular concern for the reimbursement to employees of moneys exacted from them under such agreements. In the Board's view, it would not effectuate the policies of the act to permit the retention of exactions such as dues, assessments, or work permit fees collected as the price paid by employees³⁵ in order to obtain or retain their jobs. The refund of such payments has been generally directed.³⁶ The reimbursement remedy³⁷ has, however, been omitted where the agreement under which payments were collected

³² *Hod Carriers, Building & Common Laborers Union, Local No. 324, AFL-CIO (Roy Price, Inc.)*, 121 NLRB 508

³³ *News Syndicate Co., Inc.*, 122 NLRB 818.

³⁴ *Meenan Oil Co., Inc.*, 121 NLRB 580. In such cases, the employer is directed to restore the discriminatee's former seniority status. *Ibid.*; see also *News Syndicate Co., Inc., supra*.

³⁵ Repayment of exactions from a supervisor was not directed because supervisors are not protected by sec 7 of the act. *Local 715, United Brotherhood of Carpenters and Millwrights, AFL-CIO (Charles S. Wood and Co.)*, 121 NLRB 543.

³⁶ See *Crawford Clothes, Inc.*, 123 NLRB 471; *International Union of Operating Engineers, Little Rock Local 382-382A, AFL-CIO (Armo Drainage & Metal Products, Inc.)*, 123 NLRB 1833. *Local 1566, International Longshoremen's Association (Maritime Ship Cleaning and Maintenance Co.)*, 122 NLRB 967; *Local 176, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Dimeo Construction Co.)*, 122 NLRB 980; *Argo Steel Construction Co.*, 122 NLRB 1077; *Morrison Knudsen Co., Inc.*, 122 NLRB 980; *International Union of Operating Engineers, Local 150, AFL-CIO (Fluor Co.)*, 122 NLRB 1374; *United States Steel Corp. (American Bridge Division)*, 122 NLRB 1324; *Retail Clerks International Association (Montgomery Ward & Co., Inc.)*, 122 NLRB 1264; *The Grand Union Co.*, 122 NLRB 589; *Local Union No. 85, Sheet Metal Workers' International Association (R. C. Mahon Construction Co.)*, 122 NLRB 631; *Galveston Maritime Association, Inc., et al.*, 122 NLRB 692; *C. Rasmussen & Sons*, 122 NLRB 674; *News Syndicate Co., Inc.*, 122 NLRB 818; *Los Angeles-Seattle Motor Express, Inc.*, 121 NLRB 1629.

³⁷ Commonly referred to as *Brown-Olds* remedy. See *J. S. Brown-E. F. Olds Plumbing & Heating Corp. (United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the U.S. & Canada, Local 231, AFL-CIO)*, 115 NLRB 594.

from employees was not substantively unlawful, as in the case of a union-security agreement which conformed to the limitations of the proviso to section 8(a) (3), except as to the contracting union's qualification under section 9 (f), (g), and (h).³⁸

4. Refusal To Bargain in Good Faith

Section 8(b) (3) requires a labor organization—as section 8(a) (5) requires an employer³⁹—to bargain in good faith regarding the employment terms of the employees in an appropriate unit.

The duty of labor organizations and employers to bargain in good faith is defined in section 8(d) of the act. It includes the duty of each party to meet and negotiate with the authorized representative of the other. Thus, a union's refusal to negotiate with the employer's agent because he was a former union officer was held to have violated section 8(b) (3).⁴⁰ The statutory bargaining duty also includes the obligation to execute a contract incorporating the terms on which agreement was reached. The respondent union in one case⁴¹ was held to have violated this duty by refusing to sign a contract validly negotiated for a multiemployer unit which properly included the employer whose employees the union represented.⁴²

a. Bargaining Demands

One case under section 8(b) (3) turned on the right of a union to bargain about unresolved grievances after the expiration of the contract which provided for arbitration of grievances.⁴³ The Board held that by insisting on bargaining, rather than to arbitrate regarding the subject matter of the pending grievances as a condition of reaching agreement on a new contract, the union violated section 8(b) (3). The Board expressly adopted the view of the Court of Appeals for the Sixth Circuit in the *Knight Morley* case⁴⁴ that, under the Supreme Court's *Lincoln Mills* decision,⁴⁵ the expiration of a collective-bargaining agreement containing a grievance clause

³⁸ *Philadelphia Woodwork Co.*, 121 NLRB 1642, see also *E & B Brewing Co., Inc.*, 122 NLRB 354. See footnote 19, p. 94, regarding the repeal of sec. 9 (f), (g), and (h) by Public Law 86-257, Sept. 14, 1959.

³⁹ Sec. 8(a) (5) cases are discussed at pp. 74-84, *supra*.

⁴⁰ *International Ladies' Garment Workers' Union, AFL-CIO, etc (Slate Belt Apparel Contractors' Association)*, 122 NLRB 1390. The union's conduct also was held to have violated sec 8(b) (1) (B), *supra*, p 88.

⁴¹ *Operating Engineers Local Union No. 3, AFL-CIO (California Association of Employers)*, 123 NLRB 922.

⁴² For a discussion of multiemployer unit problems, see pp. 40-42, *supra*.

⁴³ *Local 611, International Chemical Workers Union, AFL-CIO (Purex Corp., Ltd.)*, 123 NLRB 1507.

⁴⁴ *N L R. B. v. Knight Morley Corp.*, 251 F 2d 753, certiorari denied 357 U.S. 957; Twenty-third Annual Report. pp. 116-117.

⁴⁵ *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, affirming a district court judgment under sec 301 of the act.

may not be held to relieve a party to the contract of its obligation to arbitrate any grievances which arose during the term of the contract. The Board overruled its own decision in *Knight Morley*⁴⁶ insofar as it held that grievances arising, but not finally disposed of, during the term of a contract providing for arbitration are automatically returned to the general area of bargaining.

Insistence by a party on the inclusion in a contract of clauses dealing with matters not within the scope of mandatory bargaining, and which may be illegal, violates the statutory bargaining duty.⁴⁷ However, the Board held during the past year⁴⁸ that a union's demands for contract clauses which violated section 8(b)(2)⁴⁹ did not also violate section 8(b)(3) because the employer did not object to the proposals. In the absence of objections, the Board pointed out, the proposals did not prevent the parties from reaching agreement on a new contract.

b. Section 8(d) Requirements

As part of the statutory duty to bargain, labor organizations and employers are required, reciprocally, to give 60 days' notice of intention to terminate an existing contract, as well as 30 days' notice of contract disputes to Federal and State conciliation services.⁵⁰ Section 8(d) further provides that, during a specified 60-day period, the existing contract must be kept in effect without resort to strikes or lockouts by the parties.

The section 8(d) notice requirement having been violated by a union when striking without first notifying the proper conciliation services, the Board directed the union to give the required notice in advance of any future strike for contract modification.⁵¹ The Board also made clear that any such future notice would necessarily have to be preceded by a *new* 60-day notice to the employer.

In the same case, the Board construed section 8(b)(4) as prohibiting strikes as well as picketing during the statutory 60-day waiting period. The respondent union was therefore enjoined from violating section 8(d) by prematurely striking or picketing. The Board noted that picketing "is often a form of inducement to strike, and that the Board's power to forbid a particular kind of strike necessarily includes the authority to forbid inducement, whether by picketing or otherwise, to engage in such a strike."

⁴⁶ 116 NLRB 140

⁴⁷ See *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, Twenty-third Annual Report, pp 104-106

⁴⁸ *International Typographical Union, AFL-CIO & Local 38 (Haverhill Gazette; Worcester Telegram Publishing Co., Inc.)*, 123 NLRB 806.

⁴⁹ The proposals covered discriminatory apprenticeship and priority systems. See *supra*, p. 91.

⁵⁰ Sec. 8(d).

⁵¹ *Broward County Carpenters' District Council et al., United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Broward Builders Exchange, Inc.)*, 122 NLRB 1008.

5. Secondary Strikes and Boycotts⁵²

The prohibitions of the act against secondary boycotts—before its amendment on September 14, 1959—were contained in section 8(b) (4) (A) and (B). Subsection (A) was directed against secondary action intended to disrupt the business relations of separate employers. It also prohibited secondary, as well as primary, strike action for the purpose of forcing an employer or self-employed person to join any labor or employer organization.⁵³ Subsection (B) contained the prohibition against strike action against an employer for the purpose of forcing another employer to recognize a labor organization not certified by the Board.⁵⁴

a. Inducement or Encouragement of Employees To Strike

The cases under the old section 8(b) (4) (A) and (B) continued to present questions as to whether the persons allegedly approached by the respondent unions were “employees” for secondary boycott purposes; whether alleged work stoppages had been illegally induced or encouraged within the meaning of the section; and whether action engaged in by a respondent union in fact constituted a strike.⁵⁵

(1) Employee Status⁵⁶

The Board⁵⁷ during fiscal 1959 adhered to the view that union inducement of strike action by secondary employees does not violate section 8(b) (4) unless the employees are those of an employer within the definition of section 2(2) of the act. Thus, a secondary strike by railroad employees,⁵⁸ and by the employees of a Railway Express

⁵² The secondary boycott provisions of sec 8(b)(4) were substantially amended by secs 704 (a) and (b) of Public Law 86-257 (Sept. 14, 1959).

⁵³ For a violation of the prohibition against forcing self-employed persons to join a union, see *Local 691, International Brotherhood of Teamsters, etc (Morgan Drive-Away, Inc.)*, 121 NLRB 1039.

⁵⁴ In the amended sec. 8(b)(4), the prohibition against forcing employers or self-employed persons to join labor or employer organizations is contained in subsec. (A), which also prohibits labor organizations from forcing employers to enter into any agreement prohibited by the new sec. 8(e). Subsec (B) of the amended sec 8(b)(4) sets out the prohibitions against both strike action to bring about cessation of business between primary and secondary employers, and secondary strikes to compel recognition of a noncertified labor organization. The section now also makes it an unfair labor practice “to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce,” for the purposes proscribed in subsecs. (A), (B), (C), and (D).

⁵⁵ The same questions may also arise in cases under subsecs. (C) and (D) of sec 8(b) (4). See *infra*, pp 106-108.

⁵⁶ The amended sec 8(b)(4) prohibits inducement or encouragement of work stoppages by “any individual” rather than by “employees.”

⁵⁷ Member Rodgers dissenting. Member Jenkins’ disagreement with the Board remained unchanged. See his separate opinion in *U & Me Transfer*, 119 NLRB 852, at 865.

⁵⁸ *Seafarers’ International Union of North America, etc. (Superior Derrick Corp.)*, 122 NLRB 52; *Local 1205 and Local 707, International Brotherhood of Teamsters, etc (Atlantic-Pacific Manufacturing Corp.)*, 122 NLRB 1215, *Lumber & Sawmill Workers Local Union 2409, et al. (Great Northern Railway Co.)*, 122 NLRB 1403.

Agency subject to the Railway Labor Act,⁵⁹ were held not to have violated section 8(b)(4).⁶⁰

In one case, the Board was faced with the question whether the refusal of a union to comply with a contractor's request to furnish workmen for a construction job constituted unlawful inducement of "employees" within the meaning of section 8(b)(4).⁶¹ The reason for the union's refusal was that nonunion prefabricated materials were used on the job, contrary to the "fabrication" clauses of the union's National Construction Agreement to which the contractor was a party.⁶² The Board's conclusion that inducement of "employees" was involved was based on the relations between the union and the contractor under the National Construction Agreement. As found by the Board, this contract established what amounted to an exclusive hiring hall by requiring the contractor to look exclusively to the union as his source of construction workers.⁶³ In addition, the contractor was obligated to make payments into health, welfare, pension, and vacation funds, as well as into an educational trust fund. All of the funds were for the benefit of the union's members generally, rather than for the sole benefit of members actually hired by the contractor. Holding that the members whom the union refused to refer were "employees" for section 8(b)(4) purposes, the Board stated:

Where, as here, an employer agrees by contract to look to a union as the exclusive source of supply of workers; where only union members are hired by the employer as a result of referrals by the union; and, where the contract obligates the employer to contribute to fringe benefit plans in which the union members generally share, we are convinced that "an established arrangement and course of employment" is contemplated affecting members of the union which have sufficient characteristics of "certainty and continuity" to warrant

⁵⁹ *United Hatters, Cap & Millinery Workers International Union, AFL-CIO (Louisville Cap Co.)*, 121 NLRB 1154

⁶⁰ The reach of sec. 8(b)(4) has been extended in that the amended section prohibits inducement or encouragement of "any individual employed by any person engaged in commerce or in an industry affecting commerce." See sec. 8(b)(4)(i) of the amended act

⁶¹ *Local No 636, United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (The Detroit Edison Co and Westinghouse Electric Corp.)*, 123 NLRB 225

⁶² The "fabrication" clause of the National Construction Agreement provided that certain prefabricated materials had to originate in shops employing the union's members if they were to be handled by the union's members on the job. The union's constitution and bylaws required members "to make it generally known to the entire membership . . . that all [such materials] fabricated and processed in a plant . . . away from the job site shall be prepared by only members."

⁶³ In view of the contractual relationship, the Board held that the situation here was comparable to that in *United Marine Division, Local 333, et al. (New York Shipping Association)*, 107 NLRB 686; *Local 1422, International Longshoremen's Association Independent (Charleston Stevedoring Co., et al.)*, 118 NLRB 920 *Glaziers Union, Local No. 27, et al. (Johet Contractors Association)*, 99 NLRB 1391, 202 F. 2d 606 (C.A. 7), certiorari denied 346 U.S. 824, where nonreferred workers were held not "employees," was considered inapplicable because there the employers who requested referrals were not shown to have a collective-bargaining agreement covering the union's members, and the union was not the employer's exclusive hiring source for the particular type of workers.

the conclusion that they are "employees,"⁶⁴ even though they do not stand "in the proximate relation of employer and employee."⁶⁵

(2) Inducement and Encouragement To Strike

The words "induce and encourage" in section 8(b)(4) have been held broad enough to include in them every form of influence and persuasion.⁶⁶ And, as the Board again pointed out, whether a union's conduct induced or encouraged a cessation of work depends "on the factual situation" in each case.⁶⁷

Thus, picketing of a struck employer with "unfair" or similar signs has consistently been held to constitute inducement of neutral employees not to enter the struck plant.⁶⁸ Also, unions have been held to have induced employees of secondary employers not to handle struck goods or nonunion materials by such conduct as veiled threats of bodily harm "if this kept up";⁶⁹ admonitions by union representatives that the union's constitution and bylaws provided for fines and expulsion for working on nonunion materials;⁷⁰ informing truck-drivers that they "did not have to pull [struck] freight if they did not want to";⁷¹ or invocation of a union foreman's obligation to inform his subordinates of the nonunion origin of materials.⁷² The Board has also held that section 8(b)(4) inducement or encouragement may result from a union representative's silence. Thus, a failure to reply to questions regarding the purpose of a picket line was found to have illegally caused the refusal of employees to cross it.⁷³ Similarly, the Board held a union responsible for the refusal of employees to handle certain materials, because its representative remained silent when the employees stated to their supervisor that they would not handle the material unless ordered by the "union"

⁶⁴ See *United Marine Division, Local 333, et al. (New York Shipping Association)*, 107 NLRB 686.

⁶⁵ See *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 191-192.

⁶⁶ *International Brotherhood of Electrical Workers (Samuel Langer) v. N.L.R.B.*, 341 U.S. 694, 701-702.

⁶⁷ *Seafarers' International Union of North America, etc. (Superior Derrick Corp.)*, 122 NLRB 52. Member Fanning dissenting from the finding of a violation.

⁶⁸ See, e.g., *Bangor Building Trades Council, AFL-CIO (Davison Construction Co., Inc.)*, 123 NLRB 484; *Eau Claire and Vicinity Building and Construction Trades Council, et al. (St. Bridget's Catholic Congregation, Inc.)*, 122 NLRB 1341; *District Lodge No. 24, International Association of Machinists (Industrial Chrome Plating Co.)*, 121 NLRB 1298.

⁶⁹ *Highway Truckdrivers Local 107, International Brotherhood of Teamsters, Chauffeurs, etc. (Virginia-Carolina Freight Lines, Inc.)*, 123 NLRB 551.

⁷⁰ *United Brotherhood of Carpenters and Joiners of America, et al. (Midwest Homes, Inc.)*, 123 NLRB 1806; *United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al. (Del-Mar Cabinet Co., Inc.)*, 121 NLRB 1117.

⁷¹ *General Drivers, Salesmen and Warehousemen's Local 984, et al., International Brotherhood of Teamsters, etc. (The Humko Co., Inc.)*, 121 NLRB 1414.

⁷² *United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al. (Del-Mar Cabinet Co., Inc.)*, *supra*.

⁷³ *Seafarers' International Union of North America, etc. (Superior Derrick Corp.)*, 122 NLRB 52, Member Fanning dissenting from the finding of a violation.

to do so.⁷⁴ The representative, the Board noted, "was the one person to whom they could look for an affirmative authorization to work because to them, Kelley was the 'union.'"

Citing the earlier *Genuine Parts* case,⁷⁵ the Board reiterated during the past year that the statements of a union representative seeking the support of employees in a strike against an employer other than their own are no less violative of section 8(b) (4) because they are made "in the confines of a union meeting."⁷⁶

In several cases the Board had occasion to point out again that inducement or encouragement of employees to refuse to work for one of the purposes prohibited by section 8(b) (4) violates the act, even though it is not successful and the employees to whom it is addressed do not respond to the offending union's appeal.⁷⁷

Section 8(b) (4), as in effect during fiscal 1959, prohibited inducement or encouragement of employees to engage in a "concerted refusal" to work for the specified purposes.⁷⁸ However, inducement of a single employee to stop work has been held unlawful where it was "part of an overall pattern of activity."⁷⁹

(a) Refusal to refer employees as inducement to strike

In the *Detroit Edison*⁸⁰ case, the Board held that the respondent union violated section 8(b) (4) (A) by refusing to refer workmen requested by an employer under the hiring provision of an existing contract. As noted above,⁸¹ the union's object was to compel adherence to the "fabrication" clauses of its contract which implemented the union's policy to prevent the use of prefabricated materials on construction projects where its members were employed, unless the materials were manufactured by a company employing members of the union. The Board was of the view that, by refusing to refer its

⁷⁴ *Local No. 636, United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of the U S and Canada (The Detroit Edison Co. and Westinghouse Electric Corp.)*, 123 NLRB 225.

⁷⁵ *Truck Drivers & Helpers Local Union No. 728, International Brotherhood of Teamsters, etc. (Genuine Parts Co.)*, 119 NLRB 399; Twenty-third Annual Report, pp 92-93

⁷⁶ *Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, et al. (Western, Inc.)*, 93 NLRB 336, was overruled insofar as inconsistent

⁷⁷ See *Drivers, Chauffeurs, & Helpers Local 639, International Brotherhood of Teamsters, etc. (District Distributors, Inc.)*, 122 NLRB 1259, *District Lodge No. 24, International Association of Machinists, AFL-CIO (Industrial Chrome Plating Co.)*, 121 NLRB 1298 *Eau Claire and Vicinity Building and Construction Trades Council, et al. (St. Bridget's Catholic Congregation, Inc.)*, 122 NLRB 1341

⁷⁸ The amended sec. 8(b) (4), in subsec (i), more broadly prohibits inducement or encouragement of "any individual . . . to engage in a strike or a refusal [to work]."

⁷⁹ *General Drivers, Salesman and Warehousemen's Local 984, et al., International Brotherhood of Teamsters, etc (The Humko Co., Inc.)*, 121 NLRB 1414, footnote 18, citing *Capital Paper Co.*, 117 NLRB 635; Twenty-second Annual Report, p. 97; see also *International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, AFL-CIO and Local 366, et al (Adolph Coors Co.)*, 121 NLRB 271

⁸⁰ *Local No. 636, United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of the U S. and Canada (The Detroit Edison Co. & Westinghouse Electric Corp.)*, 123 NLRB 225.

⁸¹ *Supra*, p. 100.

members under these circumstances, the union in fact induced and encouraged them “to engage in a strike or a concerted refusal in the course of their employment to perform services,” and that the union itself engaged in a “strike” within the meaning of section 8(b) (4) since the term “strike” encompasses any “concerted interruption of operations by employees.”

In finding unlawful inducement, the Board pointed out that, under the hiring arrangement between the respondent union and the employer, the prospects of union members for employment with the company depended entirely upon whether the union informed them of the availability of jobs. In the Board’s view—

Possessed with this information, Respondents were in a position to determine whether their members would work or remain idle. By withholding it, they could insure that their members remained ignorant of job opportunities. . . . In our opinion, when a union assumes the role of an exclusive clearing house for jobs in its jurisdiction, the refusal to inform its members that jobs are available is as effective in influencing or persuading them not to work as any affirmative instruction in this regard would be.

In support of its conclusion that the union’s refusal to refer workmen was the equivalent of a strike, the Board said:

Where a union, as the agent of its members, refuses to permit them to work for any employer with whom it has a labor agreement by the simple expedient of failing to dispatch them to a project where operations are about to commence or already are in progress the union causes a concerted interruption of the employer’s operations as surely as if it had called the men off the job where they were already at work.⁸²

b. Neutrality of Secondary Employer

The prohibition against secondary boycotts is intended to protect neutral employers against being drawn into a dispute between a union and another employer. Where a union charged with a secondary boycott shows that the employer to whom it extended its primary strike was an “ally” of the primary employer, rather than a neutral, the Board dismisses the complaint because one of the elements of a statutory secondary boycott is lacking. Separate employers have been held to be allies for secondary boycott purposes either on the basis of their corporate relationship,⁸³ or on the basis of the performance of “struck work” turned over by the primary employer to the secondary employer.⁸⁴

⁸² The situation here was likened to that in *Charleston Stevedoring Co., et al* (118 NLRB 920, *supra*, p. 100) where the respondent union was held to have similarly violated sec 8(b) (4) (A) by refusing to post requests for workmen on its bulletin board.

⁸³ See *Warehouse & Distribution Workers Union, Local 688, et al. (Bachman Machine Co.)*, 121 NLRB 1229.

⁸⁴ See *International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, AFL-CIO and Local 366, et al (Adolph Coors Co.)*, 121 NLRB 271.

In the *Bachman Machine* case⁸⁵ a majority of the Board⁸⁶ reaffirmed its view that an ally relationship exists whenever the two employers in an alleged secondary boycott situation are commonly owned and controlled.⁸⁷ The majority rejected the contention that this was in conflict with the decision of the court of appeals in the *J. G. Roy* case,⁸⁸ pointing out that the court refused to find an ally relationship between the two companies there because, in its view, there was no common control but only common ownership.

In the *Coors Company* case,⁸⁹ the Board held that the employer to whom the respondent union extended its strike activities was not a neutral because it became voluntarily involved in the union's primary dispute by taking over delivery of the struck employer's goods in accordance with a prestrike arrangement.⁹⁰ The *Truck Operators League* case⁹¹ involved a similar situation, and the Board held that the truckers who performed delivery services for a group of struck beer distributors were the latter's allies in their dispute with the union and therefore were outside the protection of section 8(b)(4)(A). The Board rejected a contention that the truckers, being common carriers, could not be viewed as "allies" of the primary employers because of their statutory and common-law obligations not to refuse to render service. The Board observed that "as the right to strike or picket a primary employer who happens to be a common carrier may not be disputed,⁹² the concomitant right to strike or picket the primary employer's 'ally' who happens to be a common carrier also may not be disputed."

c. Ambulatory and Common Situs Picketing

The cases under the secondary boycott provisions of the act have continued to present questions regarding the legality of picketing activities in connection with a primary dispute away from the primary employer's premises.

Ambulatory picketing—as exemplified by the following of a struck employer's delivery trucks by pickets, and picketing upon the trucks' arrival at their destination—has been held unlawful where the

⁸⁵ *Warehouse & Distribution Workers Union, Local 688, et al (Bachman Machine Co.)*, *supra*.

⁸⁶ Member Rodgers dissenting; Members Jenkins and Fanning not participating.

⁸⁷ The Court of Appeals for the Eighth Circuit, disagreeing with this view, denied enforcement of the Board's order. See *infra*, p 131.

⁸⁸ *J. G. Roy and Sons Co. v. N L R. B.*, 251 F. 2d 771 (C A 1), reversing 118 NLRB 286

⁸⁹ *International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, AFL-CIO and Local 366, et al. (Adolph Coors Co)*, *supra*.

⁹⁰ The union here was, however, held to have otherwise violated sec 8(b)(4)(A) by its activities at the premises of neutral customers.

⁹¹ *General Teamsters Local No 324, International Brotherhood of Teamsters, etc. (Truck Operators League of Oregon)*, 122 NLRB 25.

⁹² The Board cited *International Brotherhood of Teamsters, etc (Conway's Express)*, 87 NLRB 972

picketing at the delivery points was conducted so as to constitute an appeal to neutral employees to strike.⁹³ However, the Board made clear that mere following of trucks by strikers does not, by itself, constitute prohibited inducement.⁹⁴

Insofar as secondary action must have one of the specified objects to come within the statutory prohibition, the Board has adhered to the *Washington Coca-Cola* rule⁹⁵ that ambulatory picketing "at the premises of a secondary employer is *per se* for an unlawful object where a primary employer has a permanent place of business at which a union can adequately publicize its labor dispute."⁹⁶ In one case where the rule was applied, the Board noted particularly that the employer maintained a permanent place of business and that his nonstriking delivery employees spent a substantial part of their working day there and crossed the union's picket line an average of 10 times a day.⁹⁷ That the union's ambulatory picketing in fact had an unlawful object was held shown by the fact that picketing was not confined to the proximity of the primary employer's trucks, as well as by the actual work stoppages of secondary employees, the union's letters requesting customers to cease doing business with the primary employer, the failure of union agents "to dispel or mitigate the effect which its picketing could reasonably be expected to have on the [neutral] employees," and the apparent attempt of the union's business agent at a union meeting to solicit the strike support of employees of neutral employers.

One union was held to have violated section 8(b)(4)(A) when it included in the picketed locations a gate which had been expressly

⁹³ See *Local No. 688, Warehouse & Distribution Workers' Union, Local 600, et al., International Brotherhood of Teamsters, etc. (Acme Paper Co., et al.)*, 121 NLRB 702. Compare *General Teamsters Local No. 324, International Brotherhood of Teamsters, etc. (Truck Operators League of Oregon)*, 122 NLRB 25.

⁹⁴ *Local No. 688, Warehouse & Distribution Workers' Union, Local 600, et al., International Brotherhood of Teamsters, etc. (Acme Paper Co., et al.)*, *supra*; *General Drivers, Salesmen and Warehousemen's Local 984, et al., International Brotherhood of Teamsters, etc. (The Humko Co., Inc.)*, 121 NLRB 1414.

⁹⁵ *Washington Coca-Cola Bottling Works, Inc.*, 107 NLRB 299, enforced 220 F. 2d 380 (C.A., D.C.).

⁹⁶ *General Teamsters, Local No 324, International Brotherhood of Teamsters, etc. (Truck Operators League of Oregon)*, 122 NLRB 25. The Board also made clear that the doctrine applies in an "ally" situation such as was involved. Here the trucks of a substitute delivery concern, which had a permanent place of business, were followed and picketed at their destination. However, no violation was found here because of the absence of *inducement*, i.e., the absence of evidence "of any contact between the pickets and any employees of secondary employers, or that the pickets ever even came within sight of such employees"

⁹⁷ *Amarillo General Drivers, Warehousemen & Helpers Local Union No. 577, International Brotherhood of Teamsters, etc. (Crowe-Gulde Cement Co.)*, 122 NLRB 1275. It was pointed out that the amount of time spent at the primary employer's permanent place of business and the frequency with which the drivers crossed the picket line distinguished the case from the *Otis Massey* case (225 F. 2d 205 (C.A. 5)), where the court denied enforcement of the Board's order in 109 NLRB 275. Compare *Drivers, Chauffeurs & Helpers, Local 639, International Brotherhood of Teamsters, etc. (District Distributors)*, 122 NLRB 1259.

reserved by the struck employer for the use of independent contractors and their employees.⁹⁸ The gate was one of five entrance points to the large plant, and a large sign gave notice that it was "FOR EMPLOYEES OF CONTRACTORS—ONLY—[COMPANY] EMPLOYEES USE OTHER GATES." Instructions to guards to limit the use of the gate accordingly were strictly enforced, persons using the wrong gate being turned back. The Board⁹⁹ held that the picketing of the contractors' gate was unlawful because the union was aware of its limited use, and because it made oral appeals to neutral employees using the gate not to cross the picket line, thus manifesting its intent to enlist their support in the union's dispute with the company.

d. "Hot Cargo" Agreements

In the cases where unions had defended their secondary boycott action by invoking agreements with the respective employers relieving employees of the duty to handle "hot cargo," the respondent unions were uniformly found to have violated section 8(b)(4)(A) on the authority of the Supreme Court's decision in the *Sand Door* case.¹ In *Sand Door*, the Supreme Court sustained the Board's conclusion that a "hot cargo" agreement is not a valid defense to secondary boycott charges.²

6. Strikes for Recognition Against Certification

Section 8(b)(4)(C) forbids a union from engaging in strike activity in order to force an employer to recognize or bargain with one labor organization as the representative of the employer's employees when another union has been certified by the Board as such representative.³

Three cases under section 8(b)(4)(C) reached the Board for decision during fiscal 1959. Violations of the section were found in two cases.⁴ One case was dismissed on the recommendation of the trial examiner.⁵

⁹⁸ *Local 761, International Union of Electrical, Radio & Machine Workers, AFL-CIO (General Electric Co., Appliance and Television Receiver Division)*, 123 NLRB 1547.

