THIRTIETH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR ENDED JUNE 30

1965

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PROPERTY OF THE UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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NATIONAL LABOR RELATIONS BOARD

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[1] Appointed Apr. 20, 1965.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 3, 1966.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Thirtieth Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1965, and, under separate cover, lists containing the cases heard and decided by the Board during this fiscal year, and the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board.

Respectfully submitted.

FRANK W. MCCULLOCH, *Chairman.*

THE PRESIDENT OF THE UNITED STATES
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Washington, D.C.

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I

Operations in Fiscal Year 1965

1. Summary

Closing 30 years of administration of the National Labor Relations Act, the National Labor Relations Board can report that in the three decades it has responded to calls for service affecting millions of employees, as well as tens of thousands of employers and unions.

It has conducted upon request more than 140,000 representation elections permitting over 19 million employees to determine whether they wished to bargain collectively with employers.

And in the 30-year span it has handled more than 200,000 unfair labor practice cases affecting hundreds of thousands of persons, all involved in questions of rights and freedoms, prohibitions and sanctions, provided by the congressionally created statute.

The Agency has witnessed the parallel growth of its caseload through the years with the development of the economy, and the complexity of issues which have been presented in the growth and changes in the industrial pattern. It expects that this side-by-side expansion will continue.

Illustrating demands on the Agency, in fiscal 1965 the 7,824 employee elections it conducted were more than 250 times the total of 31 for fiscal 1936, the first year of NLRB operation. Unfair labor practice cases in 1965 numbered 15,800, or 18 times the 865 of 1936.

The greater expansion in the NLRB caseload has come since 1958, a 7-year period which has contributed nearly 95,000 unfair labor practice cases and 49,099 elections. Elections, while showing a substantial upward push, did not approach the gain in unfair labor practice cases.

Cases of all kinds in fiscal 1965 set a record demand for NLRB services. But while total cases showed a new top level, the high proportion of those cases settled voluntarily by the parties continued apace with prior years. This elimination of litigation from the labor relations scene relieved the NLRB of a potentially mountainous workload and demonstrated acceptance of the policies of the statute by a large area of labor and management.

In fiscal 1965 the Agency disposed of 27,199 cases of all kinds. In the year its intake was 28,025 cases. Again, as in other recent years, the Agency had the happy experience of seeing more than 75 percent of unfair labor practice cases settled by the parties even after it was determined that the cases were meritorious under the statute.

NLRB reports can deal only with cases submitted to it. The Agency cannot count with accuracy the undoubtedly vaster number of situations where parties, without resort to NLRB, adjust their labor relations problems within the concepts of the law.

Included in significant case issues considered by the Agency in fiscal 1965 were: (a) Collective-bargaining representation related to selling and nonselling personnel in the retail store industry; (b) bargaining obligations of employers, particularly with regard to successor employers, and in subcontracting situations; (c) racial discrimination and the duty of fair representation; (d) enforcement of union rules; and (e) implications of section 8(e) "hot cargo" provisions of the statute with regard to contract provisions intended for protection to employee work units and standards.

a. NLRB and the NLRA

The National Labor Relations Board is an independent Federal agency created by Congress in 1935 to administer the National Labor Relations Act. The Act was amended in 1947 (Taft-Hartley Act), and in 1959 (Landrum-Griffin Act).

Board Members are Chairman Frank W. McCulloch of Illinois, John H. Fanning of Rhode Island, Gerald A. Brown of California, Howard Jenkins, Jr., of Colorado, and Sam Zagoria of New Jersey. Arnold Ordman of Maryland is General Counsel.

Although the Act administered by the NLRB has become complex, its basic national policy remains the same. Section 1 of the Act states that: "It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

Under the statute the NLRB has two primary functions—(1) to determine by Agency-conducted secret-ballot elections whether em-

ployees wish to have unions represent them in collective bargaining, and (2) to prevent and remedy unfair labor practices whether by labor organizations or employers.