⁹⁹ Member Fanning concurring specially.

¹ *Local 1976, United Brotherhood of Carpenters & Joiners of America et al. (Sand Door & Plywood Co.) v N.L.R.B.*, 357 U.S. 93, affirming 113 NLRB 1210 Twenty-third Annual Report, pp. 107-110.

² A new subsection (e) added to sec 8 of the 1947 act by Public Law 86-257, sec 704(b), now makes it an unfair labor practice for employers and unions to enter into "hot-cargo" type contracts. However, a proviso to the new sec 8(e) exempts certain contracts in the construction industry from its operation. Another proviso deals with exemptions from the application of both sec. 8(a) and 8(b)(4)(B) in the garment industry.

³ Public Law 86-257, September 14, 1959, amends 8(b)(4) but continues to forbid specified union action for the purposes described in subsec. (c).

⁴ *National Maritime Union, AFL-CIO (Moore-McCormack Lines, Inc.)*, 121 NLRB 69, *District Lodge No 24, International Association of Machinists (Industrial Chrome Plating Co.)*, 121 NLRB 1298.

⁵ *Retail Clerks International Association (Montgomery Ward Co., Inc.)*, 122 NLRB 1264.

No novel issues were involved, each case turning primarily on whether or not the purpose of the activities with which the respondent union was charged was to force an employer to recognize it as bargaining representative notwithstanding the outstanding certification of another union.

In the *Industrial Chrome* case, the Board specifically rejected the union's contention that its activities were for organizational purposes only. This contention, the Board held, could not be reconciled with the established fact that the employer was placed on the union's unfair list and was picketed in order to force him to conform wages and other employment conditions to the union's "area standard." These pressures, the Board pointed out, constituted "an attempt to obtain conditions and concessions which normally result from collective bargaining."⁶ A further indication that the union sought recognition, and was not concerned with organization, according to the Board, was that before picketing commenced the union abandoned its efforts to reach the employees through such traditional organizational methods as personal solicitation or meetings with employees.

In *Moore-McCormack*, the Board adopted the trial examiner's finding that the respondent union's picketing activities after certification of another union were unlawful within the meaning of section 8(b)(4)(C) in that they implemented previous threats of the union that all measures would be taken to enforce the union's rights under a contract it had with the employer before the certification. On the other hand, the Board in *Montgomery Ward* agreed with the trial examiner's conclusion that the respondent union's picketing was lawful because it was intended to enforce contract demands in several bargaining units where the union had representative status, and not, as alleged, to force the employer to recognize the union for another unit in which it had lost the election.

7. Jurisdictional Disputes

Section 8(b)(4)(D) forbids a labor organization from engaging in or inducing strike action for the purpose of forcing any employer to assign particular 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, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work."

⁶ The Board referred to the following earlier cases where a similar conclusion was reached. *Carter Manufacturing Co.*, 120 NLRB 1609; *Francis Plating Co.*, 109 NLRB 35; *Petrie's, an Operating Division of Red Robin Stores, Inc.*, 108 NLRB 1318

An unfair labor practice charge under this section, however, must be handled differently from charges alleging any other type of unfair labor practice. Section 10(k) requires that parties to a jurisdictional dispute be given 10 days, after notice of the filing of charges with the Board, to adjust their dispute. If at the end of that 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 is empowered to hear and determine the dispute.

Section 10(k) further provides that pending section 8(b)(4)(D) charges shall be dismissed where the Board's determination of the underlying dispute has been complied with, or where the parties have voluntarily adjusted the dispute. A complaint issues if the party charged fails to comply with the Board's determination. A complaint may also be issued by the General Counsel in case of failure of the method agreed upon to adjust the dispute.⁷

a. Proceedings Under Section 10(k)

In order for the Board to proceed with a determination under section 10(k), the record made at the hearing must show that a work assignment dispute within the meaning of sections 8(b)(4)(D) and 10(k) exists; that there is reasonable cause to believe that the respondent union has induced a work stoppage in connection with the dispute; and that the parties have not adjusted their dispute or agreed upon methods for its voluntary adjustment.

(1) Disputes Subject To Determination

A dispute to be subject to a determination under section 10(k) must concern the assignment of particular work to a group of employees "in derogation of, or rather than, assignment to members of [an] other group."⁸

The Board has consistently held that it may properly take cognizance of a dispute arising from disagreement between two unions over which of two existing bargaining units appropriately includes disputed work, and that it may resolve such a dispute by making the necessary unit determination.⁹ This type of situation was involved in the *Libbey-Owens-Ford* case where a craft union, the long-time representative of the company's skilled glasscutters, resisted the transfer of all machine cutters to the production and maintenance units represented by another, certified, union which also claimed jurisdiction over cutting-machine jobs. While the dispute remained

⁷ Public Law 86-257, Sept. 14, 1959, reenacts subsec. (D) of sec. 8(b)(4), and sec 10(k) in identical language.

⁸ See Twenty-third Annual Report, p 100.

⁹ *Window Glass Cutters League of America, AFL-CIO (Libbey-Owens-Ford Glass Co.)*, 123 NLRB 1183, citing earlier similar cases. Members Rodgers and Bean dissented on separate grounds

unresolved, the company acquired additional cutting machines of a new type and assigned all new jobs to employees in the production and maintenance unit. The craft union then struck in protest. A majority of the Board rejected the contention that this situation was sufficiently similar to that in *Lindsay Wire Weaving*¹⁰ to require dismissal of the case. It was pointed out that in *Lindsay Wire* no jurisdictional dispute within the meaning of sections 8(b)(4)(D) and 10(k) was found because the dispute between the striking union and the employer was only over the method by which certain work was to be performed and there was no issue as to whether the striking union was to represent the employees performing the work.

The Board had occasion in one case to reiterate that a primary dispute between an employer and a union about the hiring of additional employees for a particular job comes within section 10(k).¹¹ Here, the respondent unions sought to have their members employed on a construction project where the contractor and two subcontractors had assigned certain kinds of work to their own employees without regard to their union membership. The respondents contended, in part, that there was no jurisdictional dispute under the act because the evidence showed nothing more than that the unions sought to put additional employees on the job. Citing earlier similar cases,¹² the Board rejected this contention as without merit.

Two proceedings under section 10(k) involved disputes over the adoption of certain work-jurisdiction clauses by employers in the printing and publishing industry.¹³ In each case, adoption of the disputed work clause would have required the assignment to the disputing union's members of work then being performed by non-members. The Board held that the statute was applicable, again pointing out in *Heiter-Starke* that to hold that the type of dispute involved concerned lawful contract proposals and was not jurisdictional in the statutory sense "would amount to a holding that a union can subvert the clear intent of the statute to proscribe jurisdictional strikes by the simple expedient of recasting a demand for assignment of work into a contractual proposal setting forth its position in the jurisdictional dispute."

In the *Heiter-Starke* case, the Board rejected the union's contention that since its contractual work assignment demands in some

¹⁰ *American Wire Weavers' Protective Association, AFL-CIO (The Lindsay Wire Weaving Co.)*, 120 NLRB 977; Twenty-third Annual Report, pp. 100-101

¹¹ *Local 472, International Laborers Union, Heavy & General Construction, et al. (Ernest Renda Contracting Co., Inc.)*, 123 NLRB 1776.

¹² *Local 450, International Union of Operating Engineers, AFL-CIO (Industrial Painters and Sand Blasters)*, 115 NLRB 964, 968; *I L A. No. 1351, Steamship Clerks and Checkers, Independent (Roethermel Brothers)*, 108 NLRB 712, 715.

¹³ *International Typographical Union, AFL-CIO, et al (Worcester Telegram Publishing Co., Inc.)*, 121 NLRB 793; *Local 27, International Typographical Union, et al. (Heiter-Starke Printing Co., Inc., et al.)*, 121 NLRB 1013.

instances were addressed to employers who had never before engaged in the particular type of work, the demand was for future, rather than present, assignment and therefore not a proper subject for a 10(k) determination under the Board's *Anheuser-Busch* decision.¹⁴ The Board pointed out that the disputing unions had bargained on a multiemployer unit basis, and that it was of no controlling significance that some members of the group were not then engaged in the work in question.

(2) Determination of Disputes

The Board is precluded from making a determination under section 10(k) if the underlying dispute has been adjusted, or if there is "satisfactory evidence" that the parties have agreed upon methods for voluntary adjustment. Thus, no determination was made where it appeared at the hearing that the union parties to a jurisdictional dispute were obligated to settle disputes in accordance with an outstanding work-assignment decision,¹⁵ and that the company, while not initially a party to the adjustment agreement, in due time agreed to make work assignments in accordance with that decision, presently, as well as in the future.¹⁶ The Board reaffirmed the following principles governing the binding effect of agreements on methods for the adjustment of disputes: (1) An agreement is binding on an employer even though it was entered into in the midst of picket-line activity, because section 10(k) necessarily assumes the existence of activities prohibited by section 8(b)(4)(D); and (2) neither the announcement in advance of a party to an agreed-upon method for settlement that it does not intend to comply with the determination resulting therefrom, nor its subsequent failure to abide by the determination, gives the Board power to determine the dispute. The Board also made clear again that the situation is not altered where, as here, the employer has a contract assigning disputed work to one of the disputing unions. For the contract was "impliedly made subject to the provisions of the statute relating to agreed-upon methods for the voluntary settlement of disputes."

¹⁴ *District No. 9, International Association of Machinists (Anheuser-Busch, Inc.)*, 101 NLRB 346.

¹⁵ The disputing riggers and millwrights were subject to a decision of an umpire appointed by the presidents of the two parent internationals which outlined the various operations to be assigned to each union, and which also provided for the settlement of local disputes at International level, where required, in accordance with the terms of the umpire's decision.

¹⁶ *Millwrights' Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Don Cartage Co., Inc.)*, 121 NLRB 101. Compare *Local 173, Wood, Wire & Metal Lathers International Union et al. (Newark & Essex Plastering Co.)*, 121 NLRB 1094, where the mere submission of information about disputed work was held insufficient to establish an employer's intent to be bound by decisions of the National Joint Board.

(a) Nature of determination

Whenever it is found that an unresolved dispute within the meaning of section 10(k) exists, and that the parties have not agreed upon methods for settlement, the Board must ascertain whether the union charged with having violated section 8(b) (4) (D) has a valid claim to the disputed work. If such a claim is established, the Board issues a determination that the claiming union is entitled to compel the employer to assign the work to the employees in the established bargaining unit. Since a union may derive representation rights not only from a certification but also from a contract, it is the Board's practice to issue a like determination¹⁷ where "the claimant union has an immediate or derivative right under an existing contract upon which to predicate a lawful claim to the work in dispute."¹⁸ Where a union charged with a section 8(b) (4) (D) violation is found to have no valid claim to disputed work, it is the Board's practice to issue a determination to the effect that the union is not lawfully entitled to require the employer to assign the work to its members, rather than to the employer's own employees whether members of another or of no labor organization. In this type of case, the Board has consistently refrained from making an affirmative assignment of the work "to [the other party to the jurisdictional dispute], or to any other trade, craft, or class of employees."¹⁹ The Board has declined to adopt the view of the Third Circuit in the *Frank W. Hake* case²⁰ that section 10(k) requires such an affirmative award.²¹ Upon re-examination of its functions under section 10(k),²² the Board again concluded that "an arbitration type settlement of the underlying jurisdictional dispute" in a section 10(k) proceeding would not serve the combined legislative purposes of section 8(b) (4) (D) and section 10(k), which, according to the Board, are: "(1) to encourage the settlement of jurisdictional differences without Government intervention; (2) to empower this Board to determine disputes not resolved by private arbitration, and thus avoid complaint proceedings; and (3) to outlaw jurisdictional strikes in the interest of neutral employers and the public." The controlling consideration is, the Board

¹⁷ See *Local 173, Wood Wire & Metal Lathers International Union, AFL-CIO et al. (Newark & Essex Plastering Co.)*, *supra*, footnote 37

¹⁸ *International Union of Operating Engineers, AFL-CIO, Local 181, et al. (Tye & Wells)*, 121 NLRB 1072

¹⁹ See, e.g., *International Brotherhood of Electrical Workers, Local No. 90, AFL-CIO, et al. (The Southern New England Telephone Co.)*, 121 NLRB 1061

²⁰ *N.L.R.B. v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Locals 420 and 428, AFL (Frank W Hake)*, 242 F. 2d 722 (1957), Twenty-second Annual Report, pp 135-136.

²¹ See *Radio and Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers (Columbia Broadcasting System, Inc)*, 121 NLRB 1207; *Local 450, International Union of Operating Engineers, AFL-CIO (Painting and Decorating Contractors of America)*, 123 NLRB 1.

²² *Local 173, Wood, Wire & Metal Lathers, etc. (Newark & Essex Plastering Co.)*, 121 NLRB 1094.

stated, that absent representation rights of the claiming union in a 10(k) proceeding, the determination made must leave the employer free to make work assignments. The Board went on to point out that: (1) The act, except for its employer unfair labor practice provisions, was not intended to limit the employer's exercise of this power, but actually protects it in section 8(b)(4)(D), whereas the *Hake* decision requirement of affirmative jurisdictional awards would result in a restriction of the employer's right;²³ (2) "a determination that a union without representation rights was entitled, as of right, to the disputed work . . . would . . . be effecting a discriminatory assignment of the work in favor of the union's members and against those persons who were not members of that union," contrary to the express prohibitions of section 8(a)(3); and (3) that by issuing affirmative awards in accordance with the *Hake* decision the Board would be encouraging the kind of jurisdictional strike envisaged by sections 10(k) and 8(b)(4)(D) because, by striking, unions could bring section 10(k) into play with the expectation of obtaining a favorable determination and a consequent right to work assignments not obtainable by other statutory means. Observing also that its administration of section 10(k) effectively promoted industrial peace and was not "rather pointless" as suggested by the *Hake* decision, the Board pointed out that 65 dispute determinations were made during the 11-year history of section 10(k), that unfair labor practice orders were issued in only 14 of such cases, and that only 3 orders were challenged in enforcement proceedings.

b. Violation of Section 8(b)(4)(D)

Violations of section 8(b)(4)(D) were found in four cases during the past year.²⁴ In each case, the Board adopted the trial examiner's finding that the respondents had refused to comply with the decision in the antecedent 10(k) proceeding determining the underlying work assignment claims adverse to the respondents, and directing them to take appropriate action. The union's defenses in each case turned for the most part on matters that had been determined in the earlier 10(k) proceeding and were not subject to relitigation. The defense that the Board's section 10(k) determination was not binding for

²³ The Board cited the Supreme Court's ruling in *International Longshoremen's and Warehousemen's Union v. Juneau Spruce Corp.*, 342 U.S. 237, as supporting its views.

²⁴ *Local 169, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (W. H. Condo, et al)*, 121 NLRB 308; *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers (Columbia Broadcasting System, Inc)*, 121 NLRB 1207; *Local 450, International Union of Operating Engineers, AFL-CIO (C. A. Turner Construction Co.)*, 121 NLRB 1404; *Local 450, International Union of Operating Engineers, AFL-CIO (Painting and Decorating Contractors of America)*, 123 NLRB 1.

lack of an affirmative jurisdictional award was rejected²⁵ for the reasons stated in the *Newark & Essex Plastering Co.* case.²⁶

8. Excessive or Discriminatory Fees for Union Membership

Section 8(b)(5) makes it an unfair labor practice for a union to charge employees covered by a valid union-security agreement a membership fee "in an amount which the Board finds excessive or discriminatory under all the circumstances." The section further provides that "In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected."

In one case under section 8(b)(5), the Board held that the respondent union acted unlawfully when increasing its membership initiation fee fivefold and requiring employees covered by a union-security agreement to pay a \$250 initiation fee.²⁷ The fee was held both discriminatory and excessive. The evidence in the case showed that the fee increase was for the illegal purpose of maintaining a closed shop through the imposition of an initiation fee in an amount calculated to discourage entrance into the industry. There was no showing that the increase was prompted by financial necessity, the cost of providing increased benefits, or any other reason beyond the union's desire to promote a more closed union.

For the purpose of remedying the unfair labor practice, the Board directed the union to cease giving effect to the \$250 initiation fee requirement, and to return to employees subject to the requirement all sums paid in excess of the former \$50 fee.

In another case, the Board adopted the trial examiner's conclusion that the respondent union's uniform requirement of a reinstatement fee for former members, higher than the initiation fee for new members, was not discriminatory within the meaning of section 8(b)(5).²⁸

²⁵ *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers (Columbia Broadcasting System, Inc)*, *supra*; see also *Local 169, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (W. H. Condo, et al.)*, *supra*.

²⁶ *Local 173, Wood, Wire & Metal Lathers International Union AFL-CIO, et al. (Newark & Essex Plastering Co.)*, 121 NLRB 1094. See discussion at footnote 22 above.

²⁷ *Motion Picture Screen Cartoonists, Local 839, I.A.T.S.E. (Animated Film Producers Assn., et al.)*, 121 NLRB 1196.

²⁸ *Local 173, International Molders & Foundry Workers Union of North America (Hubley Mfg Co.)*, 121 NLRB 170.

IV

Supreme Court Rulings

During fiscal 1959, the Supreme Court decided four cases involving questions concerning the administration of the National Labor Relations Act. In one case, the Board participated in Supreme Court litigation as *amicus curiae* in order to state its position regarding the reach of Federal jurisdiction under the act.¹

The cases directly involving the Board were concerned with the Board's jurisdictional policies,² the relation of unfair labor practice complaints to the charges on which they are based;³ the definition of "labor organization" for section 8(a)(2) purposes;⁴ and the reviewability of representation proceedings in the Federal district courts.⁵

1. Jurisdictional Policies

The *Hotel Employees* case⁶ arose from the Board's dismissal of a representation petition on the basis of the longstanding policy not to exercise jurisdiction over the hotel industry. The Supreme Court, remanding the case, held that the Board's action in declining jurisdiction over an entire industry as a class was in conflict with the principles expressed in *Office Employees v. N.L.R.B.*⁷ Following the Court's decision, the Board revised its policy, announcing that henceforth jurisdiction will be exercised over nonresidential hotels and motels with a gross annual business of at least \$500,000.⁸

2. Relation of Unfair Labor Practice Charge to Complaint

The question before the Court in the *Fant Milling Co.*⁹ case was whether the Board, in formulating a section 8(a)(5) complaint and

¹ *Plumbers Local 298 v County of Door*, 359 U.S. 354. See sec. 5 of this chapter.

² *Hotel Employees Local No. 255, and Hotel, Restaurant Employees and Bartenders International Union, AFL-CIO (Miami Beach Hotel Assn), v. Boyd S. Leedom*, 358 U.S. 99.

³ *N.L.R.B. v Fant Milling Co.*, 360 U.S. 301.

⁴ *N.L.R.B. v Cabot Carbon Co and Cabot Shops, Inc.*, 360 U.S. 203.

⁵ *Leedom v William Kyne*, 358 U.S. 184.

⁶ *Supra*, footnote 2.

⁷ 353 U.S. 313, 318-320; Twenty-second Annual Report, pp. 114-115.

⁸ *Floridan Hotel*, 124 NLRB No. 34.

⁹ *Supra*, footnote 3.

in finding a refusal to bargain in violation of that section, could properly take cognizance of events which occurred after the filing of the charge upon which the complaint was based.

Affirming the Board's action, and reversing the adverse decision of a majority of the Court of Appeals for the Fifth Circuit,¹⁰ the Supreme Court expressed its adherence to the principle stated in the *National Licorice* case¹¹ that the Board is not confined to the specific allegations of a charge but may also deal "adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board." Thus, the Court held, the complaint in *Fant* properly included an allegation that, after the 8(a)(5) charges were filed, the employer unlawfully granted a wage increase without consulting the union, and the Board properly considered the unilateral wage increase in determining that the employer, as alleged in the charge, did not bargain in good faith. It was pointed out that, as in *National Licorice*, the postcharge conduct—the unilateral wage increase here—was "of the same class of violations as those set up in the charge [and] was 'related to' the conduct alleged in the charge and developed as one aspect of that conduct 'while the proceeding was pending before the Board.'"

As to the respective functions of an unfair labor practice charge and resulting complaint, the Court stated:

A charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit. Its purpose is merely to set in motion the machinery of an inquiry. *Labor Board v. I. & M. Electric Co.*, 318 U.S. 9, 18. The responsibility of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party. To confine the Board in its inquiry and in framing the complaint to the specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. This would be alien to the basic purpose of the Act. The Board was created not to adjudicate private controversies but to advance the public interest in eliminating obstructions to interstate commerce, as this Court has recognized from the beginning. *Labor Board v. Jones & Laughlin*, 301 U.S. 1.

Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights which Congress has imposed upon it. There can be no justification for confining such an inquiry to the precise particularizations of a charge. For these reasons we adhere to the views expressed in *National Licorice Co. v. Labor Board*. [Footnotes omitted]¹²

¹⁰ 258 F. 2d 851. The Supreme Court noted the dissenting opinion of Judge Rives.

¹¹ *National Licorice Co. v. N.L.R.B.*, 309 U.S. 350 (1940).

¹² The Court also made clear that the provision of section 10(b) that no complaint may be issued based upon conduct occurring more than 6 months before the filing of the charge does not relate to conduct subsequent to the filing of the charge.

3. "Employee Committees" as Labor Organizations

In *Cabot Carbon*,¹³ the Supreme Court, reversing the decision of the Fifth Circuit Court of Appeals,¹⁴ upheld the Board's conclusion that the Employee Committees in the employer's plant were "labor organizations" as defined in section 2(5) of the act, and that their domination by the employer constituted an unfair labor practice under section 8(a) (2).

The Supreme Court rejected the view that the Committees were outside the definition of section 2(5), because (1) they were not established for the purpose of "bargaining with" the employer in the statutory sense, and (2) Congress' 1947 amendment of section 9(a) of the act must be read to exclude such committees from the act's definition of "labor organization."

Contrary to the Fifth Circuit, the Supreme Court held that the broad term "dealing with" was not intended by Congress to be synonymous with the more limited term "bargaining with." According to the Supreme Court, it was therefore of no controlling significance that the Committees had never attempted to negotiate a collective-bargaining contract with the employer and thus did not bargain in "the usual concept of collective bargaining." The determinative factor, the decision points out, is that the Committees existed for the purpose, in part at least, "of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."¹⁵ The fact that the Employee Committees had the responsibility to, and did, handle employee grievances under an established grievance procedure in itself was held sufficient to bring the Committees squarely within the statutory definition of "labor organization." Moreover, the Court noted, the Committees made proposals and requests respecting a large variety of matters affecting the employment relationship. In the Court's view, these proposals and requests, and the employer's consideration of action upon them, established that the Committees were "dealing" with the employer within the meaning of section 2(5)—a conclusion which was not refuted by the fact that final decision in these matters remained with the employer. This is true of all such "dealing," the Court said, "whether with an independent or a company-dominated 'labor organization.' The principal distinction lies in the unfettered power of the former to insist upon its requests."

¹³ *Supra*, footnote 4.

¹⁴ 256 F. 2d 281, Twenty-third Annual Report, p 115

¹⁵ The Supreme Court noted that sec. 2(5) of the Wagner Act had been uniformly construed as extending to employee committees, similar to the ones here, and that Congress reenacted the section in the 1947 act without change.

The 1947 amendment to section 9(a) of the old act, on which the Fifth Circuit's decision was alternatively based, added to the provision "[T]hat any individual employee or a group of employees shall have the right at any time to present grievances to their employer" the words—

and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

The Supreme Court held that neither the text nor the legislative history of the amended section 9(a) indicated any intent "to eliminate [employer-established] employee committees from the term 'labor organization.'" The Court pointed out that the amended section 9(a) was adopted after Congress rejected a proposal which would have permitted an employer to form or maintain a committee of employees and to discuss with it matters of mutual interest. Congress, the Court observed, "specifically rejected all attempts to change the definition of 'labor organization' and to amend the act's provisions relating to company dominated unions." According to the Court, section 9(a) "does not say that an employer may form or maintain an employee committee for the purpose of 'dealing with' the employer . . . concerning grievances," but merely safeguards the right of individual employees or groups of employees personally to present their grievances and to have them adjusted without intervention of any bargaining representative, as long as the adjustment is not inconsistent with any existing collective-bargaining contract, and as long as the incumbent bargaining representative, if any, has been given an opportunity to be present.

4. District Court Review of Representation Proceedings

In the *Kyne* case¹⁶ a majority of the Supreme Court¹⁷ held that the jurisdiction of United States District Courts under section 24(8) of the Judicial Code (28 U.S.C. §1337) over "any action or proceeding arising under any act of Congress regulating commerce" includes the power to invalidate representation proceedings "in excess of [the Board's] delegated powers and contrary to a specific prohibition in the Act," such district court intervention was held not to be foreclosed by the review provisions of sections 9(d) and 10(e) of the National Labor Relations Act.

The district court where the case originated set aside the Board's certification of a bargaining unit which included some nonprofes-

¹⁶ *Supra*, footnote 5.

¹⁷ Justices Brennan and Frankfurter dissenting

sional employees in a predominantly professional unit.¹⁸ The district court was of the view that the Board's certification contravened the express provisions of section 9(b)(1) of the act¹⁹ and that it was therefore within the court's power to invalidate the certification. The Board had taken the view that, under the authority of the *American Federation of Labor* case,²⁰ its certification was not a "final order," and therefore was not subject to court review unless drawn in question in a proceeding for enforcement of an unfair labor practice order based on the certification. Rejecting the Board's position, the majority of the Supreme Court held that *American Federation of Labor* was inapplicable in that it left open the question whether a representation petitioner is "precluded by the [review] provisions of the [National Labor Relations] Act from maintaining an independent suit in a district court to set aside the Board's action because contrary to statute." Taking the view that such suits are not foreclosed, the majority of the Court held that the district court had the power to set the Board's certification aside because it deprived the complaining professional employees of a statutory right; that is, their right under section 9(b)(1) to be included in a bargaining unit with nonprofessionals only with their consent.

5. Board Jurisdiction in Secondary Boycott Involving Government Subdivision

In the *County of Door* case,²¹ a State court had enjoined a union from picketing a county project in protest against the employment of a nonunion contractor. Issuance of the injunction was challenged by the union on the ground that the dispute came within the jurisdiction of the National Labor Relations Board because it affected interstate commerce and because it involved questions within the purview of section 8(b)(4) of the National Labor Relations Act. The State Supreme Court affirmed the injunction for the reason that the complaining county, being a political subdivision and, as such, excluded from the definition of "employer" in the National Labor Relations Act, could not seek relief under its provisions. The Board,

¹⁸ *Kyne v. Leedom*, 148 F. Supp. 597 (D.C., D.C.), affirmed 249 F.2d 490 (C.A., D.C.), Twenty-second Annual Report, pp. 157-158.

¹⁹ Sec. 9(b)(1) provides that a unit including both professional employees (as defined in sec. 2(12)) and nonprofessional employees shall not be established "unless a majority of such professional employees vote for inclusion in such unit." Construing sec. 9(b)(1) as not requiring a self-determination election where the proposed mixed unit is to be predominantly professional, the Board included, in the unit of 233 professionals, 9 nonprofessionals with similar employment interests without the consent of the professionals.

²⁰ *American Federation of Labor v. NLRB*, 308 U.S. 401 (1940).

²¹ *Plumbers, Steamfitters, Refrigeration, Petroleum Fitters, and Apprentices of Local 298, A.F. of L. et al. v. County of Door*, 359 U.S. 354.

intervening in the U.S. Supreme Court as *amicus curiae*, submitted its view that a political subdivision is entitled to protection against secondary boycotts under the Supreme Court's decision in *Local 25, International Brothers of Teamsters etc. v. New York, New Haven & Hartford Railroad Co.*²² There, railroads, similarly excluded from the term "employer" in the act, were held entitled to the relief afforded by section 8(b) (4) (A) because the section protects not only "employers" but also "any . . . person" against secondary union pressures.²³ The Supreme Court, sustaining the Board's view, held that the "position of a county and a railroad would seem to be identical under the act," and that the reasoning of the *Local 25* case applied equally here. Citing precedents to the contrary, the Court rejected the contention that political subdivisions must be expressly included in a statute if they are to be covered by it. The Court also held that, rather than to interfere with essential State functions as urged by the union, Board jurisdiction to grant relief under the circumstances here, "far from interfering with county functions, serves to safeguard the interests of such political subdivisions."

²² 350 U.S. 155. See Twenty-second Annual Report, pp. 99-100

²³ Sec 8(b) (4) as amended by Public Law 86-257, Sept. 14, 1959, now prohibits union pressure for the object of "(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, . . ."

V

Enforcement Litigation

Board orders in unfair labor practice proceedings were reviewed by the courts of appeals in 83 enforcement cases during fiscal 1959.¹ The more important issues decided by the respective courts are discussed in this chapter.

1. Employer Unfair Labor Practices

Excluding evidentiary issues and the "union security" decisions discussed below, involving both subsections (a) and (b) of section 8, the cases arising under section 8(a) had to do with the scope of employees' section 7 right to engage in "concerted" activity for the purpose of union organization or other "mutual aid or protection," and certain incidents of an employer's bargaining obligations under section 8(a)(5). One case also presented the question whether an employer may resort to a lockout in the course of bargaining negotiations in order to exert pressure on the employees and their representative to accept a contract on his, the employer's, terms.

a. Employee Protests and Signs on Employees' Personal Effects

The Third Circuit in *Summit Mining*² upheld the Board's conclusion that the employer had violated section 8(a)(1) of the act by discharging a group of employees for staging a walkout to protest a fellow employee's dismissal. The discharge which precipitated the spontaneous strike was not itself discriminatory or otherwise unlawful, but the court noted that this did not "preclude [the] strike in protest thereof being protected."

In a comparable decision, the Seventh Circuit held that the employer in the *Time-O-Matic* case³ was not entitled to discharge a committee of employees who had left their work stations, without the permission of their foremen, in order to lodge a protest with the president of the firm regarding the discharge of a fellow employee.

¹ Results of enforcement litigation are summarized in table 19 of appendix A.

² *Summit Mining Corp. v. N.L.R.B.*, 260 F. 2d 894.

³ *Time-O-Matic, Inc. v. N.L.R.B.*, 264 F. 2d 96.

The company had an unwritten rule requiring employees to obtain the permission of their supervisors before leaving their departments, and the president invoked this rule in summarily discharging the members of the employee delegation. The court held, however, in agreement with the Board, that the discharges were nonetheless unlawful, as the circumstances indicated that the rule was either a discriminatory measure designed to suppress legitimate organizational activity by the employees, or was invoked in this instance as a mere pretext. The court also observed that the discharged employees manifestly would have been entitled to protection, under section 7 of the act, if they had gone so far as to strike in "protest over the treatment accorded a fellow employee," and that their action in attempting to take the matter up as a grievance was similarly protected, since it was only a "lesser form" of concerted activity.

In two other cases, however, the Seventh Circuit set aside Board decisions holding that concerted activity of a "lesser form" than striking was protected under section 7. In *Cleaver-Brooks*⁴ a group of employees spontaneously stopped work for a period of 20 to 25 minutes, when a management representative informed them that they were being placed under the supervision of a foreman they disliked. Four of the more vocal objectors, who acted as spokesmen for the group in ensuing conferences with the head of the firm, were discharged 2 days later. In holding that the employer's action was lawful, the court commented upon the discharged employees' "intemperate language" and "refusal to accept supervision."⁵ Referring to the work stoppage itself, the court also stated that the act "does not protect activities during working hours which disturb the efficient operation of the Company's business."⁶

In *Murphy Diesel*,⁷ the same court sustained another employer's action in penalizing a large group of union-represented employees for displaying on their persons and personal property, such as tool-boxes, signs advertising the date set at a union meeting for a strike in support of pending wage demands. A total of 155 employees were laid off, when they refused to remove the signs at the employer's request. The Board held⁸ that the disciplinary action was unlawful because the display of the strike-date signs was as much a protected

⁴ *Cleaver-Brooks Mfg Corp. v. N.L.R.B.*, 264 F. 2d 637. The Board's petition for certiorari on another point in this case was denied Oct. 12, 1959, 80 S. Ct. 58.

⁵ As had been pointed out by the Board, the Seventh Circuit in *N.L.R.B. v. Phoenix Mutual Life Insurance Co.*, 167 F. 2d 983 (certiorari denied 335 U.S. 845) had recognized the "legitimate interest" of employees in making known their views regarding the appointment of a supervisor "without being discharged for that interest."

⁶ The Board had called the court's attention to the many cases where other courts of appeals held that a work stoppage for a legitimate objective is protected even though it occurs during working hours.

⁷ *N.L.R.B. v. Murphy Diesel Co.*, 263 F. 2d 301.

⁸ The Board's decision, 120 NLRB 917, is discussed in the Twenty-third Annual Report, p. 58.

activity as the wearing of other union insignia which had been recognized by the Supreme Court as a reasonable and legitimate form of union activity.⁹ The Board also held that the employer had no valid reason for insisting on the removal of the signs, which were inoffensive, and were neither inherently disruptive of discipline nor calculated to interfere with production.¹⁰ The Board rejected, for want of evidentiary support, the trial examiner's inference that the employees' purpose in displaying the strike-date signs must have been to "taunt" the company. The court, however, in reversing the Board's decision, held that the signs had "nothing to do with union organization efforts"—as the plant had been organized for a long time—and they were "unnecessary" as a means of notifying the union's membership of the strike date 2 weeks hence, and that the inference of "taunting" was justified.

b. Lockout and Reduction of Seniority for Strikers

One important case under section 8(a)(3) presented the question whether an employer may resort to a lockout as an "offensive" weapon in collective bargaining. Another had to do with an employer's adoption of a seniority policy which discriminated against the employees who had participated in an economic strike, as compared with nonstrikers and replacements.

The issue in *Quaker State*,¹¹ which came before the Third Circuit, was whether an employer may curtail or shut down his operations in order to force the employees and their union representative to accept his terms for settlement of pending contract negotiations. The court sustained the Board's finding that this lockout, unlike the so-called lockouts involved in *Buffalo Linen* and similar cases,¹² was essentially an "offensive weapon." Here the company did not have reasonable grounds to believe that the union was about to call a sudden strike, at least without giving some advance notice or otherwise providing for a safe and orderly shutdown of critical operating units. In the circumstances, the court held, the Board had "acted according to law" in treating the lockout as a violation of section 8(a)(3) of the act, as well as 8(a)(5) and (1). While the act "permits a lockout in some circumstances," the court observed, it also forbids "interference with, impeding, or diminishing in any way the right to strike," and the lockout in this case, in advance of any bargaining impasse or actual threat of a sudden strike, had "unques-

⁹ *Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793, 802

¹⁰ In the *Caterpillar Tractor* case (230 F. 2d 357) the court had held that the employer could legally require the removal of "Don't be a scab!" buttons because the word "scab" was offensive and had a disruptive influence

¹¹ *Quaker State Oil Refining Corp. v. N.L.R.B.*, 270 F. 2d 40

¹² *N.L.R.B. v. Truck Drivers Local Union No. 449, etc (Buffalo Linen)*, 353 U.S. 87. See also the cases discussed in Twenty-second Annual Report, pp. 116-117, 124-125.

tionably lessened, if it had not destroyed entirely, future strike impact.” Noting that it is the Board’s responsibility to balance the conflicting interests “in this extremely sensitive field” on a case-to-case basis, the court enforced the Board’s order requiring the company, among other things, to reimburse the employees who had lost work during the lockout period.

In *California Date Growers*,¹³ the Board found that the employer violated section 8(a) (3) by revising the seniority list, 3 months after the termination of an economic strike, so as to reduce the seniority of the striking employees below that of nonstrikers and replacements. The Ninth Circuit sustained this finding, and distinguished its own prior decision in *Pottlatch Forests*,¹⁴ in view of the employer’s delay in posting the new seniority list and other evidence showing that the purpose of the new list was not to enable operation of the business during the strike, but to punish the strikers.

c. Employer Refusals To Bargain

Three of the cases illustrate recent applications of various settled principles in regard to an employer’s duty of collective bargaining under section 8(a) (5).

In *Quaker State*,¹⁵ the Third Circuit had occasion to apply the rule, laid down in the *Medo* case,¹⁶ that an employer may not “deal directly with the employees” in an attempt to undermine or circumvent their statutory representative.

The certified representative in *Quaker State* was an international union, which acted with and for its several locals in bargaining with the company with respect to the latter’s oil refineries. In the course of negotiations covering one of these units, the company tendered a contract offer which the local union membership voted to accept, subject to approval by the international. The international union, however, withheld approval, and the company shut down the refinery in order to force acceptance of its terms—an action which the Board and the court held to be a violation of section 8(a) (5) as well as 8(a) (3) and (1). Thereafter, the company made various attempts to get the local union membership to accept the contract without approval of the international union. To induce such local action, the company offered to reopen the refinery.

At one stage, the company sent a letter to each employee stating that its wage offer had been increased, although the improved wage proposal had yet to be tendered to the international union’s negotiators. The court agreed with the Board in holding that this course

¹³ *N.L.R.B. v. California Date Growers Assn.*, 259 F. 2d 587.

¹⁴ *N.L.R.B. v. Pottlatch Forests, Inc.*, 189 F. 2d 82.

¹⁵ 270 F. 2d 40, discussed above at footnote 11.

¹⁶ *Medo Photo Supply Corp. v. N.L.R.B.*, 321 U.S. 678 (1944).

of conduct amounted to a separate violation of section 8(a)(5). "While the relationship of the local union with its [international] bargaining representative was not satisfactory," the court remarked, "the company had no right to interfere with it as it did."

In another case,¹⁷ the District of Columbia Court of Appeals upheld the Board's position that an employer is required to produce information concerning the wage rates paid the employees in the bargaining unit when requested by the employees' representative. The union's "right to such information cannot be seriously challenged," the court observed. At the same time, the court distinguished between wage information and other information, and held that the Board had a "rational basis," in the particular circumstances of this case, for concluding that the employer was not obligated to furnish certain production and sales information which the union had requested in addition to the employees' wage rates.

The employer in *Scobell Chemical*,¹⁸ in seeking to overturn a Board finding that it had violated section 8(a)(5), contended that the union lacked majority status at the time of its bargaining request, and did not obtain a majority of signed authorization cards from the employees until after the request had been made and denied. The Second Circuit noted, however, that even if the union did not have a majority at the time of its original request, the fact that the employees thereafter struck for recognition and picketed the plant indicated that the request was a continuing one. Moreover, the court further observed, the employer was aware that the request was of a continuing character and alleged in a petition for a representation election that the union was seeking recognition. Under these circumstances, the court held that the employer's refusal to bargain with the union was a violation of section 8(a)(5). A request for recognition need not be repeated where it would be "a vain and useless formality," the court stated, and need not take any special form, "so long as there is a clear communication of meaning."

2. Union-Security Agreements

Several cases concerning union-security agreements between employers and unions involved both parties in violations of the act, the employers because the agreements unlawfully discriminated in favor of union members, in violation of section 8(a)(3), and the unions because their enforcement of the agreements caused the employers' violation and hence violated section 8(b)(2).

¹⁷ *International Woodworkers, Locals 6-7 v. N.L.R.B. (Pine Industrial)*, 263 F. 2d 483

¹⁸ *Scobell Chemical Co v. N.L.R.B.*, 267 F. 2d 922

In one case,¹⁹ the union and the company had entered into a contract requiring employees to join the union after 45 days of employment. While not invalid on its face, the contract was executed at a time when the union did not represent a majority of the employees and hence was unlawful. Although no charge was filed until more than 6 months after the agreement was executed, so that such execution was outside the section 10(b) 6-month limitation period, the District of Columbia Court of Appeals sustained the Board's conclusion that the employer's and the union's continued enforcement of the contract within the 6-month period violated the act.

The contract between the company and the union in another case contained a "first opportunity" clause in which the employer agreed that when it needed workmen it would call on the union and give it 48 hours to supply suitable job applicants before recruiting from other sources.²⁰ Although the Board, in the absence of exceptions, adopted the trial examiner's finding that this "first opportunity" clause was not unlawful on its face, the Board found, and the First Circuit agreed, that the union had operated the system in an unlawful manner by referring only union members and not considering other applicants for jobs.

One case which came before the Seventh Circuit involved a 1946 contract for an indefinite period which restricted employment to union members.²¹ In agreement with the Board, the court held that such an agreement, although valid prior to the 1947 amendments, was not protected indefinitely by the savings clause, section 102, which provided that preexisting union-security contracts, if valid under the Wagner Act, were not invalid under the Taft-Hartley amendments unless renewed or extended after such amendments became effective. The court observed that Congress could not have intended the savings clause to keep alive indefinitely an agreement in direct conflict with the purposes of the 1947 act.

a. "Subcontractor Clauses"

In the *Musser* case,²² the District of Columbia court approved a line carefully drawn by the Board in considering the legality of

¹⁹ *Local Lodge No 1424, International Association of Machinists v. NLRB (Bryan Mfg)*, 264 F. 2d 575, certiorari granted 360 U.S. 916

²⁰ *NLRB v International Association of Heat and Frost Insulators, etc (Rhode Island Covering)*, 261 F. 2d 347

²¹ *NLRB v. United Brotherhood of Carpenters, etc (Merritt-Chapman)*, 259 F. 2d 741.

²² *Operating Engineers Local Union No. 3, etc (Musser) v. NLRB.*, 266 F. 2d 905

“subcontractor clauses” common in the building trades. In that case a 1954 agreement between a local union and a contractors association provided that if the association subcontracted any work, the terms of the local’s contract would apply to the subcontractor. Thereafter, the association subcontracted to a company whose employees were represented by another union. Acting under strike pressure of the respondent local, the association caused the removal of several of the subcontractor’s employees and their replacement by employees of its own who were subject to the local’s agreement. The Board found, and the court agreed, that the association violated section 8(a)(3), and that the local violated section 8(b)(2), in causing the removal of the subcontractor’s employees.

But the Board and the court held that a new agreement between the same parties executed in 1955 was not unlawful. The new contract bound the association to award work only to subcontractors who would undertake to observe its terms, which included a union-shop clause requiring all employees to become members of the union after 31 days. After this new contract became effective, the same subcontractor sought a new subcontract, but was told that it would have to conform to the union-shop clause. This it refused to do on the ground that it had a collective-bargaining agreement with another union and would not compel its employees to join the local. The Board dismissed section 8(a)(3) and 8(b)(2) allegations based on the new contract. Affirming this ruling, the court stated that the association may have “discriminated” against the subcontractor but the act does not preclude discrimination against employers. As for the contention that the 1955 contract resulted in discrimination against the subcontractor’s employees, the court said that the Board “could lawfully conclude, as it did, that the relationships between [the association] and [the] employees of a prospective subcontractor were so attenuated that [its] refusal . . . to award a subcontract . . . did not constitute discrimination . . . against employees.”

3. Union Unfair Labor Practices

The more important issues decided by the courts of appeals in cases under section 8(b), aside from the union-security cases discussed above, concerned the validity of the Board’s *Curtis* doctrine as to recognition picketing and related activities by a minority union; and the reach of subsection (4), which bans union attempts to “induce or encourage” strikes or employee boycotts for certain specified purposes. Construction of the strike notice requirements of section 8(d) was involved in one case arising under section 8(b)(3).

a. Applicability of Section 8(b)(1)(A) to Picketing and Other Attempts by a Minority Union To Force Employer Recognition²³

In its *Curtis* and *Alloy* decisions,²⁴ the Board adopted the view that section 8(b)(1)(A) of the act reaches picketing and consumer boycott activities, such as the publication of unfair lists, conducted by an uncertified union for the purpose of compelling the employer to accord it recognition when the union represents only a minority of the employees. The Board held that such economic pressure on the employer tends to “restrain or coerce” employees in the exercise of their statutory right to select or reject a collective-bargaining representative, since it causes “damage . . . to the business on which their livelihood depends.” The District of Columbia Court of Appeals rejected this application of section 8(b)(1)(A) in the *Curtis* case, which involved so-called “stranger” picketing;²⁵ and the Ninth Circuit likewise reversed the Board’s 8(b)(1)(A) finding as to certain consumer boycott activities—direct appeals to customers, and placing the employer’s name on a “We Do Not Patronize” list—which were involved in the *Alloy* case.²⁶ But the Fourth Circuit sustained the Board’s position in a third case, *O’Sullivan*,²⁷ which involved picketing, unfair lists, and direct customer appeals as well. Petitions for certiorari were filed in all three cases, and the Supreme Court granted review of the question in the *Curtis* case.²⁸

b. Notice Obligations Under Section 8(b)(3) and 8(d)

As part of its bargaining obligation under section 8(b)(3), a union which seeks to terminate or modify an existing contract is required under section 8(d)(1) to serve on the employer a written notice 60 days before the contract’s expiration date. If, after 30 days following the 60-day notice on the employer, no agreement has been reached, section 8(d)(3) requires the union to notify Federal and State mediation agencies of “the existence of a dispute.”²⁹ Section 8(d)(4) provides that during the 60-day notice period provided in subsection (1), the contract must be continued “in full force and

²³ Public Law 86-257, Sept. 14, 1959, adds a new subsection to section 8(b) of the 1947 act (sec. 8(b)(7)), which deals specifically with picketing by unions not “currently certified” for organizational and recognition purposes.

²⁴ *Drivers, Chauffeurs, and Helpers Local 639, International Brotherhood of Teamsters, etc. (Curtis Brothers, Inc.)*, 119 NLRB 232, and *International Association of Machinists, Lodge 942, AFL-CIO (Alloy Manufacturing Co.)*, 119 NLRB 307.

²⁵ *Drivers, Chauffeurs, and Helpers Local 639, International Brotherhood of Teamsters, etc. (Curtis Brothers, Inc.) v. NLRB*, Nov. 26, 1958, 43 LRRM 2156.

²⁶ *NLRB v. International Association of Machinists, Lodge 942, AFL-CIO (Alloy Manufacturing Co.)*, 263 F.2d 796.

²⁷ *NLRB v. United Rubber, Cork, Linoleum and Plastic Workers, etc. (O’Sullivan Rubber)*, 169 F.2d 694.

²⁸ 359 U.S. 965, Apr. 20, 1959.

²⁹ Employer parties to a collective-bargaining agreement are subject to corresponding notice requirements as part of their bargaining duty under sec. 8(a)(5).

effect” without resort to strike in support of the union’s contract demands.³⁰

In the *Carroll House* case,³¹ the respondent union, seeking modification of its current contract, gave the prescribed 60-day notice under 8(d)(1), but delayed for 76 days thereafter before notifying Federal and State mediation services of the dispute. After the expiration of the 60-day waiting period, but only 10 days after the notice to the mediation services, the union called a strike. The union conceded that it violated section 8(d)(3) by failing to give notice to mediation services within 30 days after its 8(d)(1) notice, but denied that it violated section 8(d)(4) by striking less than 30 days after its 8(d)(3) notice. The union contended that, in the absence of any reference in 8(d)(4) to the 30-day 8(d)(3) waiting period, a strike after the 60-day 8(d)(1) period is lawful even though the striking union may have violated 8(d)(3). Affirming the Board’s decision, the District of Columbia Court of Appeals rejected this construction of 8(d), noting that “the whole thrust of . . . [section 8(d)(3)] is to give the [Mediation] Service sufficient time to intervene in an effective manner in advance of a stoppage of work, rather than after it has occurred, should the Service deem intervention necessary or desirable.” As construed by the court, section 8(d)(3) embodies two requirements: first, “the giving of notice [to the mediation agencies] within a 30-day period after the giving of notice [to the employer] under Section 8(d)(1)” ; and, second, “a 30-day waiting period [after the notice to the mediation agencies] before a strike or lockout, under Section 8(d)(4).” An “untimely” notice, given more than 30 days after the section 8(d)(1) notice, would be a violation of section 8(d)(3), the court explained, but “if . . . the union were to wait for 30 days beyond the [belated] 8(d)(3) notice, and then go out on strike, it would not be in violation of Section 8(d)(4).”³²

c. Strikes and Boycotts Prohibited by Section 8(b)(4)

In one group of cases under section 8(b)(4), the issue was whether a union’s conduct amounted to an attempt to “induce or encourage” employees to strike or, e.g., refuse to deliver, receive, or work on

³⁰ Sec 8(d) provides that if such a strike occurs, the strikers shall lose their employee status for the purposes of secs 8, 9, and 10 until reemployed by the employer

³¹ *Local 219, Retail Clerks International Association, AFL-CIO (Carroll House) v NLRB*, 265 F. 2d 814

³² The court did not reach the question of the loss of status by employees who engage in a strike under circumstances such as those present.

particular goods.³³ Several other cases presented the question whether an employer complaining of a union strike or picket line occupied the position of a "neutral" in the underlying labor dispute so as to be entitled to protection under the secondary boycott provisions, section 8(b)(4) (A) and (B).³⁴ The application of the Board's *Moore Dry Dock* requirements for lawful picketing at a so-called common situs also came up for review in one case; and another involved the question whether a union's purpose in picketing an employer's establishment after another union had been certified was to obtain recognition—the "object" proscribed in section 8(b)(4) (C).

(1) Inducement or Encouragement of Employees

The union in a case decided by the Second Circuit demanded recognition of two employers and, when the demand was refused, picketed both employers' establishments with signs carrying organizational slogans.³⁵ The picketing was continued after other unions had been certified, and section 8(b)(4) (C) charges were thereafter filed and sustained by the Board. In opposing enforcement of the Board's order, the union contended, among other things, that it was only picketing for publicity or organizing purposes and had not sought to "induce or encourage" any employees to stop work. The court rejected this defense, noting that one employee had been specifically requested to join the picket line; that the picketing covered freight entrances as well as entrances used by the employees and was evidently aimed at suppliers' deliverymen; and that some interference with deliveries resulted. In these circumstances, the court found that the picketing, although largely ineffectual, was intended to "encourage" work stoppages.³⁶ "Viewed realistically," the court stated, "the effect of the union's activity . . . was twofold: it harassed the employer directly, an object not forbidden by the Act;³⁷ and it brought pressure upon the employees, . . . by making them fear the disappearance of their jobs, to strike and thus lend their weight also to punitive economic pressures against the employers."

³³ Prior to the Sept. 14, 1959, amendments to the 1947 act, the prohibition of sec. 8(b)(4) was limited to such "induce[ment] or encourage[ment]" of "employees" when undertaken for certain proscribed objectives. As amended in title VII, sec. 704(a) of the Labor-Management Reporting and Disclosure Act of 1959, sec. 8(b)(4) now makes it an unfair labor practice to so "induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce" as well as "to threaten, coerce, or restrain any [such] person" for the proscribed objectives.

³⁴ Under the 1959 amendments, these provisions, with some changes, are consolidated in sec. 8(b)(4) (B).

³⁵ *N.L.R.B. v. Knitgoods Workers, Local 155, International Ladies' Garment Workers (James Knitting Mills & Packard Knitwear)*, 267 F. 2d 916

³⁶ The court distinguished, on factual grounds, its prior decision in *N.L.R.B. v. Local 50, Bakery & Confectionery Workers, etc (Arnold Bakers)*, 245 F. 2d 542, discussed in the Twenty-second Annual Report, pp 131-132.

³⁷ As noted above at footnote 33, the subsequently enacted 1959 amendments extend the proscriptions of sec. 8(b)(4) to cover direct coercion or restraint of employees

The union in *Southern Service*,³⁸ in the course of a dispute with a laundry and linen supply company, set up picket lines at several restaurants which were customers of the laundry. The legend on the picket signs read: "Notice to the Public. This Establishment's Linens Are Being Processed by a Non-Union Laundry." The union claimed that the picketing did not entail any "inducement or encouragement" of employees to strike or withhold services from their employers, as it was only a "consumer boycott" aimed at customers of the restaurants. However, the pickets were instructed not to tell deliverymen or employees of the restaurants they were free to cross the picket lines. Instead, they were merely to hand a union representative's telephone number to any such employees who might inquire as to the purpose of the picketing. The picket lines also extended across entrances used by employees of the restaurants and their suppliers, as well as customers. In the circumstances, the Ninth Circuit sustained the Board's finding of a section 8(b) (4) (A) violation. The requisite inducement or encouragement of employees was present here, in the court's opinion, because the union did nothing "to dispel the natural [strike-inducing] effect of a picket line . . . but in fact seemingly tried to obscure the actual facts." While the union had changed the heading on its picket signs from "Notice to the Public" to "Notice to Patrons," the court pointed out that the change was not made until after the litigation before the Board was commenced.

In a case which came before the Fifth Circuit,³⁹ a union conducting a strike against a manufacturing concern called a meeting of its members who worked for freight carriers in the area and proposed a resolution, which was unanimously adopted, stating that "each" member had made "an individual voluntary decision" not to handle goods consigned to or received from the strikebound plant. The court held, in agreement with the Board, that this was "a deliberate attempt" by the union officials "to produce collective union action . . . termed, for the purpose of subterfuge, individual action," and that it constituted inducement or encouragement of concerted refusals to work within the reach of section 8(b) (4).

(2) Secondary Boycotts

(a) The "ally" defense

In several of the cases where a union, engaged in a dispute with one employer, was charged with illegally boycotting a "neutral" employer, the union contended that the latter employer was an "ally"

³⁸ *N.L.R.B. v. Laundry Linen Supply etc Drivers Local No 928 (Southern Service)*, 262 F. 2d 617

³⁹ *Truck Drivers and Helpers Local Union No 728, International Brotherhood of Teamsters, etc. (Genuine Parts) v. N.L.R.B.*, 265 F. 2d 439.

of the first and, as such, not entitled to protection under section 8(b)(4) (A) or (B). This defense, although sustained by the Board, was rejected by the Eighth Circuit in one case involving two corporations owned and controlled by the members of a single family.⁴⁰ One corporation manufactured plastic custom parts and employed unskilled workers; the other manufactured tools, dies, molds, and special machinery, and employed skilled and semiskilled workers. Their respective employees had different union representatives. The individual who was president and majority stockholder of both corporations exercised active control over the labor policies of both, but the court held that this unity of ownership and control, standing alone, was not enough to make the two employers "allies"; hence a union engaged in a labor dispute with one company was not entitled to picket the other's separate place of business. The court noted that neither company was equipped to do the other's work; that the two had no employees in common with the exception of a bookkeeper; and that, while "each is a customer of the other in so far as it needs what the other produces," the two could hardly be regarded as "an integrated operation."

In two other cases, the reviewing courts upheld Board decisions rejecting the "ally" defense. The Fifth Circuit held that a union conducting a strike against a wholesale grocery cooperative was not entitled to picket several of the 370 retail grocery concerns which owned the stock of the cooperative and obtained about 30 percent of their supplies from it.⁴¹ The court noted that while the cooperative sold only to its stockholders and distributed its profits to them in the ratio of their purchases, the retailers had only one vote apiece in the election of the cooperative's board of directors, and purchased an average of about 70 percent of their merchandise from other sources. In the circumstances, the court concluded, the Board was warranted in treating the retail stores as "independent neutrals" entitled to protection against the union boycott. The court distinguished the cases holding that "one who knowingly does work which would otherwise be done by the striking employees of the [primary] employer is not within the protection of Section 8(b)(4) (A)."⁴²

The First Circuit rejected an "ally" contention in upholding the Board's finding of section 8(b)(4) (A) violation in a case involving the relationships among various contractors on a building construction project.⁴³ The respondent in this case, a council of building

⁴⁰ *Bachman Machine Co v NLRB*, 266 F 2d 599

⁴¹ *NLRB v Dallas General Drivers, etc Local 745, AFL-CIO (Associated Wholesale Grocery)*, 264 F 2d 642.