The Act's unfair labor practice provisions place certain restrictions on actions of both employers and unions in their relations with employees, as well as with each other, and its election provisions provide mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees, including balloting on petitions to decertify unions as bargaining agents as well as voting to determine whether a union shall continue to have the right to make a union-shop contract with an employer.

In handling unfair labor practice cases and elections, the Agency is concerned with the adjustment of labor disputes either by way of investigation and informal settlements or through its quasi-judicial proceedings. Congress created the Agency in 1935 because labor disputes could and did threaten the health of the economy. In the 1947 and 1959 amendments to the Act, Congress reaffirmed need for the Agency and increased the scope of its regulatory powers.

NLRB has no statutory independent power of enforcement of its orders but it may seek enforcement in the U.S. Courts of Appeals. Similarly parties aggrieved by the orders may seek judicial review.

Agency authority is divided by law. The Board Members primarily act as a quasi-judicial body in deciding cases upon formal records. The General Counsel is responsible for the issuance and prosecution of formal complaints and for prosecution of cases before the courts, and has general supervision of the NLRB's regional offices.

For the conduct of its formal hearings in unfair labor practice cases, the NLRB employs trial examiners who hear and decide cases. Trial examiners' decisions may be appealed to the Board in the form of exceptions taken; if no exceptions are taken, under the statute the trial examiners' recommended orders become orders of the Board. Trial examiners are independent of NLRB supervision, and are appointed from a roster compiled by the Civil Service Commission.

All cases coming to the Agency begin their processing in NLRB regional offices, either through filing of unfair labor practice charges or employee representation petitions. Since NLRB may not act on its own motion in either type of case, charges and petitions must be initiated at regional offices by employers, individuals, or unions.

In addition to their processing of unfair labor practice cases in the initial stages, regional offices also have the authority to investigate employee representation petitions, determine appropriate employee units for collective-bargaining purposes, conduct elections, and pass on objections to conduct of elections.

b. Some Case Activity Highlights

Total NLRB case activity in fiscal 1965, reflecting the trend of the past 7 years, again eclipsed records of prior years. However, with gains in some areas there were drops in others. Some examples follow:

- Total intake of 28,025 cases of all kinds, a record, in which there were 15,800 unfair labor practice charges; 11,989 employee representation petitions; and 106 petitions to rescind unions' authority to make union-shop agreements with employers. Charges and petitions established new records.
- A total of 27,199 cases of all kinds closed, of which 15,219 were unfair labor practice cases, both new records.
- In predominant types of unfair labor practice charges filed, charges of employer refusal to bargain rose to 3,815, against 3,088 in fiscal 1964; charges of illegal secondary boycotts against unions fell slightly to 1,409 from the previous year's 1,456.
- Issuance by the Office of the General Counsel of 1,804 formal complaints was a drop from the 1,890 of fiscal 1964, which was a record.

Details on case activity follow, including charts in this chapter of the report, as well as basic data which will be found in tables in appendix A.

2. Operational Highlights

a. Case Intake and Disposition

The constantly increasing caseload of the NLRB was demonstrated again in fiscal 1965 in which the intake was 28,025 cases of all types, or 622 above that of fiscal 1964. A caseload perspective may be obtained by measuring the current intake against those of earlier decade markings. In fiscal 1955, total intake was 13,391 unfair labor practice, representation, and union deauthorization cases, less than one-half that of fiscal 1965. In fiscal 1945 the intake was 9,737 cases, about one-third of the fiscal 1965 figure.

The comparisons with 1955 and 1945, however, give only a statistical perspective, not a measure of the workload inherent in the kinds of cases received by the Agency. In fiscal 1965 unfair labor practice charges accounted for 15,800, or substantially more than half of the total 28,025 cases. These charges call for more manpower and processing time than do representation cases. (See table 1.)

In fiscal 1955 there were 6,171 unfair labor practice charges filed; in fiscal 1945 there were 2,427.

Fiscal 1965's unfair labor practice charges set a new record as did the 14,423 unfair labor practice situations constructed by the charges. A situation, in NLRB terms, comprises one or more related charges processed as a single unit of work. To illustrate: A number of employees in the same plant might file separate but similar charges against the employer or the union. The charges would make up one situation.