⁴² See, e.g., *NLRB v Business Machine and Office Appliance Mechanics Conference Board, Local 459*, 228 F 2d 553, certiorari denied 351 U.S. 962. The Second Circuit's decision in this case is discussed in the Twenty-first Annual Report, p 147

⁴³ *NLRB v Springfield Building and Construction Trades Council (Leo Spear)*, 262 F. 2d 494.

trades unions, had conducted strikes against certain of the unionized contractors on the project to force cancellation of a contract awarded an electrical firm employing nonunion labor. In holding that the struck employers were neutrals, and not "allies" of the nonunion firm, the court pointed out that the various companies involved were independently owned, and that the secondary employers on the project were not doing "farmed out" work for the electrical firm with which the union had its primary dispute.

On a different set of facts, the "ally" defense to section 8(b) (4) (A) and (B) charges was sustained by the District of Columbia Court of Appeals in upsetting the Board's decision in *A.C.E. Transportation*.⁴⁴ The union in this case had a dispute over recognition and contract terms with a group of so-called lessor-owners who supplied a motor carrier with truck tractors driven by hired drivers. In the course of a strike against the lessor-owners, the union picketed various terminals of the carrier itself, and induced its employees to stop work. In holding that this activity was outside the reach of section 8(b) (4) (A) and (B), the court analyzed the relationship of the carrier to the drivers and the lessor-owners, which it termed "exceedingly complicated." Among other things, the leased tractors were used exclusively to haul trailers owned by the carrier and both tractors and trailers bore the carrier's name, although the lessor-owners paid all the costs of operating the tractors, provided workmen's compensation coverage for the drivers, and bore all other payroll expenses. Hiring was done by the lessor-owners, but the carrier gave the newly hired drivers physical examinations and, as the court stated, the lessor-owners would normally hire "only such drivers as appear acceptable to [the carrier]." The carrier also prescribed working rules for all drivers in its service, making few distinctions between its own employees and those of the lessor-owners. It could likewise "recommend" the discharge of a driver of a leased tractor for certain offenses, and cancel the lessor-owner's lease if the recommendation was not followed. On these facts, the court concluded that "the relationships of [the carrier], these drivers, and the lessor-owners are so intertwined with respect to employment that the carrier was not protected by the statute against the impact of a strike by the drivers against the lessor-owners."

(b) Picketing at a "common situs"

In a case reviewed by the District of Columbia Court of Appeals,⁴⁵ a sailors' union, in a recognition dispute with a ship operator, pick-

⁴⁴ *N.L.R.B. v. Local 24, International Brotherhood of Teamsters, etc. (A.C.E. Transportation)*, 266 F. 2d 675

⁴⁵ *Seafarers International Union, etc (Salt Dome Production Co) v. N.L.R.B.*, 265 F. 2d 585. The Board's decision in this case is discussed in the Twenty-third Annual Report, p 97

eted the latter's ship while it was laid up for overhaul and repairs at the drydock of a secondary employer. When the drydock employees refused to work on the ship, the operator removed employees except supervisors; however, picketing continued. The Board held that from then on the picketing was "secondary" and in violation of section 8(b)(4)(A). The Board's conclusion rested on two findings: (1) that the real purpose of the picketing must have been to induce drydock employees to refuse to work on the ship and thereby force secondary employers—the drydock company, as well as the ship's owner—to stop doing business with the primary employer—the operator; and that the latter was no longer engaged in its "normal business" at the site of the picketing after the removal of the ship's nonsupervisory personnel, so that one of the *Moore Dry Dock* requirements for lawful "common situs" picketing was not fulfilled.⁴⁶ The court, however, disagreed with each of these findings and denied enforcement of the Board's order. As for the first point, the court concluded that the record did not establish an illegal secondary objective on the part of the union. As for the *Moore Dry Dock* tests,⁴⁷ the court was of the view that they were fully met. Pointing out that the periodic overhaul and repair of the ship was part of the operator's "normal and necessary" business, the court held that the mere removal of the nonsupervisory personnel did not change the operator's business at the drydock, and that the union's initially lawful picketing was not thereby converted into unlawful secondary action.

(3) Picketing To Force Recognition Where Another Union Is Certified—Section 8(b)(4)(C)

In the *Knitgoods Workers* case, discussed above,⁴⁸ the union contested the Board's finding that its purpose in picketing two business establishments after other unions had been certified, as well as before, was to force the employers to recognize it as the bargaining representative of their employees—the "object" proscribed in clause (C) of section 8(b)(4). The Second Circuit upheld the Board's finding, however, and distinguished its own prior decision in the similar *Arnold Bakers* case.⁴⁹ Here, the court observed, even before the other unions were certified, "the only objective . . . for which there is substantial evidence is that of forcing recognition . . . [hence] the Board was justified in concluding that the objective persisted, even

⁴⁶ See *Moore Dry Dock Co.*, 92 NLRB 547.

⁴⁷ The court noted that the criteria laid down in *Moore Dry Dock* had received general judicial approval.

⁴⁸ *N.L.R.B. v. Knitgoods Workers, Local 155, ILGWU (James and Packard)*, 267 F. 2d 916. Discussed at footnote 35.

⁴⁹ *N.L.R.B. v. Local 50, Bakery & Confectionery Workers International Union, AFL-CIO (Arnold Bakers, Inc.)*, 245 F. 2d 542, denying enforcement of Board order in 115 NLRB 1333. This case is discussed in the Twenty-second Annual Report, pp. 131-132.

after certification had made it illegal . . . any other conclusion would have been unrealistic.” In negating the suggestion that the picketing was merely for organizational purposes, the court remarked that “little weight” was to be given to the wording of the picket signs, and noted that the union had made no effort at any time to solicit the employees themselves. Instead, the court pointed out, “the picketing [in one case] covered entrances not used by employees; it continued during hours when employees were not entering or leaving and during a week when no employees were in the building. And in [the other case], the picketing began before there were any employees to be organized. There was convincing evidence that it was directed primarily at suppliers; there was again no evidence that the usual traditional methods were used to influence the employees.”

4. Remedial Orders for Reimbursement of Union Dues

In a number of cases where employees were unlawfully compelled to join a union or maintain their membership as a condition of obtaining employment or, in one instance, a wage increase and other advantages provided in a union contract, the courts sustained the Board in ordering the employees to be reimbursed for the union dues and fees they paid under such illegal compulsion. The Tenth Circuit approved an order of this type against both the union and the employer in *Broderick*,⁵⁰ as well as a similar order against the union, which was the sole respondent, in *Unit Parts*.⁵¹

In *Broderick*, the company, in violation of section 8(a) (1), (2), and (3), and the union, in violation of section 8(b) (1) (A) and (2), operated under a contract which contained provisions according unlawful preference in hiring to members of the union. The Board ordered both respondents, jointly and severally, to make the employees whole for dues and initiation fees. Enforcing the order, the court rejected, on the authority of *Virginia Electric & Power Co. v. N.L.R.B.*,⁵² the employer's argument that it never had any interest in these payments. The court also rejected the union's contention that the complaint had not specifically alleged the wrongful receipt of dues and fees, noting that the complaint had duly alleged that the contract was illegal and hence fully apprised the respondents of the matters in issue.

In *Unit Parts*, the union's unfair labor practice, alleged and found to be a violation of section 8(b) (1) (A), consisted of refusing to sign a fully negotiated contract with the employer until the employees

⁵⁰ *N.L.R.B. v. Broderick Wood Products Co.*, 261 F. 2d 548.

⁵¹ *N.L.R.B. v. General Drivers, Chauffeurs and Helpers Local Union No. 886, International Brotherhood of Teamsters, etc. (Unit Parts Co.)*, 264 F. 2d 21.

⁵² 319 U.S. 533.

had signed union membership applications and dues checkoff authorizations. The Board directed the union to reimburse the employees for the dues they had paid during the 6-week period when the employer was offering to sign the contract but the union was withholding its signature. The court held that the reimbursement order was within the Board's broad discretion in devising remedies, "even though the employees who were coerced to pay the dues may have received some value therefor in the form of union services."

In the *Bryan* case,⁵³ the District of Columbia Court of Appeals upheld a reimbursement order directed jointly to the employer and the union. There, the parties had operated under a union-security agreement which was unlawful because it was executed at a time when the union lacked majority status. The court cited and followed the *Broderick* case, *supra*, in rejecting a suggestion that the dues-reimbursement remedy is appropriate only in cases involving employer-dominated labor organizations.

An order directing an employer to refund dues, assessments, and initiation fees which had been deducted from the employees' earnings and paid over to the union pursuant to a contractual checkoff provision was enforced by the Fifth Circuit in the *Dixie Bedding* case.⁵⁴ In violation of section 8(a) (1) and (2) of the act, the employer there had unlawfully assisted the union in various ways, including the execution of a union-shop contract before the union had signed up a majority of the employees. The union-shop provision was offset by another clause recognizing the employees' right under State law to refrain from union membership, but the court held, nonetheless, that the dues-reimbursement order was justified since the employees, to some extent at least, had been coerced into joining the union. The court remarked that only "an alert and informed employee" would be protected by the contractual proviso referring to State law.

5. Representation Matters

Bargaining orders issued by the Board in a line of cases arising under section 8(a) (5) were contested on the ground that the Board had exceeded its discretion in holding that the unit of employees represented by the complaining union was appropriate or in ruling on challenged ballots or other issues pertaining to an election conducted in an antecedent representation case.

a. Elections

Two cases in the Seventh Circuit involved claims that union pre-election propaganda had exceeded permissible limits. In *Olson Rug*

⁵³ *Local Lodge No 1424, International Association of Machinists v NLRB*, (Bryan Mfg.), 264 F. 2d 575, certiorari granted 360 U.S. 916.

⁵⁴ *Dixie Bedding Mfg. Co. v. N.L.R.B.*, 268 F. 2d 901.

Co.,⁵⁵ the union had distributed leaflets asserting, in effect, that detrimental changes in wages and working conditions were in prospect, but would be forestalled if it were selected, and that the company would also be able to regain profitable business it had lost in the past because the employees were not then unionized. The court agreed with the Board that these statements did not so taint the election as to require setting it aside. "Prattle rather than precision is the dominating characteristic of election publicity," the court remarked. In *Allis-Chalmers Co.*,⁵⁶ however, the same court upset an election because the union, in campaigning for votes, had misrepresented its role in the company's adoption of a college tuition refund plan. Noting that there was no "means of dependable subjective investigation" to the "importance of the . . . tuition refund plan to the voting employees," the court declared that "the law requires that no untruth be spoken in regard to the plan in the guise of what the Board described as campaign propaganda."

In *Shoreline Enterprises*,⁵⁷ reviewed by the Fifth Circuit, improper statements by employees who were not acting for the union in any representative capacity were urged by the employer as grounds for setting aside an election in which the union polled a majority by slim margin. Certain pronounion employees, it appeared, had "threatened" antiunion employees during the preelection campaign. Noting, however, that the polling itself was conducted "in an orderly fashion with no untoward incident," and that the threatening remarks were not attributable to the union, the court held that the Board had not exceeded its discretion in overruling the employer's objection. The court distinguished cases where there were serious threats of violence or a "general atmosphere of confusion and fear of reprisal."

On other grounds, the court held that the results of the consent election here were invalid. The union and the employer had stipulated in their election agreement that the appropriate bargaining unit consisted of production and maintenance employees, but that four employees in this class who spent some of their time in work outside the unit would be excluded from the list of eligible voters. The Board agent in charge of the election accordingly permitted the names of the four employees to be stricken from the list, and they, advised that they were ineligible, did not insist upon their right to vote under challenge. In the postelection proceedings before the Board, however, the four employees moved to upset the election results when it turned out that the union had polled a majority by only three votes. The employer, asserting mistake, also alleged that

⁵⁵ *Olson Rug Co v N.L.R.B.*, 260 F. 2d 255.

⁵⁶ *Allis-Chalmers Mfg. Co. v. N.L.R.B.*, 261 F. 2d 613 (C.A. 7)

⁵⁷ *Shoreline Enterprises of America, Inc v. N.L.R.B.*, 262 F. 2d 933.

the four employees were improperly deprived of the right to vote. The intervening employees' motion and the employer's objection were denied by the Board on the ground that the union-employer election agreements were controlling. In the subsequent unfair labor practice proceeding based on the employer's refusal to bargain with the union, the rulings in the representation proceeding were affirmed. Basically, the court endorsed the Board's policy to hold parties to their election agreements, noting that this is especially important in cases involving a preelection resolution of eligibility issues. As to the employer's objection to the election, the court made clear that "[T]he Company cannot play fast and loose with a preelection agreement and a stipulated eligibility list." However—while "not anxious to open the back door to a litigant denied the front door [the employer here], or to open any doors to 'subterfuges for hampering and delaying a final determination of a bargaining representative'"—the court upheld the intervening employees' objection to the election. The court pointed out that the employees by definition were members of the stipulated unit and should have been afforded an opportunity to cast a challenged ballot. While expressing "great respect for the . . . Board in its zealous, fairhanded administration of the Act," the court held that here it was the Board's duty to prevent the disfranchisement of employees who in fact were eligible to vote.

The wide scope of the Board's discretion in representation matters was emphasized by the Ninth Circuit in the *Deutsch* case,⁵⁸ where the court sustained the Board's action in conducting an election off the plant premises when the employer refused to permit the use of the premises for the polling. The court also reaffirmed the settled rule that an election of employee representatives is determined by a majority of those voting rather than by a majority of those eligible to vote.

b. Unit Determinations

In general, the courts continued to affirm Board unit determinations as within the broad area of the Board's discretion, although indicating that such determinations will be set aside where the court finds the Board's rulings arbitrary or capricious.⁵⁹ Thus, in the *Burroughs* case,⁶⁰ the Second Circuit refused to disturb the Board's determination that certain service employees at one of the company's branch establishments constituted an appropriate unit by themselves, notwithstanding various factors urged by the employer in favor of

⁵⁸ *N.L.R.B. v. The Deutsch Co.*, 265 F. 2d 473.

⁵⁹ See *N.L.R.B. v. Plankinton Packing Co.*, 265 F. 2d 638, where the Seventh Circuit held that certain clerical workers were "plant clerical employees" rather than "office clerical employees," and that their inclusion in the certified "office clerical" unit by the Board was improper.

⁶⁰ *N.L.R.B. v. Burroughs Corp.*, 261 F. 2d 463.

a nationwide unit of servicemen. The court noted that the hire, promotion, and discharge of these employees was initiated at the particular branch office, that, within general limits, the branch office effectuated wage increases, and that transfers from one branch to another were very infrequent.

Similarly, in a case arising in the garment manufacturing industry,⁶¹ the Ninth Circuit sustained a unit confined to the spreaders and cutters at one of the employer's two plants. The court held that the Board properly considered the geographical separation of the two plants, the lack of employee interchange, and the bargaining history, in declining to include in the unit the spreaders and cutters working at the other plant. The court also noted that a unit composed of all employees at both plants would have included both skilled and unskilled workers, receiving different rates of pay, working under different conditions, and not enjoying any community of interest. Finally, the court expressed itself as "satisfied that the Board, in determining the appropriate unit, was not controlled by the extent of organization among the employees . . . and therefore did not ignore or act contrary to the provisions of section 8(c)(5)," although the record did disclose that the union had sought without success to organize the cutters at the other plant.

In a converse case, *Deutsch Co.*,⁶² the same court expressly noted that the Board could have found either a single-plant unit or a two-plant unit appropriate. In view of the "centralized administration and functional integration of the two plants, the similar skills of the employees, and the uniform personnel policy" of the employer, the Board had adopted a single unit consisting of the employees at both plants. The court indicated that it would not have upset this determination even if the items produced, the type of assembly work, and the composition of the work force were substantially different at the two plants, as the company contended.

⁶¹ *N.L.R.B. v Moss Amber Mfg Co.*, 264 F. 2d 107

⁶² *N.L.R.B. v The Deutsch Co.*, 265 F. 2d 473.

VI

Injunction Litigation

Section 10 (j) and (l) authorizes temporary relief in the U.S. district courts on petition of the Board, or on its behalf, pending hearing and adjudication of unfair labor practice charges by the Board.¹

Section 10(j) provides that, after issuance of an unfair labor practice complaint against an employer or labor organization, the Board, in its discretion, may petition "for appropriate temporary relief or restraining order" in aid of the unfair labor practice proceeding before it. The court where the petition is filed has jurisdiction to grant "such temporary relief or restraining order as it deems just and proper." In fiscal 1959, the Board filed five petitions for temporary relief under section 10(j)—one against an employer and four against unions. Injunction orders were entered in four of the five cases,² three of them being consent extensions of previously issued temporary restraining orders.³ In the fifth case, the proceeding against an employer, injunctive relief was denied.⁴

Until the amendments enacted after the close of this fiscal year, section 10(l) was limited to imposing a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization charged with a violation of section 8(b)(4) (A), (B),

¹ Table 20 in appendix A lists injunctions petitioned for, or acted upon, during fiscal 1959, Table 18 contains a statistical summary of results.

² *Kennedy v Local 208, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, et al (Sierra Furniture Company)*, Mar. 4, 1959 (No 78-59-TC, D C, S D Calif), *Cuneo v Public Utility Gas Manufacturing Workers, etc (Public Service Electric & Gas Co.)*, Dec. 20, 1958 (No. 1374-58, D C, N.J.), *Getreu v United Mine Workers and District 30, etc (Kodak Coal Co, et al)*, Apr. 30, 1959 (No Jackson 280, D C, E D Ky), *Rains v United Mine Workers and District 19, etc (G & R Coal Co, et al)*, Apr. 30, 1959 (No. London 985, DC., E D. Ky.).

³ *Cunco v Public Utility Gas Manufacturing Workers, etc (Public Service Electric & Gas Co)*, *supra*, *Getreu v. United Mine Workers and District 30, etc (Kodak Coal Co. et al)*, *supra*, *Rains v United Mine Workers and District 19, etc (G & R Coal Co, et al)*, *supra*.

⁴ *Elliott v Alamo Express, Inc, et al.*, Mar. 9, 1959 (No 12,514, D C, S D. Tex)

or (C) of the act ⁵ whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and that a complaint should issue." Section 10(1) also provides for the issuance of a temporary restraining order without notice to the respondent upon a petition alleging that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days. In addition, section 10(1) provides that its procedures shall apply in seeking injunctive relief against a labor organization charged with engaging in a jurisdictional strike in violation of section 8(b)(4)(D) "in situations where such relief is appropriate."

In fiscal 1959, the Board filed 129 mandatory petitions for injunctions under section 10(1). This was a slight increase over the number filed in fiscal 1958, the previous record year. As in past years, most of the petitions were based on charges alleging violations of the secondary boycott and sympathy strike provisions of section 8(b)(4)(A) and (B). Twenty-seven petitions were based on charges alleging jurisdictional strikes in violation of section 8(b)(4)(D), and 8 on charges alleging strikes against Board certifications of representatives in violation of section 8(b)(4)(C).⁶

Section 10(e) of the act authorizes the Board, when it has issued an order directing an employer or a union to cease an unfair labor practice and take appropriate remedial action, to petition a court of appeals "for appropriate temporary relief or restraining order" pending enforcement of the order. Such temporary relief was obtained in one case in fiscal 1959,⁷ when the respondent's action threatened circumvention of the Board's order. The Board's order directed the respondent to cease and desist from refusing to bargain collectively with the employer's designated representative in violation of section 8(b)(1)(A) and 8(b)(3).⁸

A. Injunctions Under Section 10(j)

In one case during 1959, the injunctive provisions of section 10(j) were utilized to prevent the disruption of public utility services to customers in New Jersey by a strike allegedly in violation of the

⁵ These subsections, prior to the amendments adopted after the fiscal year, prohibited secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer associations, certain sympathy strikes, and strikes against Board certifications of bargaining representatives.

The National Labor Relations Act was amended by the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257, Sept. 14, 1959), which, among other things, added two new unfair labor practice provisions (secs 8(e) and 8(b)(7)). The injunction provisions of sec 10(1) were made to apply to secs. 8(e) and 8(b)(7).

⁶ These cases and the actions in them are shown on table 18, appendix A

⁷ *N.L.R.B. v. International Ladies' Garment Workers' Union*, 44 LRRM 2003 (C.A. 3).

⁸ 122 NLRB 1390.

collective-bargaining provisions of section 8(d) and 8(b)(3) of the act.⁹ In this case, the employer secured the agreement of four employees to work overtime during an unusual cold spell. The union refused to permit the employees to work the extra hours, demanding that instead, another shift be added. Upon the failure of the four men, pursuant to union instructions, to report as scheduled, the employer suspended them. Thereupon the union ordered its members to strike and established picket lines at the employer's installations and prevented all access to the plant, including delivery of food supplies for the supervisors who were attempting to maintain service to customers. The contract in effect between the employer and the union prohibited the union from striking during its term and provided for the disposition of "any dispute or difference" through the grievance and binding arbitration provisions of the contract. The contract also contained a "management functions" clause which the employer claimed gave it the prerogative to make the decision of when to establish an extra shift instead of working employees overtime. The petition alleged that the strike and picketing to force the employer to relinquish its contractual prerogative of deciding when to establish an extra shift, and to agree to the union's demands without the benefit of the exhaustion of the contractual provisions for arbitration, constituted a strike to modify the terms of the contract between the parties in violation of section 8(d) and 8(b)(3). The court, entering preliminary findings that there was reasonable cause to believe the conduct violated these sections, entered a temporary restraining order which, after a hearing, was continued upon consent of the union.

In *Sierra Furniture*,¹⁰ an injunction was obtained to prevent the union, which did not represent a majority of the employees, from continuing, in violation of section 8(b)(1)(A) and (2) of the act, to picket an employer to force him to enter into a contract which would have required the employees to accept the union as their exclusive collective-bargaining representative and to join the union within 30 days. The union demanded recognition and a contract, refused to present evidence that it represented the employer's employees, and commenced picketing. After the picketing, the employer signed the union's demanded contract. An employee filed charges with the Board against both the employer and the union. Being advised that the charges had merit because of the union's lack of majority, the employer agreed to settle the case before the Board

⁹ *Cuneo v. Public Utility Gas Manufacturing Workers, etc. (Public Service Electric and Gas Co.)*, Dec. 20, 1958 (No. 1374-58, D.C., N.J.).

¹⁰ *Kennedy v. Local 208, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; and Local 123, United Furniture Workers, Upholsterers & Woodworkers Union (Sierra Furniture Company)*, Mar. 4, 1959 (No. 78-59 T.C., D.C., S.D. Calif.).

by withdrawing recognition from the union and not giving effect to the contract. The union refused to comply, and resumed picketing of the employer to enforce adherence to the contract or execution of another contract. Upon a complaint issued on the charges under section 8(b) (1)(B) and (2), the Board asked for an injunction. Finding reasonable cause to believe the union's conduct violated the sections charged, the court granted a temporary restraining order and, after a hearing, entered an injunction restraining a repetition of the picketing pending the Board's decision.¹¹

In two proceedings involving the eastern Kentucky and northern Tennessee coalfields,¹² the union was enjoined from restraint and coercion prohibited by section 8(b)(1)(A) of the act. The petitions alleged that the unions, in violation of this section, had sent motorcades of members into the coalfields to compel mines, tipples, and haulers in the area, most of which were unorganized, to sign the union's current contract. The contract, in substance, required signers to do business only with other employers who signed. The motorcades, by mass action, threats, and violence, shut down operations of those who refused to sign the contract and threatened further violence if the operations were resumed before execution of the contract. The motorcades were led by representatives of the unions. The court, entering preliminary findings that there was reasonable cause to believe the union's conduct violated section 8(b)(1)(A), entered a temporary restraining order enjoining a repetition of the charged conduct or other violence in restraint or coercion of employees. Subsequently, the restraining order was continued upon consent of the union.

In the *Alamo Express* case,¹³ an injunction was sought against an employer's continuation of alleged violations of section 8(a) (1) and (3) of the act. An outstanding Board order¹⁴ required the employer to cease (1) intimidating employees in the exercise of their rights to form or join a labor organization of their own choice, and (2) discriminating against them in employment because of their union membership or activities. The General Counsel, investigating new charges which had been filed, found that the employer had continued to intimidate employees illegally and had discharged additional em-

¹¹ The Board's decision issued on Nov. 17, 1959, finding violations of the sections charged. See *Sierra Furniture Co.*, 125 NLRB No. 20.

¹² *Getreu v. United Mine Workers of America and District 30, etc. (Kodak Coal Co., et al.)*, April 30, 1959 (No. Jackson 280, D.C., E.D. Ky.); *Rams v. United Mine Workers of America and District 19, etc. (G. & R. Coal Co., et al.)*, Apr. 30, 1959 (No. London 985, D.C., E.D. Ky.).

¹³ *Elliot v. Alamo Express, Inc.*, Mar. 9, 1959 (No. 12,514, D.C., S.D. Texas. J. Ingram, J.) Motion for new trial denied Apr. 29, 1959.

¹⁴ 119 NLRB 6 (1957) where the Board found that six employees had been illegally discharged for union activities during a union organizing campaign in 1955. Enforced June 22, 1959, by summary entry of decree (C.A. 5). Pending is a hearing on a specification that the employer owes the six employees a total of \$18,684 in back pay.

ployees for union activities. Accordingly, a new complaint was issued against the company, Alamo Express.¹⁵ On the basis of the new complaint, an injunction under section 10(j) was sought. The court, however, disagreed that there was reasonable cause to believe that the employer's conduct violated the act and denied the injunction. Thereafter, new charges were filed alleging that 13 additional employees had been discharged illegally after denial of the injunction. A motion was made for a new trial on an amended petition for injunction covering the new allegations. This also was denied.

B. Injunctions Under Section 10(l)

In fiscal 1959, 60 petitions under section 10(l) went to final order, the courts granting injunctions in 50 cases and denying injunctions in 10 cases.¹⁶ Injunctions were issued in 32 cases involving secondary action proscribed by section 8(b)(4) (A) or (B), or both; in 6 cases involving strikes against Board certifications in violation of section 8(b)(4) (C); and in 12 cases involving jurisdictional disputes in violation of section 8(b)(4) (D). Three cases under section 8(b)(4) (C) and four under 8(b)(4) (D) also involved secondary activities under subsection (A) and/or (B).

All but 1 of the 10 cases in which injunctions were denied were predicated on alleged violations of section 8(b)(4) (A) or (B); the remaining case alleged a violation of section 8(b)(4) (D).

1. Secondary Boycott Situations

Several cases during the year dealt with problems of general application to the injunction provisions of the act. In *Chicago Calumet*,¹⁷ it was contended that the status of a respondent union as a labor organization within the meaning of section 2(5) of the act is jurisdictional in an injunction proceeding under section 10(l) and must be found as a fact by the court and not merely measured by the standard of reasonable cause. The Seventh Circuit rejected the contention, observing that in granting injunctive relief under section 10(l) the district court "looks to the statutory yardstick of 'reasonable cause'" in "preserving the status quo until [the Board] could ascertain by hearings, whether it had statutory jurisdiction, and if unfair labor practices existed."

¹⁵ Trial examiner's intermediate report issued in the new cases (39-CA-853 etc.), Dec 16, 1959, finding that, after the Board's original order, the company had illegally discharged 21 employees, including 5 for testifying at the injunction trial in U.S. district court or in the NLRB hearing. The case is pending before the Board in Washington on exceptions.

¹⁶ See tables 18 and 20 in appendix A.

¹⁷ *Madden v. International Organization of Masters, Mates & Pilots, etc. (Chicago Calumet Stevedoring Co.)*, 259 F. 2d 312 (C.A. 7).

Applying the same standards, the court of appeals in the *Wilson* case¹⁸ affirmed the district court's injunction restraining the union from inducing its members not to make transcriptions for advertisers which were to be broadcast over a radio station with which the union had a dispute. The Sixth Circuit noted that the district court, "as a prerequisite for the issuance of a temporary injunction, need only find that there is reasonable cause to believe that a violation of . . . the act as charged has been committed." The court rejected the contentions that the injunction should be set aside because the union members involved were "independent contractors and not employees" and because the inducement, if any, was not "to refuse to perform services in the course of their employment, but only to refuse to *accept* any employment which involved making transcriptions to be used by" the radio station. While noting that, with one exception, the members were not continuously employed but were engaged by "sponsors and advertising agencies for limited periods to do specific jobs," and that the Seventh Circuit in *Joliet Contractors*¹⁹ had held that the refusal of glaziers to accept employment on projects where preglazed glass was used "did not constitute a concerted refusal in the course of employment" within the meaning of section 8(b)(4)(A) of the act, the court pointed out, however, that the Board in longshoremen cases²⁰ held that, despite the absence of continuous employment, the employment relationship in that industry had such "characteristics of certainty and continuity" as to make longshoremen "employees" for the purposes of section 8(b)(4)(A). The court, noting that it was for the Board to determine in the first instance whether or not the members involved were employees, stated, "Unless this court should hold that nothing short of a continuous employment relationship can suffice, the Board should be allowed to determine whether the present situation is more akin to the longshoremen's cases than to the *Joliet Contractors* case."

a. Withholding Work Permits and Union Label

In *Midwest Homes*,²¹ the employer was engaged in the manufacture and erection of prefabricated homes. Its employees were represented by a local whose international's label the employer was permitted by contract to use on its products. When erection work was to be done within the jurisdiction of an affiliated local, Midwest's employees, pursuant to the union's constitution, were required

¹⁸ *American Federation of Radio and Television Artists, AFL-CIO v. Getreu (L. B. Wilson, Inc.)*, 258 F. 2d 698 (C.A. 6).

¹⁹ *Joliet Contractors Assn. v. N.L.R.B.*, 202 F. 2d 606 (C.A. 7).

²⁰ *Charleston Stevedoring Co.*, 118 NLRB 920, *United Marine Division, Local 333, International Longshoremen's Assn. (New York Shipping Assn.)*, 107 NLRB 686.

²¹ *Cosentino v. United Brotherhood of Carpenters & Joiners (Midwest Homes, Inc.)*, Aug. 21, 1958 (No. 4146, D.C., E.D. Ill.), *affd.* 265 F. 2d 327 (C.A. 7).

to obtain work permits from the affiliated local before commencing the erection work. Upon discovering that Midwest was using some window frames purchased from a nonunion manufacturer, the union withdrew its label from the prefabricated homes and induced affiliated locals to refuse to grant work permits to Midwest's employees which would permit them to erect Midwest's homes in their jurisdiction. The district court, finding reasonable cause to believe that the conduct violated section 8(b)(4)(A), granted an injunction.

On appeal to the Seventh Circuit, the union did not attack the granting of the injunction but contended that its scope was too broad in that it prohibited the union from taking secondary action against Midwest and withholding label and work permits, not only to prevent the use of the particular window frames but also from taking similar action to prevent Midwest's use of products from any other nonunion firm. The court of appeals affirmed the broad order²² and rejected the union's arguments, holding that the broad order was justified to maintain the status quo, as the union's objective was not merely to stop Midwest from using the particular manufacturer's products but also to force Midwest to cease doing business with any other producer whose products did not bear the union's label.

b. Ambulatory Picketing

A number of cases involved picketing of trucks of a primary employer at the premises of the secondary employer. This type of picketing was conducted despite the existence of a plant or warehouse operated by the primary employer in the area to which its employees reported each day and at which the union had an adequate opportunity, through picketing, to bring its dispute to the attention of the employees of the primary employer without the direct involvement of secondary employees. In the *Hallon Milk Service* case²³ the union had a dispute over the refusal of the company to grant it recognition as the exclusive bargaining agent for Hallon's drivers. The company collected fluid milk from farmers in southwest Ohio and hauled it to processing plants in Cincinnati and other cities in the area. The drivers for the company reported to the company's garage at Blanchester, Ohio, each day before starting their runs. The union picketed the primary premises on only 1 day. Thereafter it had its pickets follow the company's trucks to milk-processing plants in Ohio, West Virginia, and Kentucky where picket lines would be established causing the employees of the dairies to refuse to handle the milk which Hallon was delivering. The union contended that its picketing met the criteria for ambulatory

²² *Cosentino v. United Brotherhood of Carpenters, etc.*, 265 F. 2d 327.

²³ *Andrews v. Milk & Ice Cream Drivers (Hallon Milk Service)*, Oct. 21, 1958 (No. 2305, D.C., W. Ohio).

picketing set forth in *Moore Dry Dock*²⁴ and therefore was lawful. The district court, in granting the injunction, in effect, found that because Hallon's drivers reported at least once daily at its garage, the Board's decision in *Washington Coca-Cola*²⁵ was applicable and the union had an adequate opportunity to reach the primary employees by picketing at the company's garage and that the picketing at the dairies was for a secondary purpose.

A somewhat similar situation was presented in the *K-C Refrigeration* case.²⁶ The union in the course of a primary dispute with K-C picketed its garage and warehouse to which the company's employees would report each day before starting and after finishing work. The union, as part of its economic pressure against the firm, sent pickets to follow the company's trucks on their delivery routes. Whenever the trucks would stop at a warehouse or plant, the pickets would get out of the car and begin patrolling the premises while a union business agent would attempt to induce the secondary employees to refuse to handle goods destined for K-C. This ambulatory picketing was enjoined since it was secondary and induced secondary employees to cease work to force secondary employers to cease doing business with K-C.

In the *Dallas County Construction Employers'* case,²⁷ the union had a primary dispute with a firm which was engaged in construction work, as well as the delivery and sale of building materials. The company maintained a warehouse where it stored its building materials. It also had a lot adjacent to its premises at which all its construction employees were required to report daily before proceeding to a construction site. The union picketed various job sites at which the construction employees of the primary employer were working, resulting in employees of neutral employers ceasing work. The union sought to invoke the Board's *Moore Dry Dock*²⁸ standards, claiming a common situs situation existed and the picketing was, therefore, protected. However, the injunction was granted, the district court in effect finding that the union, by picketing the primary employer's warehouse and lot, could adequately publicize its labor dispute without drawing the employees of secondary employers into the ambit of its activities. An injunction was granted based on the same rationale in a somewhat similar situation in *Crowe Gulde Cement*,²⁹ where the union in the course of a primary dispute

²⁴ 92 NLRB 547.

²⁵ 107 NLRB 299, enforced 220 F. 2d 380 (C.A.D.C.).

²⁶ *McLeod v. Local 294, International Brotherhood of Teamsters etc. (K-C Refrigeration Transport Co.)*, Mar. 7, 1959 (No. 7411, D.C., N.D. N.Y.).

²⁷ *Elliott v. Dallas General Drivers (Dallas County Construction Employers' Assn.)*, Mar. 25, 1959 (No. 8137, D.C., N.D. Texas).

²⁸ 92 NLRB 547.

²⁹ *Elliott v. Amarillo General Drivers (Crowe Gulde Cement Co.)*, Oct. 28, 1959 (No. 2696, D.C., N.D. Texas).

picketed not only the plant of the primary employer but also job sites at which the company's trucks delivered concrete.

c. Alleged Consumer Picketing

In a number of cases the union, having a dispute with an employer, maintained a picket line in front of neutral retail stores which sold the products of the employer. In *Peyton Packing*,³⁰ the union, after striking the employer following the breakdown of negotiations for a new contract, extended its picketing to retail stores which handled Peyton's products. The union had no dispute with these retailers. The picket signs contained the words "ON STRIKE" in very large letters while all the other words on the signs, purporting to appeal to customers, were in small letters. The pickets patrolled the entrances to the retail stores used in common by employees of the stores and suppliers, as well as by customers. The picketing occurred at times when none of Peyton's employees were in the vicinity. The picketing was preceded or accompanied by a request that the retail store stop using Peyton's products. The court granted the injunction, finding reasonable cause to believe that the union's conduct violated section 8(b)(4)(A) of the act.

In two other cases, *Flamingo Trailers*³¹ (involving a manufacturer of house trailers) and *Perfection Mattress*³² (a bedding manufacturer), the union, in addition to picketing the plant of the manufacturer with which it had a dispute, sought to increase the economic pressure by picketing the independent retailers who distributed the products to the public. The union contended it was merely engaging in consumer picketing in an attempt to inform the public of the dispute. However in each instance, the signs carried by the pickets, the picketing of entrances used in common by employees and customers, and the conduct of the pickets indicated an appeal to employees of secondary employers not to cross the picket lines to force the stores to cease doing business with the primary employer.

d. Construction Gate Cases

In a number of cases, the union picketed all entrances to the premises of an employer with whom the union had a primary dispute, notwithstanding that a gate had been set aside for the exclusive use of workers employed by independent contractors. In the

³⁰ *Elliott v. Amalgamated Meat Cutters (Peyton Packing Co., Inc.)*, May 2, 1959 (No. 1993, D C, W.D. Texas)

³¹ *Kennedy v. Miscellaneous Woodworkers Union (Flamingo Trailer Mfg. Co.)*, Nov. 26, 1959 (No. 1014-58 WM, D C, S D Calif)

³² *Rains v. Retail, Wholesale & Department Store Union (Perfection Mattress & Spring Co.)*, Dec. 9, 1958 (No. 9258 D C, N D Ala); affirmed, *Retail Store Union v. Rains*, 44 LRRM 2040 (C.A. 5).

General Electric case,³³ the company had for a number of years restricted gate 3-A of its Appliance Park plant for the exclusive use of employees of independent contractors who performed maintenance and renovation work for the company on a virtually continuous basis. A large sign posted at the gate read: "Gate 3-A for Employees of Contractors—only—G.E. Employees Use Other Gates," and the plant-protection force was instructed to insure that only outside contractors' employees used the gate. The union representing General Electric's production employees, in the course of a dispute with the company, established picket lines at all the plant's gates, including gate 3-A. As a result of the picketing of gate 3-A, the employees of the independent contractors refused to enter the plant premises and the renovation and maintenance work ceased. The company filed a charge alleging violation of section 8(b)(4)(A), and a 10(1) injunction was sought by the Board. The court granted the injunction, in effect finding that the union's picketing of the gate restricted to the use of the outside contractors' employees constituted an effort to enmesh the employees of these neutral employers in its dispute with the company in order to force the independent contractors to cease doing business with General Electric.³⁴ In the *Builder's Association of Kansas City* case,³⁵ the union picketed all of the entrances to an Air Force base pursuant to its dispute with a subcontractor, although one gate had been designated for the exclusive use of that subcontractor's employees. The district court granted the injunction, finding that the union's picketing of all the gates had the intended effect of stopping all construction activity on the base and, therefore, was secondary picketing under the act.

e. Waterfront Cases

Several interesting cases involving maritime and waterfront disputes arose during the year. In the *Catalina Island* case³⁶ the company, which was the sole common carrier of passengers and freight between the island of Santa Catalina and the mainland, had a contract whereby it employed members of the longshoremen's union to load its vessels. Upon the expiration of its contract with the union, the company discontinued its freight-handling operations and contracted them out. Under the new arrangement, freight for the island was shipped to a consolidated truck terminal where it was loaded on trailers which were later driven to a pier where the trailer

³³ *Fraker v. Local No. 761, International Union of Technical, Radio & Machine Workers (General Electric Co.)*, Oct 1, 1958 (No 3665 D C, W D Ky).

³⁴ The Board subsequently found the union's conduct constituted a violation of sec. 8(b)(4)(A). 123 NLRB 1547, discussed at pp 105-106

³⁵ *Sperry v. International Union of Operating Engineers (Builders Association, Inc. of Kansas City)*, Nov. 6, 1958 (No. 12104 D C, W D Mo.).

³⁶ *Kennedy v. International Longshoremen & Warehousemen's Union (Catalina Island Sighting Lines)*, Dec. 17, 1958 (No 1094, D.C., S D. Calif.).

was rolled onto a barge for transport to the island. At the island the trailer was rolled off the barge and then hauled to the consignees of the freight where it was unloaded. The union, contending that this system displaced its members, picketed the primary employer's premises. In addition, it picketed the loading dock of an independent towing firm which had contracted to provide the necessary barge and towing service and induced its employees to refuse to handle Catalina's goods. The union also threatened to picket the terminal at which the trailers were loaded before being delivered to the pier. The picketing caused a complete stoppage of the shipment of freight to the island. The court, in granting the injunction, found reasonable cause to believe an 8(b)(4)(A) violation existed in that the union induced and encouraged the employees of the truckline and towing concern to cease handling goods destined for the island in an effort to force the two concerns to cease doing business with Catalina.

In the *Terminal Operators* case,³⁷ the company operated a pier on which a three-story structure was located. The first and second floors were used for stevedoring work involving the loading and unloading of vessels and temporary storage. The third floor regularly was used by Terminal for long-term storage. Terminal contracted to make available second-floor space for the long-term storage of imported automobiles. The union which represented checkers employed by the independent stevedoring firm which unloaded ships at Terminal's pier objected to the second floor being used for storage, contending that such use would reduce the employment of its members as it would not be available for regular stevedoring work and less freight would move in and out of the terminal. The union induced its members, the clerks employed by the stevedoring firm which unloaded the automobiles from the ships, to refuse to perform the paperwork necessary before the automobiles could be turned over to Terminal by the stevedoring firm for removal to the second floor for storage. The union contended that it had a primary dispute with the stevedoring firm and, therefore, its action was primary and not a secondary boycott. However, the court found that the union's dispute was with Terminal and that the inducement of the stevedoring firm's employees to refuse to process the automobiles for release to Terminal for storage constituted inducement of a secondary employer's employees not to perform services to prevent a secondary employer from doing business with the primary employer.

In *Quaker Oats*,³⁸ the company's cat-food canning plant purchased all its fish from a fish broker. The union represented the seamen

³⁷ *Alpert v Local 1066, International Longshoremen's Assn*, 166 F Supp 22 (D C, Mass.).

³⁸ *Lebus v Fishermen & Allied Workers Union (Quaker Oats Co)*, May 23, 1959 (No. 2126, D C., S D. Miss.).

manning the fishing boats. In connection with a dispute with the broker over the method of payment for the fish and other matters, the union placed a picket line in front of Quaker's plant in an effort to force Quaker either to cease doing business with the broker or to bring pressure on the broker to accede to the demands of the seamen. The union contended its primary dispute was with Quaker, as it claimed that Quaker controlled the operations of, or was allied with, the broker. The court concluded that the broker was a separate person and the union's primary dispute was with him, not Quaker, and enjoined the picketing of Quaker's plant.

f. Hotels

In the *Southern Florida Hotel and Motel Association* case,³⁹ the union picketed a number of Miami Beach hotels in an attempt to force the hotels to cease doing business with certain auto parking and rental agencies whose employees the union was trying to organize. The standards for common situs picketing which the Board set forth in *Moore Dry Dock*⁴⁰ were not satisfied. The picket signs claimed the dispute was with the hotels, the picketing was not restricted to the immediate area where the agents of the auto rental companies were located, and the union had induced employees of other employers not to cross the picket line. At this time, the Board was declining to assert jurisdiction over the hotel industry.⁴¹ However, jurisdiction was asserted on the basis of the out-of-State purchases of the primary employers, the auto rental firms, which exceeded \$50,000 annually and therefore came within the Board's jurisdictional standards.⁴²

g. Common Situs Situations

As in preceding years, a number of the cases in which injunctions were granted turned on the legality of alleged common situs picketing under the criteria laid down in the Board's *Moore Dry Dock* decision.⁴³ In the *St. Bridget's Catholic Congregation* case,⁴⁴ the

³⁹ *Bowe v Taxi Drivers (Southern Florida Hotel & Motel Assn)*, May 1, 1959 (No 9205-M, D C, S D Fla.).

⁴⁰ 92 NLRB 547

⁴¹ *The Virgin Isles Hotel, Inc.*, 110 NLRB 558 (1954). After the Supreme Court's decision in *Hotel Employees v. Leedom*, 358 U.S. 99 (see *supra*, p 114), the Board in *Floridan Hotel of Tampa*, 124 NLRB No. 34, announced that it will assert jurisdiction over nonresidential hotels and motels whose gross revenues annually exceed \$500,000.

⁴² See *Jamestown Builders Exchange*, 93 NLRB 386

⁴³ 92 NLRB 547. The Board there held that common situs picketing, such as was involved, is primary if—

(a) The picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises; .

(b) At the time of the picketing the primary employer is engaged in its normal business at the situs ,

(c) The picketing is limited to places reasonably close to the location of the situs ;

(d) The picketing discloses clearly that the dispute is with the primary employer.

⁴⁴ *Knapp v. Eau Claire and Vicinity Building & Construction Trades Council (St. Bridget's Catholic Congregation)*, Oct. 27, 1958, 43 LRRM 2675 (D C, W Wis)

union was enjoined from picketing the site at which a convent and gym were being built because its picket signs failed clearly to disclose that its dispute was with the primary employer. In the *Buettner* case,⁴⁵ the picketing was held unlawful in that the umbrellas carried by the pickets did not identify the primary employer, the union picketed at the secondary premises, at times when the primary employees were not in the vicinity, and there was oral inducement of work stoppages by the secondary employers. In the *Central Roig*,⁴⁶ *Sproul Homes*,⁴⁷ and *Cianchette*⁴⁸ cases, the union, in conjunction with its picketing of the common site, orally sought to induce secondary employees to cease work in order to bring pressure on the secondary employer to cease doing business with the primary employer.

2. Injunction Against Picketing To Force an Employer To Join an Employer Association

In the *General Ore* case,⁴⁹ the union, desiring to represent General Ore's dock employees, demanded that General Ore join an employer association with which the union had a contract. Under the contract, the work involved was assigned to the union's members. In support of its demand, the union, using seaborne as well as land pickets, induced ships not to dock at General Ore's premises for unloading. The court, agreeing that the ban against conduct to require an employer to join an employer or labor organization in section 8(b) (4)(A) protected an employer from primary, as well as secondary, pressure, enjoined the picketing.

3. Injunction Against Picketing After Certification of Another Union

In the *Moreelee* case,⁵⁰ an injunction was granted to restrain the continuation of picketing by the respondent union after another union had won an election and had been certified by the Board as the representative of the employees involved. The respondent union had been picketing the employer's plant in an effort to induce

⁴⁵ *Cosentino v. Local 35, United Association (Richard E. Buettner)*, June 4, 1959 (No. 59 C 152, D C, E D Mo)

⁴⁶ *Compton v. Union De Muelles De Puerto Rico (Central Roig Refining Co.)*, Aug 27, 1958 (No 285, D C, P R).

⁴⁷ *Elliott v. New Mexico Building & Construction Trades Council (Sproul Homes, Inc.)*, Mar 3, 1959 (No 4094, D C, N M).

⁴⁸ *Greene v. Bangor Building Trades Council (Cianchette)*, 165 F Supp 902 (D.C., Me.).

⁴⁹ *Graham v. International Longshoremen's & Warehousemen's Union (General Ore, Inc.)*, Mar 17, 1959 (No. 10086, D C, Ore)

⁵⁰ *Douds v. Knitgoods Workers' Union Local 135 (Moreelee Knitting Mills, Inc.)*, 42 LRRM 2710 (D C., N J).

Moreelee to recognize and bargain with it. The pickets appealed to Moreelee's employees to strike and threatened drivers of other employers and physically prevented them from making deliveries to Moreelee. After the certification,⁵¹ respondent continued its picketing without any ostensible change in purpose or object. The court in enjoining the picketing distinguished this situation from that in the *Arnold Bakers* case⁵² where the picketing had not caused any work stoppage and there was no evidence that it was intended by the union to have such an effect. The court held that the Moreelee picketing, which had not changed in character after the certification, could reasonably be expected to have the same effect on the employees of Moreelee and other employees as the precertification picketing.

4. Jurisdictional Dispute Situations

Injunctions were granted in 12 cases involving jurisdictional disputes—5 relating to conflicting claims to the assignment of work in the building and construction industry;⁵³ 3 contests relating to work in the trucking industry;⁵⁴ 2 cases involving disputes in the shipping industry;⁵⁵ and the remaining 2 treating with disputes in the metal fabricating⁵⁶ and communications industries.⁵⁷

The dispute in the metal fabricating industry case⁵⁸ arose in an unusual manner. Specialty Steel Products, which for years had operated a plant at Braddock, Pa., where its employees were repre-

⁵¹ The respondent union had opposed the election on the ground that its contract with another company of which Moreelee was the successor, obligated Moreelee to recognize the respondent as the employees' collective-bargaining representative. The Board rejected the contention. The respondent was denied a place on the ballot because it had made no showing of representation among the employees.

⁵² *Douds v Local 50, Bakery and Confectionery Workers*, 224 F 2d 49 (CA 2).

⁵³ *Getreu v Local 181, International Union of Operating Engineers (Tye & Wells Contractors)*, July 14, 1958 (No 810, D.C., W.D. Ky.); *Rains v Local 188, United Association of Journeymen (Peacock Construction Co)*, Apr 10, 1959 (No 1042, D.C., S.D. Ga.); *Cosentino v Local 85, United Association of Journeymen (Richard E Buettner)*, June 4, 1959 (No 59C152, D.C., E.D. Mo.); *Cunco v. Local 472, International Hod Carriers (Ernest Renda Construction Co)*, Jan. 20, 1959 (No 14-59, D.C., N.J.); *Brown v. Local Union No 447 (Sheet Metal Heating & Air Conditioning Contractors Assn.)*, Nov. 24, 1958 (No 7826, D.C., ND Calif.)

⁵⁴ *McLeod v. Paperhandlers' & Straighteners' Union No 1 (News Syndicate Co.)*, Sept 5, 1958 (No 137-140, D.C., SD NY.), *Namark v Truck Drivers & Chauffeurs Union Local No 478 (United States Steel Supply Division)*, July 11, 1958 (No. 718-58, D.C., N.J.), *McLeod v Dary Transport Drivers (Middletown Milk & Cream Co)*, Dec 26, 1958 (No. 140-120, D.C., S.D NY.).

⁵⁵ *Graham v Marine Staff Officers (Merrill & Ring Western Lumber)*, June 4, 1959 (No. 4829, D.C., W.D. Wash.), *Graham v. International Longshoremen's & Warehousemen's Union (General Ore, Inc)*, Mar 17, 1959 (No 10086 D.C., Ore).

⁵⁶ *Sherman v United Steel Workers of America (Specialty Steel Products Inc.)*, June 26, 1959 (No 17944, D.C., W.D. Pa.)

⁵⁷ *Alpert v International Brotherhood of Electrical Workers (Southern New England Telephone Co.)*, July 7, 1958 (No 734, D.C., Conn.).

⁵⁸ *Sherman v United Steel Workers of America, supra.*

sented by a union, purchased a larger plant at Verona, Pa., and made arrangements to transfer its employees and operations to its newly acquired plant. Upon announcement of the purchase of the Verona plant, the union which had represented the employees of the former company demanded that Specialty hire its members who had been laid off when Specialty purchased the Verona plant rather than transfer the Braddock employees, who were represented by another union, to the Verona plant as planned. Specialty refused to accede to the demand, and the Verona union picketed the plant and prevented the transfer of Specialty's equipment and employees from the Braddock plant. The court concluded that there was reasonable cause to believe that the Verona union's picketing to compel Specialty to employ its members at the new Verona plant, rather than transfer the employees represented at Braddock by another union, violated section 8(b)(4)(D) of the act. An injunction against the picketing was granted.⁵⁹

⁵⁹ Subsequently, Specialty and the two unions settled the jurisdictional dispute by agreeing that jobs at the new plant would be divided between Specialty's Braddock employees and the employees who worked at Verona for the former company.

VII

Contempt Litigation

During fiscal 1959 petitions for adjudication in civil contempt of parties for noncompliance with decrees enforcing Board orders were acted upon by the respective courts in two cases. The Board's petition was granted by the Second Circuit in *Mastro Plastics*¹ and denied by the Sixth Circuit in *Deena Artware*.²

In *Mastro*, the company defended its refusal to reinstate a striker in accordance with the court's decree on the ground that the employee had been convicted of disorderly conduct during the strike with a resulting suspended sentence, and also on the ground that, in the poststrike application for reinstatement, the employee failed to disclose her conviction. The court rejected the proffered defenses as both untimely and substantially without merit. The court made clear that, if the company believed that it had sufficient grounds to refuse reinstatement to the employee, its only proper recourse was a timely petition for modification by the court of its decree. "The orderly administration of justice," the court stated, "requires that respondents scrupulously avoid a unilateral determination that our orders need no longer be complied with." No timely application for modification having been made,³ the company's past failure to comply with its reinstatement obligations under the decree was held to have been contemptuous.

The court further held that, prospectively, the company's defense was likewise unavailable. The court pointed out that the employee's misconduct occurred during the strike which led to the unfair labor practice proceeding, and that the Company, not having raised the issue either before the Board or before the court in the enforcement proceeding, was now foreclosed from asserting the conduct as a defense. As for the employee's failure to disclose her conviction when applying for reinstatement, the court found no merit in the contention that this was the reason for the company's denial of rein-

¹ *NLRB v. Mastro Plastics Corp., and French-American Reeds Mfg. Co., Inc.*, 261 F. 2d 147

² *NLRB v. Deena Artware, Inc.*, 261 F. 2d 503.

³ The court noted that company's application for relief to the Board was improperly placed and, in any event, was too late since it was not made until 4 years after issuance of the decree and 2 years after its affirmance by the Supreme Court

statement. In any event, the court held, the employee's apparent misstatement, even if promptly asserted, would not have justified modification of the court's reinstatement decree, since modification could have been granted only on the basis of "subsequent events or subsequently discovered evidence which would tend to show that reinstatement would no longer further the purpose of the act." The employee's misstatement was no such event, according to the court, because (1) the company was barred from asserting the underlying strike misconduct as justification for the denial of reinstatement; (2) the company, knowing of the misconduct, was not misled by the misstatement; and (3) similar misstatements by applicants had not in the past been considered by the company as ground for discharge.

In *Deena Artware*, the Board's contempt petition was based on the company's noncompliance with an original and a supplemental decree⁴ of the Sixth Circuit awarding back pay to discriminatorily discharged employees. The petition alleged that the company's asserted financial inability to make back-pay payments was brought about by the conduct of the business—through the company's president and corporate affiliates—in a manner which divested the company of its assets and which was intended to prevent compliance by the company with the court's decree. The Board requested that the respondent company and its president and affiliates be therefore adjudicated in civil contempt.⁵

Dismissing the Board's petition, the court held that the sole issue was whether the transaction which deprived the respondent company of its assets was "in disobedience or resistance of an existing court order." The court noted that the transactions to which the Board's petition referred occurred before the original back-pay award became liquidated; that is, before the court's original decree was made definite by the supplemental decree specifying the amount of back pay ascertained by the Board to be due. The court was of the view that its "enforcement order . . . which left undecided and undisposed of the amounts of back pay which any individual employee would be entitled to receive, was not sufficiently definite and mandatory to serve as a basis for contempt proceedings."⁶ The court therefore dismissed the Board's petition as well as its motion for discovery and other relief.⁶ The Supreme Court granted the Board's petition for certiorari on May 4, 1959.⁷

⁴ *N L R B. v. Deena Artware, Inc.*, 198 F. 2d 645; 228 F. 2d 871.

⁵ Simultaneously, the Board moved for discovery, inspection of books and records of the several companies, and for an order that depositions be taken of the companies' officers. An earlier similar request of the Board was denied by the court as premature, having been made in advance of the institution of contempt proceedings, 251 F. 2d 183; Twenty-third Annual Report, p. 140.

⁶ See footnote 3, *supra*.

⁷ 359 U.S. 983

VIII

Miscellaneous Litigation

Litigation for the purpose of aiding or protecting the Board's processes during fiscal 1959 was concerned with the enforcement of subpoenas issued in proceedings under the act, and with the defense of suits by parties seeking review or nullification of orders in representation proceedings and refusals of the Board's General Counsel to issue unfair labor practice complaints.

1. Subpoena Enforcement

The Fifth Circuit Court of Appeals sustained the Board's right to district court of enforcement of its subpoenas *duces tecum* in two cases.