Fiscal 1965's new high total of 12,095 petitions for employee elections of all kinds, like unfair labor practice cases, maintained the recordbreaking consistency of recent years. There were 312 more petitions received than in the prior year. (See charts 1 and 1A.)

In disposition of cases, the NLRB in fiscal 1965 closed 27,199 cases of all kinds and at all Agency levels, a gain of 484 above the disposition of 26,715 cases in fiscal 1964.

In case closings, the significant factor was the high number of unfair labor practice cases disposed of, amounting to 15,219 of the total of 27,199 cases of all kinds closed, compared with 15,074 unfair labor practice cases closed in fiscal 1964 out of that year's all-category total of 26,715 cases.

On employee representation questions, there were 11,980 cases closed, including 95 in which petitions had been filed for voting by

Chart 1

CASE INTAKE BY UNFAIR LABOR PRACTICE SITUATIONS AND REPRESENTATION PETITIONS

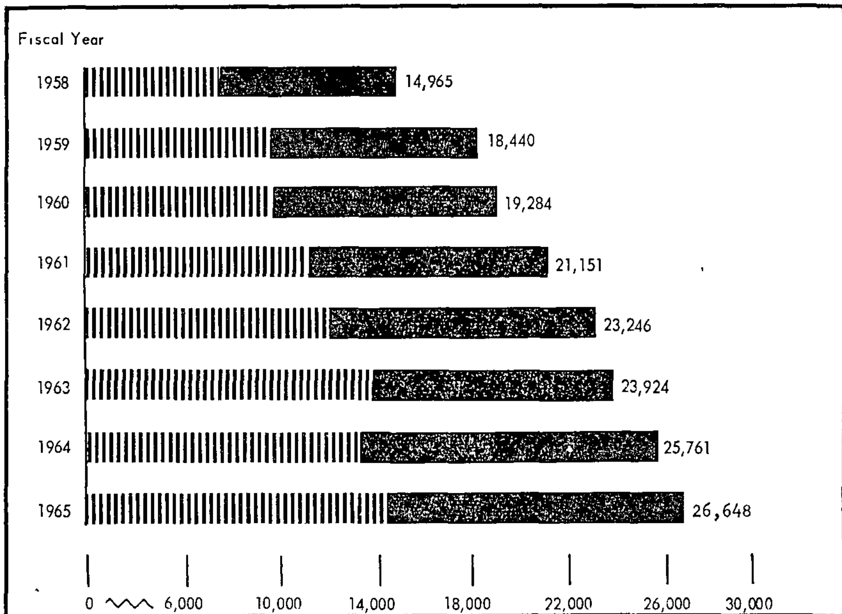
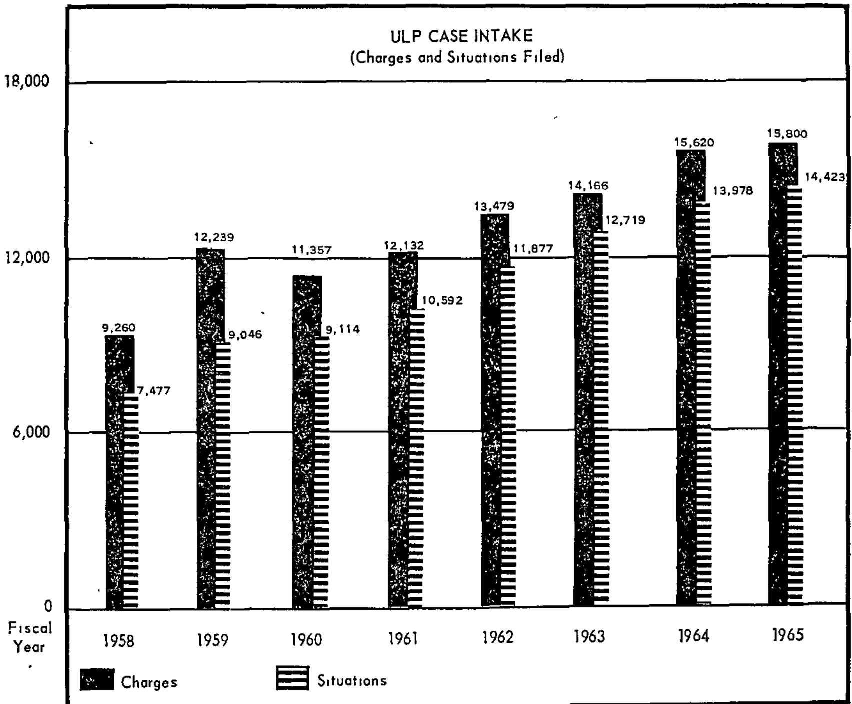