In *Duval Jewelry*¹ the court reversed the action of a district court in refusing to enforce and quashing subpoenas *duces tecum* issued by the Board on the ground that they were "unreasonable and oppressive." The subpoenas required the company to furnish certain documentary proof as to its operations on which the Board's exercise of jurisdiction in a representation proceeding depended.² The district court deemed the subpoenas oppressive because, on their face, they called for the production of books and records within 10 days at the place of hearing some 350 miles distant from the company's offices. However, as pointed out by the court of appeals, the Board's hearing officer had offered to move the place of hearing to the seat of the company's place of business; the subpoenas themselves provided that "in lieu of" producing the specified books and records "a statement signed and certified by a responsible official" could be submitted; and the company also was granted several extensions of time to comply. Concluding that the subpoenas should not have been

¹ *N.L.R.B. v Duval Jewelry Co of Miami, Inc, et al*, 257 F. 2d 672

² The subpoenas here had previously been held invalid by the Fifth Circuit on another grounds (243 F. 2d 427; Twenty-second Annual Report, pp. 154-155). The Supreme Court having reversed the holding and remanded the case (357 U.S. 1; Twenty-third Annual Report, pp. 112-113), it became incumbent on the court of appeals to consider the ground which had prompted the district court's denial of enforcement.

quashed, the court of appeals noted that the district court possessed power to assure the nonoppressive enforcement of the subpoenas by such means as affording sufficient time for compliance, or providing for inspection and copying of company records by Board agents. The district court was directed to enforce the subpoenas "in a manner considered by [it] to be not unduly burdensome or oppressive."

In *White Construction*,³ the court, *per curiam*, held that the district court properly granted the Board's petition for the enforcement of its subpoenas *duces tecum* and *ad testificandum*. As for the subpoena *duces tecum*, the district court's enforcement order was held valid even though it did not expressly provide for the submission of statements "in lieu of" production of records, the court of appeals noting that the Board interpreted the order as being subject to the "in lieu of" provision which the court considered essential.

2. Petitions for Judicial Intervention in Representation Proceedings

Applications for district court relief from Board action at varying stages of representation proceedings during the past year were opposed by the Board primarily on the ground that the court was without jurisdiction to grant relief.

In two cases, the petitioners asserted unsuccessfully that the challenged Board action exceeded statutory authority and, therefore, could be nullified by the district court in the exercise of its equity powers, under the recent decisions of the District of Columbia Circuit and the Supreme Court in *Leedom v. Kyne*.⁴ The petitioning union in one case complained of the Board's direction of an election notwithstanding the union's representative status among the employees in the voting unit and its current contract with their employer.⁵ In accordance with its established practice, the Board had held that the asserted contract was not a bar to an election because a schism in the union's ranks, resulting from expulsion by its parent organization, so unstabilized the existing bargaining relationship that an election was warranted.⁶ The District of Columbia Court of Appeals, affirming the district court's conclusion that the Board acted within its statutory discretion, rejected the union's contention that the direction of an election under the circumstances here was unlawful under

³ *White Construction and Engineering Co., Inc. v. N.L.R.B.*, 260 F. 2d 507.

⁴ 249 F. 2d 490; 358 U.S. 184. The Supreme Court's decision is discussed at pp. 117-118 of this report.

⁵ *National Biscuit Division (Biscuit Council, Bakery and Confectionery Workers' International Union of America) v. Boyd Leedom*, 265 F. 2d 101, affirming the judgment of the District Court for the District of Columbia, July 17, 1958.

⁶ The Board's contract bar rules as affected by schism are discussed at pp. 26-28 of this report.

the *Kyne* decision. The union had contended that the Board's schism rules discriminated against unaffiliated unions, contrary to the provision of section 9(c)(2) that the same rules must be applied in determining the existence of a representation question "irrespective of the identity of the persons filing the petitions or the kind of relief sought."⁷

In the *Connecticut Light* case,⁸ after the petitioning union lost a section 9 election the employer sued for an injunction to compel the Board to vacate the decision on which the election was based. In this decision, the Board had found that individuals whom the union sought to represent were not supervisors, as contended by the company, but employees for the purposes of the act. In the injunction case, the company urged that this relief was necessary because the Board's determination established conclusively and indefinitely the status of the individuals involved, thus having the effect of compelling the company in the future to treat them as employees under the act. Rejecting the company's contentions, the court noted that the status of the particular individuals depended on their duties and was necessarily subject to change, and that the Board's determination therefore could not foreclose a redetermination of their status in future proceedings. The court accordingly concluded that there was no justiciable controversy of which it could take cognizance. Moreover, according to the court, the subject matter of the action was not one over which it had jurisdiction under the Administrative Procedure Act, or the National Labor Relations Act, or section 24(8) of the Judicial Code. The court pointed out that the Administrative Procedure Act and the National Labor Relations Act clearly conferred no jurisdiction on the district courts to review Board representation proceedings. Nor, in the court's view, was there occasion for the company to invoke the court's equity jurisdiction in reliance on the Supreme Court's ruling in the *Kyne* case.⁹ The district court concluded that the *Kyne* decision left intact the general rule that a Board order in a representation proceeding, not being a "final order," is reviewable only in connection with an enforcement or review proceeding under section 10, permitting district court intervention only in the limited situation that the challenged action of the Board is contrary to statute or the requirements of due process, and no other adequate remedy exists. No such situation was pres-

⁷ In another case arising out of the same schism (*Local Union No 1, Bakery & Confectionery Workers v Madden*, Aug 12 1959, 42 LRRM 2619), the District Court for Northern Illinois denied the union's motion to enjoin the holding of a representation election by a Board regional director, because no substantial constitutional or procedural due process question was presented.

⁸ *The Connecticut Light and Power Co v. Boyd S Leedom, et al*, 174 F. Supp 171

⁹ Footnote 4. *supra*.

ent here, according to the court, because in an appropriate case review under section 10 of the act was possible. Furthermore, the Board's determination of employee status was made in the exercise of allowable statutory discretion, and clearly was not, as the action in *Kyne*, in conflict with "rigid and mandatory" provisions. The court said: "Certainly . . . *Kyne* did not intend to allow a mere allegation of unlawful action on the part of the Board to confer jurisdiction on the district court. . . . Exactly what unlawful action must be alleged in order to confer jurisdiction on the district courts is a question to be decided on the particular facts of each case."¹⁰

3. Petitions for District Court Relief in Unfair Labor Practice Proceedings

In two cases, parties who had filed unfair labor practice charges sought district court relief from the dismissal of the charges by the Board's General Counsel. Under the act, the General Counsel has exclusive authority to issue unfair labor practice complaints.

In the *Heiser Ready Mix* case,¹¹ the General Counsel declined to investigate the company's charge on the ground that the company's operations failed to meet the minimum standards fixed by the Board for the assertion of jurisdiction. The district court granted the company's petition for injunctive relief and directed the General Counsel to investigate the charges and, in case of reasonable grounds for believing them to be true, to issue a complaint and otherwise to proceed in accordance with the provisions of the act. On appeal, the Seventh Circuit reversed the district court on the ground that the complaint should have been dismissed because of lack of jurisdiction over the person of the General Counsel.¹²

In the other case, the petitioning parties sought a declaratory judgment construing the provision of the National Labor Relations Act which confers discretion on the General Counsel in the matter

¹⁰ See also *Retail Clerks International Association, Local No 128 v. Leedom, et al.*, Oct. 29, 1958 (43 LRRM 2029). Here, the District Court for the District of Columbia held that it was without jurisdiction to restrain the Board from entertaining an employer's petition for a sec 9 election which was based on the representation claims of a union alleged not to be in compliance with the then effective filing requirements of sec 9 (f), (g), and (h) of the 1947 act. (Sec 9 (f), (g), and (h) was later repealed by Public Law 86-257, Sept. 14, 1959) The court noted that the union's motion for judicial relief was premature; that no irreparable damage was shown to result from the conduct of the representation proceeding here; and that in any event there was no cause for judicial intervention because the Board's interpretation of sec. 9 (f), (g), and (h) was reasonable and the conduct of an investigation of representatives did not exceed the Board's statutory authority. The union's appeal from the district courts' decision was dismissed by the District of Columbia Court of Appeals on Mar. 2, 1959.

¹¹ *Heiser Ready Mix Co v. Jerome D. Fenton*, July 9, 1958, 42 LRRM 2735 (D.C., W. Wis.).

¹² *Heiser Ready Mix Co. v. Jerome D. Fenton*, 265 F. 2d 277.

of the issuance of complaints, in order to determine whether the exercise by the General Counsel of his discretion in the present case was lawful. The district court denied the requested relief, pointing out that the necessary basis for declaratory relief, an actual controversy, was lacking, and that the court was without jurisdiction over the subject matter. The Court of Appeals for the Seventh circuit affirmed the district court's judgment.¹³

¹³ *Howard E. Shank and Ruth Warner v. N.L.R.B. and General Electric Co.*, 260 F. 2d 444.

APPENDIX A

Statistical Tables for Fiscal Year 1959

Table 1.—Total Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1959

	Number of cases				
	Total	Identification of complainant as petitioner			
		AFL-CIO affiliates	Unaffiliated unions	Individuals	Employers
All cases ¹					
Pending July 1, 1958.....	6,385	2,093	752	2,824	716
Received fiscal 1959.....	21,633	7,936	3,806	7,769	2,122
On docket fiscal 1959.....	28,018	10,029	4,558	10,593	2,838
Closed fiscal 1959.....	20,355	7,539	3,363	7,547	1,906
Pending June 30, 1959.....	7,663	2,490	1,195	3,046	932
Unfair labor practice cases					
Pending July 1, 1958.....	4,651	1,080	330	2,698	543
Received fiscal 1959.....	12,239	2,677	1,111	7,176	1,275
On docket fiscal 1959.....	16,890	3,757	1,441	9,874	1,818
Closed fiscal 1959.....	11,465	2,528	963	6,936	1,038
Pending June 30, 1959.....	5,425	1,229	478	2,938	780
Representation cases					
Pending July 1, 1958.....	1,723	1,013	422	115	173
Received fiscal 1959.....	9,347	5,259	2,694	547	847
On docket fiscal 1959.....	11,070	6,272	3,116	662	1,020
Closed fiscal 1959.....	8,840	5,011	2,399	562	868
Pending June 30, 1959.....	2,230	1,261	717	100	152
Union shop deauthorization cases					
Pending July 1, 1958.....	11	0	0	11	-----
Received fiscal 1959.....	47	0	1	46	-----
On docket fiscal 1959.....	58	0	1	57	-----
Closed fiscal 1959.....	50	0	1	49	-----
Pending June 30, 1959.....	8	0	0	8	-----

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 sec 8(a).
 CB: A charge of unfair labor practices against a union under sec. 8(b)(1), (2), (3), (5), (6).
 CC: A charge of unfair labor practices against a union under sec. 8(b)(4) (A), (B), (C).
 CD: A charge of unfair labor practices against a union under sec. 8(b)(4)(D).
 RC: A petition by a labor organization or employees for certification of a representative for purposes of collective bargaining under sec. 9(c)(1)(A)(i).
 RM: A petition by employer for certification of a representative for purposes of collective bargaining under sec 9(c)(1)(B).
 RD: A petition by employees under sec. 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 sec 9(e)(1) asking for a referendum to rescind a bargaining agent's authority to make a union-shop contract under sec. 8(a)(3).

Table 1A.—Unfair Labor Practice and Representation Cases Received, Closed, and Pending (Complainant or Petitioner Identified), Fiscal Year 1959

	Number of unfair labor practice cases					Number of representation cases				
	Total	Identification of complainant				Total	Identification of petitioner			
		AFL-CIO affiliates	Unaffiliated unions	Individuals	Employers		AFL-CIO affiliates	Unaffiliated unions	Individuals	Employers
	CA cases ¹					RC cases ¹				
Pending July 1, 1958.....	2,957	1,029	312	1,612	4	1,435	1,012	422	1	7
Received fiscal 1959.....	8,266	2,534	1,046	4,664	22	7,959	5,259	2,693	7	7
On docket fiscal 1959.....	11,223	3,563	1,358	6,276	26	9,394	6,271	3,115	8	8
Closed fiscal 1959.....	7,825	2,392	912	4,515	6	7,415	5,010	2,398	7	7
Pending June 30, 1959.....	3,398	1,171	446	1,761	20	1,979	1,261	717	1	1
	CB cases ¹					RM cases ¹				
Pending July 1, 1958.....	1,333	46	17	1,084	186	173	-----	-----	-----	173
Received fiscal 1959.....	3,129	83	62	2,488	496	847	-----	-----	-----	847
On docket fiscal 1959.....	4,462	129	79	3,572	682	1,020	-----	-----	-----	1,020
Closed fiscal 1959.....	2,902	80	48	2,404	370	868	-----	-----	-----	868
Pending June 30, 1959.....	1,560	49	31	1,168	312	152	-----	-----	-----	152
	CC cases ¹					RD cases ¹				
Pending July 1, 1958.....	263	3	1	1	258	115	1	0	114	-----
Received fiscal 1959.....	657	29	2	18	608	541	0	1	540	-----
On docket fiscal 1959.....	920	32	3	19	866	656	1	1	654	-----
Closed fiscal 1959.....	525	24	2	11	488	557	1	1	555	-----
Pending June 30, 1959.....	395	8	1	8	378	99	0	0	99	-----
	CD cases ¹									
Pending July 1, 1958.....	98	2	0	1	95					
Received fiscal 1959.....	187	31	1	6	149					
On docket fiscal 1959.....	285	33	1	7	244					
Closed fiscal 1959.....	213	32	1	6	174					
Pending June 30, 1959.....	72	1	0	1	70					

¹ See table 1, footnote 1, for definitions of types of cases

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1959

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 8,266	1 100 0	8(a)(3).....	6,775	82.0
8(a)(1).....	2 8,266	2 100 0	8(a)(4).....	173	2.1
8(a)(2).....	724	8.8	8(a)(5).....	1,311	15.9

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

Total cases.....	1 3,973	1 100.0	8(b)(3).....	208	5.2
8(b)(1).....	2,849	71.7	8(b)(4).....	844	21.2
8(b)(2).....	2,454	61.8	8(b)(5).....	17	.4
			8(b)(6).....	14	.4

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

			Total cases 8(b)(4)....		
Total cases 8(b)(1)....	1 2,849	1 100.0		1 844	1 100.0
8(b)(1)(A).....	2,816	98.8	8(b)(4)(A).....	624	73.9
8(b)(1)(B).....	45	1.6	8(b)(4)(B).....	202	23.9
			8(b)(4)(C).....	33	3.9
			8(b)(4)(D).....	187	22.2

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 the employees guaranteed by the act, and therefore is included in all charges of employer unfair labor practices.

Table 3.—Formal Action Taken, by Number of Cases, Fiscal Year 1959

Formal action taken	All cases	Unfair labor practice cases			Representation cases
		All C cases	CA cases ¹	Other C cases ¹	
Complaints issued.....	2,101	2,101	1,283	818	-----
Notices of hearing issued.....	4,315	51	-----	51	4,264
Cases heard.....	3,698	1,158	779	379	2,540
Intermediate reports issued.....	762	762	539	223	-----
Decisions issued, total.....	2,883	764	423	341	2,119
Decisions and orders.....	531	531	2 320	3 211	-----
Decisions and consent orders.....	233	233	103	130	-----
Elections directed.....	1,726	-----	-----	-----	1,726
Rulings on objections and/or challenges in stipulated election cases.....	173	-----	-----	-----	173
Dismissals on record.....	220	-----	-----	-----	220

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

² Includes 46 cases decided by adoption of intermediate report in absence of exceptions.

³ Includes 10 cases decided by adoption of intermediate report in absence of exceptions.

Table 4.—Remedial Action Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1959

A BY EMPLOYERS ¹

	Total	By agree- ment of all parties	By Board or Court order
Cases			
Notice posted.....	964	798	166
Recognition or other assistance withheld from employer-assisted union.....	267	234	33
Employer-dominated union disestablished.....	29	25	4
Workers placed on preferential hiring list.....	49	44	5
Collective bargaining begun.....	141	107	34
Workers			
Workers offered reinstatement to job.....	42,078	² 41,758	320
Workers receiving back pay.....	1,521	³ 1,010	⁴ 511
Back-pay awards.....	\$793,530	\$391,440	\$402,090

B. BY UNIONS ⁵

	Cases		
Notice posted.....	565	454	111
Union to cease requiring employer to give it assistance.....	207	192	15
Notice of no objection to reinstatement of discharged employees.....	93	74	19
Collective bargaining begun.....	27	24	3
Workers			
Workers receiving back pay.....	374	327	47
Back-pay awards.....	\$106,580	\$69,400	\$37,180

¹ In addition to the remedial action shown, other forms of remedy were taken in 88 cases² Includes 32 west coast trucking industry cases involving 41,200 workers³ Includes 287 workers who received back pay from both employer and union.⁴ Includes 37 workers who received back pay from both employer and union⁵ In addition to the remedial action shown, other forms of remedy were taken in 87 cases

Table 5.—Industrial Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1959

Industrial group ¹	All cases	Unfair labor practice cases					Representation cases			
		All C cases	CA ²	CB ²	CC ²	CD ²	All R cases	RC ²	RM ²	RD ²
Total.....	21, 586	12, 239	8, 266	3, 129	657	187	9, 347	7, 959	847	541
Manufacturing.....	11, 342	5, 749	4, 398	1, 151	163	37	5, 593	4, 760	453	380
Ordnance and accessories.....	23	13	7	6	0	0	10	9	0	1
Food and kindred products.....	1, 679	793	568	182	41	2	886	772	65	49
Tobacco manufacturers.....	16	5	4	1	0	0	11	10	1	0
Textile mill products.....	335	222	174	41	7	0	113	86	22	5
Apparel and other finished products made from fabric and similar materials.....	479	356	240	105	9	2	123	88	22	13
Lumber and wood products (except furniture).....	433	196	153	32	8	3	237	206	19	12
Furniture and fixtures.....	451	245	196	37	12	0	206	167	19	20
Paper and allied products.....	376	142	119	22	1	0	234	199	23	12
Printing, publishing, and allied industries.....	620	308	238	65	3	2	312	262	24	26
Chemicals and allied products.....	724	350	304	39	7	0	374	304	33	37
Products of petroleum and coal.....	196	109	97	11	1	0	87	76	5	6
Rubber products.....	251	97	83	13	1	0	154	134	10	10
Leather and leather products.....	155	67	53	12	2	0	88	71	11	6
Stone, clay, and glass products.....	620	368	249	102	12	5	252	207	30	15
Primary metal industries.....	694	333	225	67	24	17	361	314	24	23
Fabricated metal products (except machinery and transportation equipment).....	1, 152	547	423	112	12	0	605	536	38	31
Machinery (except electrical).....	949	380	303	62	12	3	569	490	35	44
Electrical machinery, equipment, and supplies.....	931	515	397	115	2	1	416	357	24	35
Aircraft and parts.....	247	139	116	20	1	2	108	102	3	3
Ship and boat building and repairing.....	163	119	84	35	0	0	44	44	0	0
Automotive and other transportation equipment.....	369	224	174	46	4	0	145	121	9	15
Professional, scientific, and controlling instruments.....	158	66	58	6	2	0	92	62	20	10
Miscellaneous manufacturing.....	321	155	133	20	2	0	166	143	16	7
Agriculture, forestry, and fisheries.....	32	19	14	5	0	0	13	12	1	0
Mining.....	480	390	156	143	90	1	90	74	5	11
Metal mining.....	54	20	15	2	2	1	34	27	0	7
Coal mining.....	334	317	90	141	86	0	17	15	1	1
Crude petroleum and natural gas production.....	12	5	5	0	0	0	7	4	1	2
Nonmetallic mining and quarrying.....	80	48	46	0	2	0	32	28	3	1
Construction.....	2, 356	2, 118	904	893	205	116	238	210	24	4
Wholesale trade.....	1, 289	493	380	78	30	5	796	651	100	45
Retail trade.....	2, 015	920	777	89	46	8	1, 095	906	144	45
Finance, insurance, and real estate.....	84	26	24	2	0	0	58	53	3	2
Transportation, communication, and other public utilities.....	2, 860	1, 890	1, 189	587	101	13	970	851	81	38
Local passenger transportation.....	282	152	104	47	1	0	130	127	2	1
Motor freight, warehousing, and transportation services.....	1 620	1 125	743	309	63	10	495	425	49	21
Water transportation.....	518	434	221	183	29	1	84	75	9	0
Other transportation.....	58	24	11	8	4	1	34	30	3	1
Communications.....	220	86	60	26	0	0	134	116	8	10
Heat, light, power, water, and sanitary services.....	162	69	50	14	4	1	93	78	10	5
Services.....	1, 128	634	424	181	22	7	494	442	36	16

¹ Source—Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1957.² See table 1, footnote 1, for definitions of types of cases

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1959

Division and State ¹	All cases	Unfair labor practice cases					Representation cases			
		All C cases	CA ²	CB ²	CC ²	CD ²	All R cases	RC ²	RM ²	RD ²
Total.....	21,586	12,239	8,266	3,129	657	187	9,347	7,959	847	541
New England.....	971	468	350	95	22	1	503	428	50	25
Maine.....	64	36	27	2	7	0	28	20	5	3
New Hampshire.....	42	13	8	3	2	0	29	27	0	2
Vermont.....	43	19	18	1	0	0	24	17	6	1
Massachusetts.....	580	301	219	74	8	0	279	241	24	14
Rhode Island.....	62	24	18	5	1	0	38	32	5	1
Connecticut.....	180	75	60	10	4	1	105	91	10	4
Middle Atlantic.....	4,290	2,461	1,558	713	129	61	1,829	1,511	207	111
New York.....	2,158	1,219	799	360	48	12	939	773	120	46
New Jersey.....	839	471	281	130	50	10	368	295	36	37
Pennsylvania.....	1,293	771	478	223	31	39	522	443	51	28
East North Central.....	4,509	2,503	1,787	613	76	27	2,006	1,647	217	142
Ohio.....	1,427	832	607	213	12	0	595	508	51	36
Indiana.....	571	356	257	83	13	3	215	177	15	23
Illinois.....	1,137	585	390	156	23	16	552	450	77	25
Michigan.....	1,031	611	443	143	20	5	420	312	61	47
Wisconsin.....	343	119	90	18	8	3	224	200	13	11
West North Central.....	1,361	517	341	119	43	14	844	736	70	38
Iowa.....	161	37	28	4	4	1	124	114	7	3
Minnesota.....	208	52	39	7	6	0	156	128	24	4
Missouri.....	630	320	187	97	25	11	310	262	25	23
North Dakota.....	50	10	10	0	0	0	40	34	4	2
South Dakota.....	45	5	5	0	0	0	40	34	4	2
Nebraska.....	119	30	23	3	3	1	89	87	0	2
Kansas.....	148	63	49	8	5	1	85	77	6	2
South Atlantic.....	2,904	1,861	1,395	384	64	18	1,043	955	54	34
Delaware.....	39	22	12	2	8	0	17	15	2	0
Maryland.....	282	135	85	43	6	1	147	134	8	5
District of Columbia.....	95	30	16	9	3	2	65	62	0	3
Virginia.....	240	119	102	13	4	0	121	107	6	8
West Virginia.....	304	231	160	61	9	1	73	59	10	4
North Carolina.....	300	184	172	9	3	0	116	104	9	3
South Carolina.....	71	39	30	6	3	0	32	28	1	3
Georgia.....	455	323	200	110	4	9	132	121	8	3
Florida.....	1,118	778	618	131	24	5	340	325	10	5
East South Central.....	1,958	1,529	872	490	136	31	429	370	26	33
Kentucky.....	555	434	154	182	96	2	121	101	6	14
Tennessee.....	689	515	319	186	8	2	174	148	11	15
Alabama.....	571	476	318	100	31	27	95	85	8	2
Mississippi.....	143	104	81	22	1	0	39	36	1	2
West South Central.....	1,452	809	569	184	50	6	643	585	28	30
Arkansas.....	160	61	40	13	7	1	99	94	2	3
Louisiana.....	442	318	222	72	21	3	124	119	3	2
Oklahoma.....	104	33	26	4	3	0	71	66	2	3
Texas.....	746	397	281	95	19	2	349	306	21	22
Mountain.....	873	350	259	54	31	6	523	474	33	16
Montana.....	63	35	19	6	8	2	28	23	4	1
Idaho.....	75	33	31	1	0	1	42	36	3	3
Wyoming.....	26	10	6	1	3	0	16	14	1	1
Colorado.....	385	121	94	15	10	2	264	254	6	4
New Mexico.....	126	73	55	11	6	1	53	36	13	4
Arizona.....	130	40	29	16	4	0	81	75	5	1
Utah.....	56	20	18	2	0	0	36	33	1	2
Nevada.....	12	9	7	2	0	0	3	3	0	0
Pacific.....	2,710	1,464	946	412	87	19	1,246	995	142	109
Washington.....	392	226	141	78	4	3	166	128	16	22
Oregon.....	297	145	95	24	23	3	152	106	29	17
California.....	2,021	1,093	710	310	60	13	928	761	97	70

Table 6.—Geographic Distribution of Unfair Labor Practice and Representation Cases Received, Fiscal Year 1959—Continued

Division and State ¹	All cases	Unfair labor practice cases				Representation cases ²				
		All C cases	CA ²	CB ²	CC ²	CD ²	All R cases	RC ²	RM ²	RD ²
Outlying areas.....	558	277	189	65	19	4	281	258	20	3
Alaska.....	48	31	15	8	4	4	17	17	0	0
Hawaii.....	126	41	30	6	5	0	85	76	7	2
Puerto Rico.....	374	204	143	51	10	0	170	156	13	1
Canada.....	0	0	0	0	0	0	0	0	0	0
Virgin Islands.....	10	1	1	0	0	0	9	9	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 1959

Stage of disposition	All C cases		CA cases ¹		CB cases ¹		CC cases ¹		CD cases ¹	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed.....	11,465	100.0	7,825	100.0	2,902	100.0	525	100.0	213	100.0
Before issuance of complaint.....	10,685	93.2	7,357	94.0	2,723	93.8	406	77.3	199	93.4
After issuance of complaint, before opening of hearing ²	335	2.9	195	2.5	82	2.8	49	9.3	9	4.2
After hearing opened, before issuance of intermediate report ²	78	.7	47	.6	22	.8	9	1.7	0	.0
After intermediate report, before issuance of Board decision.....	49	.4	35	.5	7	.2	6	1.2	1	.5
After Board order adopting intermediate report in absence of exceptions.....	29	.3	22	.3	4	.2	3	.5	0	.0
After Board decision, before court decree.....	182	1.6	108	1.4	37	1.3	36	6.9	1	.5
After circuit court decree, before Supreme Court action.....	93	.8	50	.6	27	.9	13	2.5	3	1.4
After Supreme Court action ⁴	14	.1	11	.1	0	.0	3	.6	0	.0

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

² Includes cases in which the parties entered into a stipulation providing for Board order and consent decree in the circuit court.

³ Includes 42 cases in which a notice of hearing issued pursuant to sec 10(k) of the act. Of these 42 cases, 29 were closed after notice, 1 was closed after hearing, and 12 were closed after Board decision.

⁴ Includes either denial of writ of certiorari or granting of writ and issuance of opinion.

Table 8.—Disposition of Representation Cases Closed, Fiscal Year 1959

Stage of disposition	All R cases		RC cases ¹		RM cases ¹		RD cases ¹	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed.....	8,840	100.0	7,415	100.0	868	100.0	557	100.0
Before issuance of notice of hearing.....	4,884	55.2	4,105	55.4	487	56.1	292	52.4
After issuance of notice of hearing, before opening of hearing.....	1,649	18.7	1,368	18.4	185	21.3	96	17.2
After hearing opened, before issuance of Board decision.....	427	4.8	363	4.9	37	4.3	27	4.9
After issuance of Board decision.....	1,880	21.3	1,579	21.3	159	18.3	142	25.5

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

Table 9.—Analysis of Stages of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1959

Stage and method of disposition	All C cases		CA cases ¹		CB cases ¹		CC cases ¹		CD cases ¹	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed.....	11,465	100 0	7,825	100 0	2,902	100 0	625	100 0	213	100.0
Before issuance of complaint.....	10,685	93.2	7,357	94 0	2,723	93.8	406	77 3	199	93 4
Adjusted.....	1,238	10 8	809	10 3	300	10 3	82	15 6	47	22 0
Withdrawn.....	5,289	46 1	3,532	45 1	1,421	49 0	243	46 3	93	43.7
Dismissed.....	4,158	36 3	3,016	38 6	1,002	34 5	81	15 4	59	27.7
After issuance of complaint, before opening of hearing.....	335	2 9	195	2 5	82	2 8	49	9 3	9	4.2
Adjusted.....	174	1.5	124	1 6	35	1 2	14	2 7	1	5
Compliance with stipulated decision.....	8	.1	2	(^b)	3	.1	3	.5	0	0
Compliance with consent decree.....	94	.8	39	.5	33	1.1	14	2 7	8	3 7
Withdrawn.....	47	.4	18	.2	11	.4	18	3 4	0	0
Dismissed.....	12	.1	12	.2	0	.0	0	.0	0	.0
After hearing opened, before issuance of intermediate report.....	78	.7	47	.6	22	.8	9	1.7	0	0
Adjusted.....	16	.1	13	.2	2	.1	1	.2	0	.0
Compliance with stipulated decision.....	7	.1	2	(^b)	2	.1	3	.5	0	.0
Compliance with consent decree.....	53	.5	31	.4	18	.6	4	.8	0	.0
Withdrawn.....	2	(^b)	1	(^b)	0	0	1	.2	0	.0
After intermediate report, before issuance of Board decision.....	49	.4	35	.5	7	.2	6	1 2	1	.5
Compliance.....	48	.4	35	.5	7	.2	5	1 0	1	5
Withdrawn.....	1	(^b)	0	.0	0	.0	1	.2	0	0
After Board order adopting intermediate report in absence of exceptions.....	29	.3	22	.3	4	.2	3	.5	0	0
Compliance.....	12	.1	8	.1	1	.1	3	.5	0	0
Dismissed.....	17	.2	14	.2	3	.1	0	0	0	0
After Board decision, before court decree.....	182	1 6	108	1.4	37	1.3	36	6 9	1	.5
Compliance.....	128	1 1	70	.9	26	.9	31	5 9	1	.5
Dismissed.....	51	.5	35	.5	11	.4	5	1 0	0	.0
Withdrawn.....	1	(^b)	1	(^b)	0	.0	0	.0	0	.0
Otherwise.....	2	(^b)	2	(^b)	0	.0	0	.0	0	.0

After circuit court decree, before Supreme Court action-----	93	.8	50	.6	27	.9	13	2.5	3	1.4
Compliance-----	78	.7	44	.6	24	.8	8	1.5	2	.9
Dismissed-----	14	1	5	(⁶)	3	.1	5	1.0	1	.5
Otherwise-----	1	(⁶)	1	(⁶)	0	.0	0	.0	0	.0
After Supreme Court denied writ of certiorari—Compliance-----	9	.1	7	.1	0	.0	2	.4	0	.0
After Supreme Court opinion—Compliance-----	5	(⁶)	4	(⁶)	0	.0	1	.2	0	.0

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

² Includes 36 cases adjusted before 10(k) notice; and 11 cases adjusted after 10(k) notice.

³ Includes 77 cases withdrawn before 10(k) notice; 13 cases withdrawn after 10(k) notice, and 3 cases withdrawn after 10(k) Board decision.

⁴ Includes 44 cases dismissed before 10(k) notice, 5 cases dismissed after 10(k) notice, 1 case dismissed after 10(k) hearing; and 9 cases dismissed by 10(k) Board decision.

⁵ Less than one-tenth of 1 percent.

Table 10.—Analysis of Methods of Disposition of Representation Cases Closed, Fiscal Year 1959

Method and stage of disposition	All R cases		RC cases ¹		RM cases ¹		RD cases ¹	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed.....	8,840	100 0	7,415	100 0	868	100 0	557	100 0
Consent election.....	2,392	27 1	2,112	28 5	208	24 0	72	12 9
Before notice of hearing.....	1,786	20 2	1,598	21 5	151	17 4	37	6 6
After notice of hearing, before hearing opened.....	493	5 6	420	5 7	45	5 2	28	5 0
After hearing opened, before Board decision.....	113	1 3	94	1 3	12	1 4	7	1 3
Stipulated election.....	1,813	20 5	1,644	22 2	124	14 2	45	8 1
Before notice of hearing.....	985	11 1	896	12 1	69	7 9	20	3 6
After notice of hearing, before hearing opened.....	535	6 1	478	6 4	42	4 8	15	2 7
After hearing opened, before Board decision.....	141	1 6	133	1 8	4	5	4	7
After postelection decision.....	152	1 7	137	1 9	9	1 0	6	1 1
Withdrawn.....	2,213	25 0	1,737	23 4	294	33 9	182	32 7
Before notice of hearing.....	1,465	16 6	1,140	15 4	193	22 2	132	23 7
After notice of hearing, before hearing opened.....	515	5 8	400	5 4	78	9 0	37	6 6
After hearing opened, before Board decision.....	136	1 5	109	1 4	16	1 9	11	2 0
After Board decision and direction of election.....	97	1 1	88	1 2	7	8	2	4
Dismissed.....	900	10 2	617	8 3	132	15 2	151	27 1
Before notice of hearing.....	563	6 4	393	5 3	68	7 8	102	18 3
After notice of hearing, before hearing opened.....	53	.6	24	3	17	2 0	12	2 2
After hearing opened, before Board decision.....	24	.3	15	2	5	6	4	7
By Board decision.....	220	2 9	185	2 5	42	4 8	33	5 9
Board-ordered election.....	1,522	17 2	1,305	17 6	110	12 7	107	19 2

¹ See table 1, footnote 1, for definitions of types of cases

² Includes 5 RC, 14 RM, and 16 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 1959

Type of case	Total elections	Type of election			
		Consent ¹	Stipulated ²	Board ordered ³	Regional Director directed ⁴
All elections, total.....	5,660	2,358	1,783	1,507	12
Eligible voters, total.....	447,322	120,634	169,358	156,816	514
Valid votes, total.....	401,421	106,440	154,368	140,166	447
RC cases, ⁵ total.....	5,022	2,092	1,631	1,299	-----
Eligible voters.....	395,635	105,194	149,157	141,284	-----
Valid votes.....	355,529	92,678	135,803	127,048	-----
RM cases, ⁵ total.....	406	191	109	106	-----
Eligible voters.....	34,388	8,691	14,772	10,925	-----
Valid votes.....	30,265	7,854	13,442	8,969	-----
RD cases, ⁵ total.....	216	72	43	101	-----
Eligible voters.....	16,231	6,200	5,429	4,602	-----
Valid votes.....	14,656	5,388	5,123	4,145	-----
UD cases, ⁵ total.....	16	3	0	1	12
Eligible voters.....	1,068	549	0	5	514
Valid votes.....	971	520	0	4	447

¹ Consent elections are held by agreement of all parties concerned. Postelection ruling and certification 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 1959

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)				Valid votes cast				
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	Resulting in deauthorization		Resulting in continued authorization		Total	Percent of total eligible	Cast for deauthorization	
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total
Total.....	16	10	62.5	6	37.5	1,068	323	30.2	745	69.8	971	90.9	296	27.7
AFL-CIO.....	12	8	66.7	4	33.3	853	260	30.5	593	69.5	792	92.8	241	23.3
Unaffiliated.....	4	2	50.0	2	50.0	215	63	29.3	152	70.7	179	83.3	55	25.6

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

Table 13.—Collective-Bargaining Elections ¹ by Affiliation of Participating Unions, Fiscal Year 1959

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 5,428	3,410	62.8	² 430,023	257,028	59.8	² 385,794	89.7	247,867	64.2
AFL-CIO.....	3,970	2,302	58.0	384,547	171,441	44.6	344,553	89.6	177,351	51.5
Unaffiliated.....	2,030	1,108	54.6	162,320	85,587	52.7	144,200	88.8	70,516	48.9

¹ The term "collective-bargaining election" is used to cover representation elections requested by a union or other candidate for employee representative or by the employer. This term is used to distinguish this type of election from a decertification election, which is one requested by employees seeking to revoke the representation rights of a union which is already certified or which is recognized by the employer without a Board certification.

² Elections involving 2 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 on the 2 groupings by affiliation.

Table 13A.—Outcome of Collective-Bargaining Elections¹ by Affiliation of Participating Unions, and Number of Employees in Units, Fiscal Year 1959

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	
		AFL-CIO affiliates	Unaffiliated unions			AFL-CIO affiliates			Unaffiliated unions
Total.....	5,428	2,302	1,108	2,018	430,023	171,441	85,587	172,995	385,794
1-union elections:									
AFL-CIO.....	3,165	1,841		1,324	226,821	102,272		124,549	205,217
Unaffiliated.....	1,392		801	591	40,463		21,055	18,808	36,657
2-union elections:									
AFL-CIO v. AFL-CIO.....	209	159		50	31,497	15,150		16,347	28,745
AFL-CIO v. unaffiliated.....	529	270	219	40	107,814	49,312	53,243	5,259	94,816
Unaffiliated v. unaffiliated.....	65		65	0	4,994		4,994	0	4,568
3-union elections:									
AFL-CIO v. AFL-CIO v. AFL-CIO.....	14	12		2	1,931	1,755		176	1,773
AFL-CIO v. AFL-CIO v. unaffiliated.....	32	9	16	7	6,754	1,609	4,394	751	6,018
AFL-CIO v. unaffiliated v. unaffiliated.....	9	2	4	3	1,655	709	661	285	1,565
Unaffiliated v. unaffiliated v. unaffiliated.....	1		1	0	19		19	0	16
4-union elections:									
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO.....	9	8		1	7,124	304		6,820	5,537
AFL-CIO v. AFL-CIO v. unaffiliated v. unaffiliated.....	2	0	2	0	621	0	621	0	560
5-union elections. AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO.....	1	1		0	330	330		0	322

¹ For definition of this term, see table 13, footnote 1.

Table 14.—Decertification Elections by Affiliation of Participating Unions, Fiscal Year 1959

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.....	216	74	34 3	142	65 7	16,231	8,526	52 5	7,705	47 5	14,656	90 3	7,672	52 3
AFL-CIO.....	167	60	35 9	107	64 1	14,800	8,003	54 1	6,797	45 9	13,326	90 0	7,132	53 5
Unaffiliated.....	49	14	28 6	35	71 4	1,431	523	36 5	908	63 5	1,330	92 9	540	40 6

Table 14A.—Voting in Decertification Elections, Fiscal Year 1959

Union affiliation	Elections in which a representative was redesignated					Elections resulting in decertification				
	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for winning union	Votes cast for no union	Employees eligible to vote	Total valid votes cast	Percent casting valid votes	Votes cast for losing union	Votes cast for no union
Total.....	8,526	7,474	87 7	5,785	1,689	7,705	7,182	93 2	1,887	5,295
AFL-CIO.....	8,003	6,983	87 3	5,379	1,604	6,797	6,343	93 3	1,753	4,590
Unaffiliated.....	523	491	93 9	406	85	908	839	92 4	134	705

Table 15.—Size of Units in Collective-Bargaining and Decertification Elections, Fiscal Year 1959

A. COLLECTIVE-BARGAINING ELECTIONS

Size of unit (number of employees)	Number of elections	Percent of total	Elections in which representation rights were won by—				Elections in which no representative was chosen	
			AFL-CIO affiliates		Unaffiliated unions		Number	Percent
			Number	Percent	Number	Percent		
Total.....	5,428	100 0	2,302	100 0	1,108	100 0	2,018	100 0
1-9.....	1,131	20 8	416	18 1	355	32 0	360	17 8
10-19.....	1,171	21 6	495	21 5	249	22 5	427	21 1
20-29.....	710	13 1	325	14 1	124	11 2	261	12 9
30-39.....	468	8 6	211	9 2	78	7 0	179	8 9
40-49.....	283	5 2	139	6 0	40	3 6	104	5 2
50-59.....	231	4 3	102	4 4	33	3 0	96	4 8
60-69.....	195	3 6	84	3 7	33	3 0	78	3 9
70-79.....	144	2 7	68	3 0	31	2 8	45	2 2
80-89.....	119	2 2	43	1 9	23	2 1	53	2 6
90-99.....	94	1 7	47	2 0	17	1 5	30	1 5
100-149.....	286	5 3	120	5 2	41	3 7	125	6 2
150-199.....	163	3 0	71	3 1	15	1 3	77	3 8
200-299.....	174	3 2	74	3 2	28	2 5	72	3 6
300-399.....	87	1 6	32	1 4	16	1 4	39	1 9
400-499.....	53	1 0	23	1 0	6	5 5	24	1 2
500-599.....	29	5	16	7	3	3	10	.5
600-799.....	28	5	10	4	4	4	15	.7
800-999.....	17	3	9	.4	1	1	7	.3
1,000-1,999.....	29	5	14	.6	5	5	10	.5
2,000-2,999.....	10	2	2	.1	3	3	5	.2
3,000-3,999.....	2	(¹)	1	(¹)	0	.0	1	.1
4,000-4,999.....	1	(¹)	0	.0	1	1	0	0
5,000-9,999.....	3	1	0	.0	2	2	1	.1
10,000 and over.....	0	0	0	.0	0	.0	0	0

B. DECERTIFICATION ELECTIONS

Total.....	216	100 0	60	100 0	14	100 0	142	100 0
1-9.....	30	13 9	3	5 0	0	0	27	19 0
10-19.....	57	26 4	7	11 7	5	35 7	45	31 7
20-29.....	31	14 3	8	13 3	0	0	23	16 2
30-39.....	20	9 2	5	8 3	2	14 3	13	9 2
40-49.....	12	5 6	3	5 0	2	14 3	7	4 9
50-59.....	13	6 0	3	5 0	4	28 6	6	4 3
60-69.....	6	2 8	3	5 0	0	0	3	2 1
70-79.....	5	2 3	1	1 7	0	0	4	2 8
80-89.....	4	1 9	3	5 0	1	7 1	0	0
90-99.....	3	1 4	2	3 3	0	.0	1	.7
100-149.....	16	7 4	9	15 0	0	.0	7	4 9
150-199.....	3	1 4	3	5 0	0	0	0	0
200-299.....	10	4 6	7	11 7	0	0	3	2 1
300-399.....	2	9	1	1 7	0	0	1	.7
400 and over.....	4	1 9	2	3 3	0	0	2	1 4

¹ Less than one-tenth of 1 percent

Table 16.—Geographic Distribution of Collective-Bargaining Elections, Fiscal Year 1959

Division and State †	Total	Number of elections in which representation rights were won by—		In which no representative was chosen	Employees eligible to vote	Total valid votes cast	Valid votes cast for—			Employees in units choosing representation
		AFL-CIO affiliates	Unaffiliated unions				AFL-CIO affiliates	Unaffiliated unions	No union	
Total.....	5,428	2,302	1,108	2,018	430,023	385,794	177,351	70,516	137,927	257,028
New England.....	305	120	70	115	28,663	26,298	11,521	3,803	10,974	14,689
Maine.....	15	3	4	8	3,674	3,417	1,027	209	2,181	359
New Hampshire.....	15	3	0	12	2,419	2,216	869	23	1,324	371
Vermont.....	13	4	1	8	1,181	1,068	461	60	547	481
Massachusetts.....	176	74	47	55	15,305	13,862	6,658	2,861	4,343	10,189
Rhode Island.....	19	7	5	7	701	670	230	126	314	442
Connecticut.....	67	29	13	25	5,383	5,065	2,276	524	2,265	2,847
Middle Atlantic.....	979	419	233	327	82,956	74,094	35,968	19,713	18,413	59,927
New York.....	428	180	105	143	38,258	34,002	16,106	10,497	7,399	29,148
New Jersey.....	200	88	46	66	11,692	10,335	4,704	2,607	3,024	8,056
Pennsylvania.....	351	151	82	118	33,006	29,757	15,158	6,609	7,990	22,723
East North Central.....	1,211	540	238	433	110,821	99,646	48,374	14,684	36,588	62,961
Ohio.....	375	159	64	152	31,364	28,705	14,192	2,824	11,689	14,812
Indiana.....	116	53	29	34	15,806	14,157	6,862	3,559	3,736	11,154
Illinois.....	334	152	59	123	37,794	33,333	15,607	3,964	13,762	17,874
Michigan.....	232	100	62	70	16,888	15,566	6,898	3,606	5,062	12,942
Wisconsin.....	154	76	24	54	8,969	7,885	4,815	731	2,339	6,179
West North Central.....	557	215	134	208	26,016	23,076	10,021	4,815	8,240	16,206
Iowa.....	86	30	19	37	4,687	4,325	1,878	535	1,912	2,339
Minnesota.....	107	35	33	39	4,739	4,233	1,206	1,188	1,839	2,668
Missouri.....	190	92	44	54	11,314	9,818	5,039	2,270	2,509	8,108
North Dakota.....	28	4	11	13	476	411	68	137	206	198
South Dakota.....	18	8	4	6	608	534	309	55	170	385
Nebraska.....	58	13	13	32	1,706	1,577	407	381	789	753
Kansas.....	70	33	10	27	2,486	2,178	1,114	249	815	1,755

† Division and State

South Atlantic.....	635	237	108	290	58,365	53,563	20,118	11,303	22,142	30,068
Delaware.....	23	20	0	3	771	743	443	11	289	716
Maryland.....	84	29	16	39	5,384	4,966	2,057	914	1,995	3,113
District of Columbia.....	35	8	10	17	882	806	273	171	362	475
Virginia.....	77	24	17	36	14,319	12,815	3,119	7,512	2,184	12,058
West Virginia.....	50	14	14	22	5,308	4,943	1,964	452	2,527	1,437
North Carolina.....	93	32	11	50	10,023	9,425	3,332	794	5,299	2,556
South Carolina.....	18	7	4	7	4,330	4,048	1,692	199	2,157	635
Georgia.....	98	49	9	40	8,769	8,005	3,832	508	3,665	4,470
Florida.....	157	54	27	76	8,579	7,812	3,406	742	3,664	4,608
East South Central.....	233	86	37	110	20,020	18,659	7,802	1,546	9,311	8,583
Kentucky.....	51	17	7	27	2,938	2,751	1,251	149	1,351	1,422
Tennessee.....	104	35	20	49	8,089	7,507	3,192	545	3,770	3,288
Alabama.....	62	29	9	24	7,174	6,661	2,837	775	3,049	3,588
Mississippi.....	16	5	1	10	1,819	1,740	622	77	1,141	285
West South Central.....	389	149	67	173	27,623	25,353	10,174	2,847	12,332	12,445
Arkansas.....	50	22	9	19	4,100	3,631	1,814	296	1,621	2,160
Louisiana.....	75	22	23	30	3,596	3,332	1,359	634	1,339	2,049
Oklahoma.....	48	15	5	28	4,673	4,344	1,320	300	2,724	1,087
Texas.....	216	90	30	96	15,254	14,046	5,681	1,617	6,748	7,149
Mountain.....	306	168	55	83	19,652	15,557	8,432	3,617	3,508	15,619
Montana.....	10	6	2	2	2,542	2,152	974	1,078	100	2,495
Idaho.....	28	16	5	7	1,262	1,174	290	254	630	511
Wyoming.....	12	7	2	3	770	718	195	419	104	706
Colorado.....	152	95	16	41	8,929	6,098	4,291	526	1,281	7,345
New Mexico.....	37	14	9	14	1,799	1,594	809	327	458	1,205
Arizona.....	46	18	16	12	3,069	2,742	1,352	650	740	2,233
Utah.....	20	11	5	4	1,265	1,066	514	363	189	1,108
Nevada.....	1	1	0	0	16	13	7	0	6	16
Pacific.....	671	294	126	251	44,313	39,788	18,416	6,930	14,442	27,057
Washington.....	85	47	17	21	2,325	2,064	1,131	442	491	1,819
Oregon.....	87	42	13	32	7,345	6,343	3,250	1,345	1,748	5,043
California.....	499	205	96	198	34,643	31,381	14,035	5,143	12,203	20,195
Outlying areas.....	142	74	40	28	11,594	9,760	6,525	1,258	1,977	9,473
Alaska.....	9	8	1	0	425	343	304	30	9	425
Hawaii.....	47	14	22	11	1,626	1,470	487	588	395	1,196
Puerto Rico.....	80	48	17	15	9,227	7,698	5,563	640	1,495	7,639
Virgin Islands.....	6	4	0	2	316	249	171	0	78	213

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 1959

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		
		AFL-CIO affiliates	Unaffiliated unions			
Total.....	5,428	2,302	1,108	2,018	430,023	385,794
Manufacturing.....	3,477	1,604	588	1,285	329,925	300,253
Ordnance and accessories.....	4	4	0	0	3,853	3,530
Food and kindred products.....	623	254	172	197	53,684	46,174
Tobacco manufacturers.....	3	3	0	0	498	466
Textile mill products.....	72	22	18	32	12,624	11,766
Apparel and other finished products made from fabrics and similar materials.....	67	24	7	36	9,619	8,901
Lumber and wood products (except furniture).....	160	84	12	64	9,736	8,916
Furniture and fixtures.....	109	52	11	46	6,788	6,788
Paper and allied products.....	142	80	21	41	16,113	14,897
Printing, publishing, and allied industries.....	178	86	41	51	6,064	5,586
Chemicals and allied products.....	261	109	61	91	24,265	22,523
Products of petroleum and coal.....	57	17	22	18	11,284	10,215
Rubber products.....	98	38	18	42	7,035	6,446
Leather and leather products.....	52	22	7	23	6,706	6,159
Stone, clay, and glass products.....	161	91	21	49	9,860	9,039
Primary metal industries.....	220	114	39	67	23,001	21,029
Fabricated metal products (except machinery and transportation equipment).....	374	180	42	152	21,787	20,171
Machinery (except electrical).....	345	173	25	147	28,755	26,528
Electrical machinery, equipment, and supplies.....	220	98	32	90	35,123	32,093
Aircraft and parts.....	76	36	7	33	12,637	11,720
Ship and boat building and repairing.....	21	12	4	5	10,812	9,624
Automotive and other transportation equipment.....	100	45	14	41	7,590	6,989
Professional, scientific, and controlling instruments.....	51	23	5	23	5,292	4,964
Miscellaneous manufacturing.....	83	37	9	37	6,287	5,729
Agriculture, forestry, and fisheries.....	4	0	1	3	167	100
Mining.....	44	21	9	14	4,090	3,764
Metal mining.....	14	8	0	6	1,635	1,491
Coal mining.....	4	1	3	0	152	125
Crude petroleum and natural gas production.....	6	1	0	5	768	748
Nonmetallic mining and quarrying.....	20	11	6	3	1,535	1,400
Construction.....	112	83	14	15	8,647	5,518
Wholesale trade.....	511	125	192	194	20,395	17,560
Retail trade.....	606	236	106	264	25,095	22,271
Finance, insurance, and real estate.....	21	9	2	10	1,328	1,250
Transportation, communication, and other public utilities.....	487	156	157	174	29,623	25,816
Local passenger transportation.....	13	7	4	2	780	700
Motor freight, warehousing, and transportation services.....	274	43	120	111	8,146	7,261
Water transportation.....	44	18	13	13	3,627	3,089
Other transportation.....	18	7	5	6	1,032	954
Communication.....	86	54	7	25	9,604	8,042
Heat, light, power, water, and sanitary services.....	52	27	8	17	6,434	5,770
Services.....	166	68	39	50	10,753	9,262

¹ Source Standard Industrial Classification, Division of Statistical Standards, U. S. Bureau of the Budget, Washington, 1957 and 1945 editions.

Table 18.—Injunction Litigation Under Sec. 10 (j) and (l), Fiscal Year 1959

Proceedings	Number of cases instituted	Number of applications granted	Number of applications denied	Cases settled, withdrawn, inactive, pending, etc
Under sec 10(j)				
(a) Against unions.....	4	4	0	1 settled. ¹
(b) Against employers.....	1	0	1	0
Under sec. 10(l).....	129	50	10	31 settled ² 33 alleged illegal activity suspended. ⁴ 1 withdrawn 1 dismissed without prejudice 9 pending.
Total.....	134	54	11	76

¹ Case pending at end of the prior fiscal year was settled

² Injunctions were granted in fiscal 1959 on 4 petitions instituted in the prior fiscal year.

³ Includes settlements in 2 cases instituted in prior fiscal year.

⁴ Illegal activity suspended prior to filing of petition no order to show cause issued.

⁵ One proceeding combining requests for 10(j) and 10(l) relief is reflected in the statistics for both 10(j) and 10(l).

Table 19.—Litigation for Enforcement or Review of Board Orders, July 1, 1958–June 30, 1959; and July 5, 1935–June 30, 1959

	July 1, 1958– June 30, 1959		July 5, 1935– June 30, 1959	
	Number	Percent	Number	Percent
Cases decided by U.S. courts of appeals.....	83	100 0	1,856	100 0
Board orders enforced in full.....	46	55 4	1,109	59 8
Board orders enforced with modification.....	13	15 7	363	19 6
Remanded to Board.....	6	7 2	48	2 6
Board orders partially enforced and partially remanded.....	1	1 2	14	.8
Board orders set aside.....	17	20 5	322	17.3
Cases decided by U.S. Supreme Court.....	4	100 0	118	100 0
Board orders enforced in full.....	2	50 0	80	67 8
Board orders enforced with modification.....	0	0	11	9 3
Board orders set aside.....	2	50 0	16	13 6
Remanded to Board.....	0	0	2	1 7
Remanded to court of appeals.....	0	0	7	5 9

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1959

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
10-CC-289, 292, 293, 296-300.	Masters, Mates & Pilots of A. (American Coal Shipping)	Feb. 2, 1957	(1)	-----	-----	Mar. 4, 1957	-----	May 18, 1959	Mar 11, 1959
2-CC-410	Masters, Mates & Pilots of A. (Monta Marine Co., Inc.).	Feb. 5, 1957	(1)	-----	-----	Feb 26, 1957	-----	Apr 22, 1959	Do.
5-CC-71	Seafarers, Local 9, MEBA, Local 11 (American Coal Shipping)	Feb. 7, 1957	(1)	-----	-----	Apr. 2, 1957	-----	May 18, 1959	Do
2-CA-5169	American Coal Shipping (Seafarers)---	Feb 11, 1957	(1)	Feb 21, 1957	-----	Mar 13, 1957	-----	Apr 22, 1959	Do
7-CC-55	Plumbers, Local 636 (Detroit Edison & Co et al)	Apr. 12, 1957	(1)	-----	-----	May 9, 1957	-----	June 11, 1959	Mar 16, 1959
2-CD-146	Electrical Wkrs, Local 1212 (Columbia Broadcasting Corp).	May 24, 1957	(1)	-----	-----	July 1, 1957	-----	Nov. 25, 1958	Oct 19, 1958
2-CC-430, 431.	*Teamsters, Milk Drivers & Dairy Employees U Local 584 (Chesterfield Farms et al & Home Milk Delivery Association).	June 5, 1957	(1)	June 5, 1957	-----	June 13, 1957	-----	May 11, 1959	Feb 18, 1959.
30-CC-30	Brewery Workers, Local 366 (Adolph Coors Co).	June 25, 1957	(1)	-----	-----	July 29, 1957	-----	Sept. 9, 1958	Aug 6, 1958
10-CC-316	*Teamsters, Local 515 (Baggett Transportation Co).	July 24, 1957	(1)	-----	-----	Aug. 6, 1957	-----	Dec. 18, 1958	July 11, 1958.
6-CC-145	Electrical Workers, Local 5 (Franklin Electric Construction)	Sept 3, 1957	(1)	-----	-----	(1)	-----	Aug. 15, 1958	July 24, 1958
35-CC-45	*Teamsters, Local 691 (Morgan Drive-Away, Inc.)	Sept 20, 1957	(1)	Oct 1, 1957	-----	Nov. 1, 1957	-----	Nov. 24, 1958	Sept. 25, 1958
22-CC-4	*Teamsters, Milk Drivers & Delivery Union, Local 680 (Crowley's Milk Co).	Sept 25, 1957	(1)	-----	-----	(1)	-----	Jan 29, 1959	Dismissed
19-CD-29	Carpenters, Local 1849 (Montag-Halvorson-Austin & Associates)	Oct. 4, 1957	(1)	-----	-----	(1)	-----	Jan. 22, 1959	Withdrawn.
17-CD-25	Carpenters, Local 978, and Hod Carriers, Local 676, et al. (Markwell & Hartz Contractors)	Oct. 12, 1957	(1)	-----	-----	Oct. 22, 1957	(2)	Aug. 26, 1958	Settled.
3-CC-68, 75.	*Teamsters, Local 118 (Scobel Chemical Co).	Oct. 14, 1957	(1)	-----	-----	Dec. 27, 1957	-----	Jan 20, 1959	Oct 1, 1958
9-CC-124, 125.	Sheet Metal Workers, Local 98 (York Corp).	Oct 29, 1957	(1)	-----	-----	(1)	-----	Jan 7, 1959	Aug. 28, 1958
33-CC-24	Carpenters, Local 511 (Associated General Contractors et al).	Nov. 4, 1957	(1)	-----	-----	(1)	-----	Aug 20, 1958	June 26, 1958.
17-CC-60	*Teamsters, Locals 554 and 147 (Clark Bros Transfer Co.).	Dec 12, 1957	(1)	-----	-----	(1)	-----	Sept. 8, 1958	Aug. 29, 1958
14-CC-114	*Teamsters, Local 688 (Bachman Machine Co).	Jan. 20, 1958	(1)	Feb. 20, 1958	-----	Apr. 18, 1958	-----	Jan. 9, 1959	Oct. 10, 1958.
39-CC-44	Retail Clerks (Montgomery Ward & Co).	Apr. 1, 1958	(1)	-----	-----	May 19, 1958	-----	Mar. 12, 1959	Feb 4, 1959

22-CC-11	Distillery Workers, Local 1 (Leonard Kreusch, Inc.).	Apr. 18, 1958	(1)	Apr. 18, 1958	Apr. 23, 1958 (consent.)	Nov. 17, 1958	Nov. 5, 1958.
7-CC-72	Carpenters, Local 982, et al. (Robert Hawes Co.).	Apr. 24, 1958	(1)		May 7, 1958	Dec. 22, 1958	Aug. 20, 1958.
22-CC-12	Garment Workers, Ladies, Local 155 (Morelee Knitting Mills, Inc.).	May 1, 1958	(1)	May 12, 1958	Oct 7, 1958	Feb. 25, 1959	Withdrawn.
2-CC-460, CD-165	Electrical Workers, Local 203 (General Electric Co.).	May 7, 1958	(1)		(1)	Apr. 7, 1959	Feb. 24, 1959.
6-CC-157- 168.	Butler Building Trades Council & Carpenters, District Council of Pittsburgh & vicinity (Fernway Homes, Inc.).	May 9, 1958	(1)		(1)	Nov. 17, 1958	Settled.
9-CC-154	Carpenters, Ohio Valley District Council (Door Sales & Installation Co.).	May 14, 1958	(1)		(1)	Nov. 21, 1958	Do.
12-CC-27-29.	*Teamsters, Local 79, & J. W. Hughes, John Walker, Manuel Fernandez, agents (Ryder Systems, Inc., Florida Retail Owned Grocers, Inc., and Barker & Co.).	June 2, 1958	(1)		June 6, 1958	Nov. 12, 1958	Aug. 28, 1958.
35-CC-47- 51, CD- 29-33.	Carpenters, Carpenters Local 1341 (Clark Construction Co.).	June 9, 1958	(1)		(1)	Dec 29, 1958	Settled.
18-CC-57	Eau Claire and Vicinity Building Trades Council, Ralph, Moe, Robert Powers, agents (St. Bridget's Catholic Congregation, Inc.).	June 11, 1958	(1)		Oct. 27, 1958	May 8, 1959	Feb. 9, 1959.
1-OD-57	Electrical Workers, Local 90, et al. (Southern New England Telephone Co.).	do	(1)		July 7, 1958	Dec 11, 1958	Sept. 26, 1958.
2-CD-167	*Sailors Union of North America (Mack Klosty & Co., Inc.).	June 19, 1958	(1)		(1)	Aug. 8, 1958	Dismissed.
22-CC-13	Clothing Workers, Washable Clothing, Sportswear, etc., Local 169 (Max Rubin t/a Made Rite Baby Togs).	June 23, 1958	(1)		(1)	Oct. 9, 1958	Settled.
2-CB-2216	Electrical Workers, Local 1922 (Mid-Island Lighting Fixtures Co., Inc. & Mid-Island Electrical Sales Corp.).	June 27, 1958	(1)		(1)	Mar. 19, 1959	Jan. 7, 1959.
22-CC-14, CD-18.	*Teamsters, Local 478 (United States Steel Corp. and United States Steel Supply Div.).	do	(1)		July 11, 1958 (consent)	Mar. 23, 1959	Settled as to "CC", with- drawn as to "CD."
32-CC-21	Painters, Local 381 (William S. James, Jr., Construction Co.).	July 9, 1958	(1)	July 11, 1958	July 15, 1958	Mar. 20, 1959	Settled.
35-CD-35- 38.	Engineers, Operating, Local 181, Carpenters, Local 1341, et al. (Tye & Wells, Contractors).	July 10, 1958	(1)		July 14, 1958	Oct. 14, 1958	Sept. 29, 1958.
19-CC-109	Carpenters, Local 2409 (Great Northern Railway Co.).	July 18, 1958	(1)			Aug. 8, 1958	Feb. 13, 1959.
17-CC-76	Electrical Workers, Local 124 (Kansas City Power & Light Co.).	July 29, 1958	(1)		(1)	Aug. 25, 1958	Aug. 7, 1958.
24-CC-52	Union de Trabajadores de Mielles y Ramas Aneas, et al., Local 1903 (Porto Rican American Sugar Refinery, Inc.).	July 30, 1958	(1)		(1)	Oct. 8, 1958	Sept. 17, 1958.

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1959—Continued

Case No	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
18-CC-174-179	Sheet Metal Workers, Local 308, et al (Meyers Plumbing Corp)	July 31, 1958	(1)	-----	-----	(1)	-----	Dec 19, 1958	Dismissed 13-CC-174-178, settled 13-CC-179
15-CD-9	*Teamsters, Local 5 (Stone & Webster Engineering Corp)	Aug. 4, 1958	(1)	-----	-----	(1)	-----	Feb 20, 1959	
4-CC-103	*Teamsters, Local 107 (Virginia-Carolina Freight Lines Inc)	Aug. 6, 1958	(1)	-----	-----	(1)	-----	-----	Apr 2, 1959
1-CC-212-217	Engineers, Operating, and Local 4, et al. (Joseph R. Cranchette and Davison Construction Co)	Aug. 7, 1958	(1)	-----	-----	Aug 20, 1958	-----	-----	Mar 31, 1959.
20-CC-149	Carpenters, Local 751, et al. (Mengel Co. and U S Plywood).	-----do-----	(1)	-----	-----	(1)	-----	-----	May 29, 1959.
2-CC-465	*Teamsters, Local 810 (Main Steel & Wire Corp)	Aug. 8, 1958	(1)	-----	-----	(1)	-----	-----	May 20, 1959
14-CC-119	Carpenters, Local 347 (Midwest Homes, Inc)	-----do-----	(1)	-----	-----	Aug 21, 1958	-----	-----	June 26, 1959
9-CC-158	Electrical Radio Workers (General Electric Co)	Aug 9, 1958	(1)	Aug 9, 1958	-----	Oct 1, 1958	-----	-----	June 8, 1959
13-CC-182	Masters, Mates & Pilots, Local 3, et al (The Texas Co.)	Aug. 15, 1958	(1)	Aug 15, 1958	Aug 26, 1958	-----	Aug 26, 1958	-----	-----
22-CC-23-25	*Teamsters, Local 469 and Federal Labor Union No 22026 (Hess Trading & Transport Inc and Refinery Engineering)	Aug. 19, 1958	(1)	-----	-----	(1)	-----	Nov 12, 1958	Withdrawn
24-CC-54-58	Seafarers, Atlantic & Gulf Dist (Fernando Amador & Sugar Service Corp.).	-----do-----	(1)	-----	-----	Aug 26, 1958 (consent)	-----	-----	-----
15-CC-78,79	Laborers, Local 207, Building & Construction Trades Council (Southern Construction Corp).	Aug 20, 1958	(1)	-----	-----	(1)	-----	Apr 9, 1959	Nov. 11, 1958
22-CC-21	*Teamsters, Local 522 (DeMartini Coal & Lumber Co)	Aug 22, 1958	(1)	-----	-----	-----	Oct 28, 1958	-----	Withdrawn
18-CC-51	*Teamsters, Local 446, and Wausau Building and Trades Council (Helser Ready Mix Co)	Aug. 26, 1958	(1)	-----	-----	(1)	-----	-----	June 3, 1959
24-CC-57	Seafarers and Locals 1900 and 1901 (Central Rotg Refining Co)	-----do-----	(1)	-----	-----	Aug. 27, 1958	-----	-----	-----
2-CD-168	Printing Pressmen, Local 1 (News Syndicate Co., Inc.)	Aug 27, 1958	(1)	-----	-----	Sept. 5, 1958	-----	-----	-----
1-CC-218	Plumbers, Local 4 (Donoghue & Bartels)	Sept. 2, 1958	(1)	-----	-----	(1)	-----	Dec 18, 1958	Settled
13-CC-183	*Teamsters, Locals 743 and 200 (Milwaukee Plywood Co)	Sept 4, 1958	(1)	-----	-----	-----	Jan 27, 1959	-----	

3-CC-88, CD-35	Painters, District Council No 4 (Boyd E Hart Co.).	Sept 5, 1958	(1)			(1)		Mar 26, 1959	Settled as to CC, withdrawn as to CD Dec. 17, 1958.
1-CC-219	*Longshoremen's Association, Local 1066, et al. (Terminal Operators, Inc.).	Sept 9, 1958	(1)			Sept 23, 1958			
5-CC-99-102	Baltimore Building & Construction Trades Council and Bridge, Structural & Iron Workers, Local 16, and Plumbers Local 48, et al. (S Elmer Amiger, Inc.)	Sept. 12, 1958	(1)			(1)		Feb. 17, 1959	Feb. 3, 1959.
10-CC-387, 388.	Electrical Workers & Local 558 (Huntsville Contractors Association).	do	(1)	Sept. 12, 1958	Sept 25, 1958	(1)		Sept 25, 1958	Withdrawn
37-CC-9, 10	*Teamsters, Locals 996 and 626 (Virg Davidson Chudacoff Co and A. H. Hansen Sales, Ltd).	Sept 15, 1958	(1)			(1)		Nov. 14, 1958	Oct 31, 1958.
4-CD-35, CB-424	Clothing Workers, Local 128 (Palmer-ton Mills, Inc)	Sept. 26, 1958	(1)			(1)		Nov. 17, 1958	Settled.
12-CC-31	*Intl Union, United Plant Guard Workers of America (General Plant Protection Corp).	do	(1)			(1)		Apr. 3, 1959	Do.
2-CC-478	*Teamsters, Local 294, and Meat Cutters, Local 1, and Retail Clerks, Local 345 (The Golub Corp.)	Sept 29, 1958	(1)			(1)		Dec. 17, 1958	Withdrawn.
2-CC-479- 481	*Teamsters, Local 282 (Vins Trucking Co., E. G Trucking Co.; Orza Trucking Co)	Sept. 30, 1958	(1)			(1)		Oct 15, 1958	Do.
32-CC-24	Operating Engineers, Local 382 (Peterson, Garvi & Joseph, Inc)	do	(1)			(1)		June 11, 1959	Do
9-CC-161	*Teamsters, Milk & Ice Cream Drivers Local 98, et al. (Hollon Milk Service)	Oct. 9, 1958	(1)	Oct. 9, 1958		Oct. 16, 1958			Settled.
14-CD-81, CB-669	Plumbers, Local 553, et al. (Service Pipe Line Co)	do	(1)					Oct. 17, 1958	Dec 16, 1958.
16-CC-87	*Teamsters, Local 577 (Crowe Gulde Cement Co)	Oct 13, 1958	(1)			Oct 28, 1958		Feb. 25, 1959	Feb. 4, 1959.
18-CC-61	*Teamsters, Local 790 (Dunham-Bush, Inc)	Oct. 15, 1958	(1)			(1)		Jan. 19, 1959	Settled.
33-CC-51	Steel Workers (Hod Carriers, Local 16)	Oct 16, 1958	(1)			(1)			Mar 11, 1959.
14-CC-121, CD-80	Engineers, Operating, Local 318 (Oil Field Electric Co, Inc)	Oct. 22, 1958	(1)			(1)			Settled.
19-CC-112	Carpenters, Local 1281 (G & J Flooring Contractors).	do	(1)			(1)			
21-CC-299	*Miscellaneous Woodworkers Union, Local 530 (Flamingo Trailer Manufacturing Co)	do	(1)			Nov. 26, 1958			June 9, 1959.
17-CC-82, 83.	Engineers, Operating & Locals 6, 6A (Builders Association, Inc., of Kansas City).	Oct 23, 1958	(1)			Nov. 6, 1958 (locals only)			
21-CC-300	Auto Workers, Local 645 (Pacific Motor Trucking Co).	Oct 24, 1958	(1)			(1)		Dec. 4, 1958	Withdrawn.
9-CC-160, CB-516	Hatters (Louisville Cap Co)	Oct. 29, 1958	(1)			(1)			June 22, 1959.
2-CC-489	Maritime Union, Local 333, et al (Van Ships, Inc)	Nov 10, 1958	(1)			Nov 21, 1958			Mar. 11, 1959

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1959—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
2-CC-482, 483.	Plumbers, Local 638, et al (Mechanical Contractors Association of N.Y. & Consolidated Edison Co.).	Nov. 12, 1958	(I)			(I)			
20-CD-54	Plumbers, Local 447 (Sheet Metal Heating and Air Conditioning Contractors Association).	Nov. 17, 1958	(I)			Nov. 24, 1958		Feb. 17, 1959	Dismissed.
1-CC-224	Plumbers, Local 476 (Rhode Island Chapter, Associated General Contractors of America).	Nov. 19, 1958	(I)			(I)			
2-CC-487, CD-170.	*Teamsters, Local 770, et al. (Middletown Milk & Cream Co.)	Nov. 20, 1958	(I)			Dec. 26, 1958		May 11, 1959	Withdrawn.
9-CC-163, 164, CB-590	Electrical Workers, Local 317, et al. (St. Albans Builders Supply Co.)	.....do.....	(I)			Dec. 12, 1958 (consent)		Apr. 8, 1959	Do.
10-CC-390, 391	Retail, Wholesale Workers, Local 261 (Perfection Mattress & Spring Co.).	Nov. 21, 1958	(I)			Dec. 9, 1958			
36-CC-59, CD-18.	*Intl. Longshorem and Warehousemen's Union, Local 8 (General Ore, Inc.)	.....do.....	(I)			Mar. 17, 1959			Dismissed
21-CC-305, 306.	*Intl. Longshoremen and Warehousemen's Union, Local 13, et al. (Catalina Island Sightseeing Lines).	Nov. 25, 1958	(I)			Dec. 23, 1958			Withdrawn in 21-CC-306.
1-CC-226	Electrical Workers, Local 660, et al. (Traffic Safety, Inc.)	Dec. 9, 1958	(I)				Jan. 22, 1959		
12-CC-32, 33.	Cement Workers, Local 330, and *Teamsters Local 512 (Lehigh Portland Cement Co.).	Dec. 11, 1958	(I)			(I)			April 17, 1959.
14-CC-125	Masters, Mates, Pilots, Local 28 and Local 3, et al (Ingram Barges).	.....do.....	(I)				Jan. 8, 1959		
13-CD-58, CC-189, 191, CB-713.	Hod Carriers, Local 41, and Bricklayers, Local 6 (Calumet Contractors Association).	Dec. 17, 1958	(I)			(I)			Dismissed.
22-CB-136	*Public Utility Gas Manufacturing Workers of the State of N.J. and Plumbers Local 450 (Public Service Electric & Gas Co.).	Dec. 20, 1958	(J)	Dec. 20, 1958		Jan. 14, 1959			May 28, 1959.
9-CC-165, 167, 168.	Electrical Workers, Local 369 (Link Electric Co.).	Jan. 5, 1959	(I)			Jan. 16, 1959		Mar. 18, 1959	Withdrawn.
18-CC-64	Hod Carriers, Locals 662 and 317, et al. (Steneman Concrete Products, Inc.).	.....do.....	(I)			(I)		Apr. 29, 1959	Settled.
2-CC-491	*Teamsters, Local 294 (K-C Refrigeration Transport Co., Inc.).	Jan. 8, 1959	(I)			Mar. 7, 1959			

22-CC-26-29, CD-19.	Hod Carriers, Laborers Local 472, and Compressed Air Workers Local 147; Engineers, Operating, Local 825; Molders, Local 11 (Ernest Renda Contracting Co., Inc, et al).	Jan. 9, 1959	(1)			Jan. 30, 1959 (Local 147 only)			Withdrawn.
2-CC-493...	*Teamsters, Local 810 (Wilford Auto Sales, Inc)	Jan. 14, 1959	(1)			(1)		May 20, 1959	Do.
21-CB-1197.	*Teamsters, Local 208 (Sierra Furniture Co)	Jan. 22, 1959	(1)	Feb. 5, 1959		Mar. 4, 1959			
2-CC-476...	*Teamsters, Local 1205 (Reserve Supply Corp. of L.L., Inc.).	Jan. 26, 1959	(1)			(1)			Withdrawn.
5-CC-107...	Hatters (Korber Hats, Inc)	.....do.....	(1)				June 8, 1959		
6-CC-199...	*Teamsters, Local 249 (Fried & Reine-man Packing Co.).	.....do.....	(1)			Feb. 6, 1959		June 2, 1959	Do.
2-CC-497...	Electrical Workers, Local 459 (The Texas Co.).	Jan. 30, 1959	(1)				Feb. 16, 1959		
10-CC-392...	*Teamsters, Local 327 (Keith-Simmons Co, Inc.).	Feb. 4, 1959	(1)			Feb. 18, 1959			
21-CC-294...	Garment Workers, Ladies; Teamsters, Local 994; and Clothing Workers, Local 268 (Skirts, Inc.).	.....Do.....	(1)			(1)		Apr. 8, 1959	Apr. 29, 1959
39-OA-853, 866, 867.	Alamo Express and Alamo Cartage Co. (*Teamsters, Local 963 and 657).	Feb. 5, 1959	(1)				Mar. 9, 1959		
2-CC-495, 496, 500-503, 4-CC-109, 110, 22-CC-30, 31.	*Teamsters, and Locals 707 and 509 (Mercury Motor Express Inc. and Big City Cartage, Inc.).	Feb. 9, 1959	(1)	Feb. 9, 1959	(2)				May 8, 1959 in 2-CC-495, 496.
30-CC-44...	Painters and Local 79 (Kohler-McLister Paint Co.).	.....do.....	(1)			(1)		Apr. 22, 1959	Withdrawn
22-C-36, 38, 39, 41	*Teamsters, Locals 560 and 641 (Riss & Co., Inc, and Pennsylvania RR. Co.).	Feb. 10, 1959	(1)	Feb. 10, 1959	(2)				
24-CC-59...	*Teamsters, Local 901, and Intl. Long-shoremen's Association, Local 1855, et al. (Industries Freight Service and American Trucking Co.).	Feb. 12, 1959	(1)			Feb. 20, 1959			Apr. 21, 1959.
10-CC-393, 395-399, 401-403.	Steel Workers, Local 4203, et al (Sullivan, Long & Hagerty, et al.).	Feb. 16, 1959	(1)			(1)			
2-CC-498...	*Teamsters, Local 553 (Shore Fuel Oil Co).	Feb. 17, 1959	(1)			(1)		Apr. 29, 1959	Mar. 26, 1959
30-CC-43...	Roofers, Local 41 (R. W. Meir Construc-tion Co.).	.....do.....	(1)			(1)		Apr. 24, 1959	Settled.
33-CC-50...	Sheet Metal Workers, Local 49, et al (Driver-Miller Plumbing & Heating Corp).	.....do.....	(1)			(1)			
22-CC-42-44.	Garment Workers, Ladies, Locals 222, 166, and 144 (Knit Fashions, Inc).	Feb. 20, 1959	(1)			(1)			Do.

See footnotes at end of table.

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1959—Continued

Case No.	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
33-CC-60, CD-37	Carpenters, Local 1319, and Hod Carriers, Local 16, et al. (Sproul Homes, Inc)	.....do.....	(1)	-----	-----	Mar. 3, 1959	-----	-----	May 28, 1959
7-CC-94	Steel Workers, Local 2652 (Central Metal Pickling Corp)	Mar. 2, 1959	(1)	-----	-----	(1)	-----	-----	Settled
8-CC-82	Carpenters, Local 1023, and Ralph Bagley, business agent (Endicott Furniture Co)	.....do.....	(1)	-----	-----	(1)	-----	-----	Do
22-CC-37, CD-20	*New Jersey Guards Union, et al (Otis Elevator Co.)	.....do.....	(1)	-----	-----	(1)	-----	-----	Withdrawn
22-CC-40	*New Jersey Guards Union, et al (Nilsen Detective Agency, Inc.)	.....do.....	(1)	-----	-----	(1)	-----	-----	-----
15-CC-75	Electrical Workers, Local 861, Lake Charles Building & Construction Trades Council (Joe Billy Carbello, et al)	Mar. 3, 1959	(1)	-----	-----	(1)	-----	-----	Dismissed
22-CC-32	*Teamsters, Local 575 (B. Newman & Son)	Mar. 4, 1959	(1)	-----	-----	(1)	-----	-----	-----
16-CC-91	*Teamsters, Local 745 (Dallas County Construction Employers Association Inc.)	Mar. 13, 1959	(1)	-----	-----	Mar. 25, 1959	-----	-----	-----
10-CC-402, 403, CD- 108, 109	Steel Workers and Local 4203 (Intl Brotherhood of Electrical Workers, Local 136)	Mar. 18, 1959	(1)	-----	-----	(1)	-----	-----	-----
10-CD-111, 115, 133, 134	Electrical Workers, Local 508, et al (Peacock Construction Co.)	Mar. 25, 1959	(1)	-----	-----	Apr. 10, 1959	-----	-----	-----
4-CC-112, 113, CD- 37, 38	*Longshoremen's Intl. Association and Local 1332, et al. (Motor Transport Labor Relations, Inc.)	Mar. 26, 1959	(1)	-----	-----	(1)	-----	-----	-----
13-CC-192	Madison Building & Construction Trades Council and General Laborers Local 464, et al. (Searl Electric Service)	.....do.....	(1)	-----	-----	Apr. 9, 1959	-----	-----	-----
35-CC-59	*Teamsters, Local 135 (Aetna Plywood & Veneer)	Mar. 31, 1959	(1)	-----	-----	Apr. 17, 1959	-----	-----	-----
13-CC-193	Madison Building & Construction Trades Council, et al. (Dohm Construction Co.)	Apr. 9, 1959	(1)	-----	-----	(1)	-----	-----	-----
15-CC-88	Seafarers (Gulf & Caribbean Towing Co., Inc.)	Apr. 13, 1959	(1)	-----	-----	Apr. 24, 1959	-----	-----	-----
24-CC-60, 61	*Comite de Empleados de Simmoner Inc, et al., and *Teamsters Local 901 (Simmons, Inc.)	Apr. 20, 1959	(1)	-----	-----	Apr. 28, 1959	-----	-----	-----

12-CC-37, 38.	*Teamsters, Taxicab Drivers Local 320 (Southern Florida Hotel & Motel Association).	Apr 21, 1959	(1)		May 1, 1959		
21-CC-319, 322.	Engineers, Operating, Local 12 (Tri County Association of Civil Engineers and Land Surveyors).	Apr. 22, 1959	(1)		(1)		
33-CC-61	Meat Cutters (Peyton Packing Co., Inc.)	Apr 23, 1959	(1)		May 2, 1959		
15-CC-90- 93.	Woodworkers and Local 4-443 (T. Smith & Son, Inc)	Apr. 28, 1959	(1)		May 6, 1959		
9-CB-681, 762.	*United Mine Workers, District 30 (Kodak Coal Co., et al.).	Apr. 30, 1959	(1)	Apr. 30, 1959			
9-CC-169, 238-240, 242-253	do	do	(1)	do			
10-CB-1073, 1078.	*United Mine Workers, Dist 19.(G & R Coal Co., et al)	do	(1)	do			
22-CC-48, CD-22.	Boilermakers, Local 28 (Arthur Tickle Engineering Works)	do	(1)		(1)		
1-CC-229	Sheet Metal Workers, Local 40 (Anemostat Corp of America).	May 4, 1959.	(1)		(1)		Settled.
3-CC-92	Meat Cutters, Local 1 (Emerson Produce Co., Inc)	May 6, 1959	(1)	May 6, 1959			Withdrawn.
7-CC-98	Steel Workers and Local 2652 (Copeo Steel Engineering Co)	May 7, 1959	(1)		(1)		Settled.
20-CC-169	Building & Construction Trades Council, Roofers Local 98 (California Association of Employers and Jack, Young Super-Markets)	May 8, 1959	(1)		(1)		
12-CC-30-42	Plumbers, Local 519, et al (Milhot-Mancini Building Corp and Sam Rogers Plumbing Co)	May 12, 1959	(1)		(1)		Do.
15-CC-89	Maritime Union, Fishermen & Allied Workers Union (Quaker Oats Co)	do	(1)		May 23, 1959		
13-CC-202	Hod Carriers, Local 41 (Calumet Contractors Association).	May 13, 1959	(1)		June 5, 1959		
14-CC-132	*Teamsters, Local 618, et al (Ben Schilh Trucking)	May 14, 1959	(1)		(1)		Do.
22-CC-56, CD-28	Carpenters, Local 853 (Greenbrook Land Corp and Laurie Construction Co)	May 15, 1959	(1)				Withdrawal of 8(b)(4)(D), Settled 8(b)(4)(C).
19-CD-43	Seafarers and Nick Shaner, business agent, et al (Merril & Ring Western Lumber Co)	May 18, 1959	(1)		June 4, 1959		
17-CC-86	*Teamsters, Local 795 (Grant-Bilingsley Fruit Co., Inc)	May 21, 1959	(1)			May 28, 1959	Dismissed.
14-CC-133, CD-86	Plumbers, Local 35 (Richard E Buettnier)	May 25, 1959	(1)		June 4, 1959 (consent)		
17-CD-32	Sheet Metal Workers, Local 3 (Simpson Co)	May 26, 1959	(1)				Do.

See footnotes at end of table

Table 20.—Record of Injunctions Petitioned for, or Acted Upon, Fiscal Year 1959—Continued

Case No	Union and company	Date petition for injunction filed	Type of petition	Temporary restraining order		Date temporary injunction granted	Date injunction denied	Date injunction proceedings dismissed or dissolved	Date Board decision and/or order
				Date issued	Date lifted				
17-CC-88-90.	Painters, Dist. Council No 3, et al (Northtown Glass Co, Inc)	May 29, 1959	(1)			(1)			
14-CD-88...	Plumbers, Local 562 (General Refrigeration Service Co)	June 1, 1959	(1)			(1)			Settled
13-CD-64...	Electrical Workers, Local 9, et al. (G. A. Rafel & Co, Inc)	June 3, 1959	(1)						
2-CC-510...	*Teamsters, Local 1205 (W. Wilton Wood, Inc)	June 10, 1959	(1)			(1)			
35-CC-61...	*Teamsters, Local 135 (Hoosier Coffee Co).	do.	(1)			June 18, 1959			
12-CC-46...	*Teamsters, Local 320, et al. (Southern Florida Hotel & Motel Association)	June 12, 1959	(1)			(1)			Do
22-CC-61...	*Teamsters Local 522 (Mack Lumber Co).	do.	(1)						
22-CC-60...	Electrical Workers, Local 333 (Tracy Towing Line, Inc.)	June 15, 1959	(1)			(1)			Withdrawn.
2-CC-512...	*Teamsters, Local 124 (Quintree Distributors, Inc)	June 19, 1959	(1)			(1)			Settled.
6-CD-103, 104	Steel Workers and Local 1156 (Specialty Steel Products, Inc)	do.	(1)	June 19, 1959	June 25, 1959	June 26, 1959			
7-CC-102...	Carpenters, Local 1102, et al. (Associated General Contractors Detroit Chapter).	do.	(1)						
22-CC-62-66.	Electrical Workers, and Locals 1134, 1338, 1350, 1774, et al. (Asplundh Tree Expert Co.).	do.	(1)			(1)			June 24, 1959.
2-CC-511...	*Teamsters, Local 294 (Tom Gallo)	June 22, 1959	(1)			(1)			
11-CC-16...	*Teamsters, and Locals 41 et al. (Overnite Transportation Co).	do.	(1)						
36-CC-64, CD-20.	*Longshoremen & Warehousemen's Union Local 53 (Yaquina Bay Dock & Dredge Co)	do.	(1)			(1)			
10-CC-426...	*Teamsters, Local 522 (Overnite Transportation Co)	June 26, 1959	(1)						
24-CC-62, 63	Carpenters, Local 3251, et al (Levitt Corp.).	June 30, 1959	(1)						

*All unions are affiliated with AFL-CIO except those indicated by an asterisk.
 1 Because of suspension of unfair labor practice, case retained on court docket for further proceedings if appropriate.
 2 As to Local 978, Carpenters, and Local 676, Hod Carriers, only.
 3 Until final Board disposition