Chart 1A



employees to rescind the authority of unions to make union-shop agreements, as well as 60 cases involving clarification of employee bargaining units, and 28 cases where there were amendments of certifications of employee representation. In fiscal 1964 the total number of representation cases closed was 11,641.

Pending at the end of fiscal 1965 at all Agency levels were 8,911 cases, amounting to 826 or about 10 percent above the pending caseload of 8,085 at the end of fiscal 1964. There were 6,312 unfair labor practice cases pending at fiscal 1965's end; 2,568 were representation cases; and 31 were union-shop deauthorization requests.

Also, in fiscal 1965, there were 98 notices of hearing issued in cases coming under the Act's section 10(k), compared with 63 in fiscal 1964. These are proceedings in which generally it is alleged that jurisdictional disputes between groups of employees have caused or threatened strikes over work assignments. In fiscal 1965 there were 58 such hearings (33 in fiscal 1964), resulting in 69 Board decisions and determinations of dispute, as against 32 in fiscal 1964.

The industrial distribution of unfair labor practice cases closed in fiscal year 1965 showed percentages very close to those of fiscal 1964. In 1965, the manufacturing industries again were in the lead with 48 percent of the closed cases; 15 percent of the closings were in the

construction industry; 13 percent were in transportation, communication, and other public utilities, and the remainder were in other industries.

b. Unfair Labor Practice Charges

As noted, the 15,800 unfair labor practice charges filed with the NLRB in fiscal 1965 set a new record exceeding the previous high mark of 15,620 in fiscal 1964. Direction of the charges remained almost constant, with more than two-thirds being allegations against employers, the remainder being directed against unions.

Noteworthy were some changes in the kinds of charges filed against both employers and unions. Refusal-to-bargain charges against employers, for example, were nearly 25 percent above the prior year. However, illegal discharge and other forms of discrimination against employees continued to be the principal charge against employers.

Against unions, charges of illegal secondary boycotts exceeded those of the prior year, but the total of allegations in all categories naming unions was below the fiscal 1964 total.

Alleged employer violations of the Act in fiscal 1965 accounted for 10,931 or 69 percent of the 15,800 total charges, 236 above the 10,695 charges against employers in fiscal 1964.

There were 4,813 charges against unions, more than 30 percent of the 1965 total allegations, representing a drop of 43 below the 4,856 level of 1964.

There were also 48 charges against unions alleging violations of the Act's section 8(e) "hot cargo" provisions, and 8 similar charges against employers.

Unions again, as in recent years, led in charges against employers with 7,453 or 68 percent of the total of 10,931; individuals filed 3,471, or 32 percent, and 7 charges were filed by employers against employers.

Employers filed 2,565 (53 percent) of the total charges against unions; 1,973 (41 percent) came from individuals; and 275 or 6 percent were from unions against unions.

Employers filed 45 of the 56 charges of section 8(e) hot cargo violations; 9 were submitted by unions; 2 came from individuals.

Table 2, appendix A, gives additional data on specific allegations in unfair labor practice cases filed in fiscal 1965.

The 34 percent of total charges filed by individuals in 1965 continued a downward trend from 1958 in which 56 percent of the allegations against employers and 63 percent against unions came from this source.

The increased total of charges in fiscal 1965 resulted from the greater number of charges being filed by employers and unions. These filings have shown year-by-year increases since 1958.

Unions in fiscal 1965 filed a total of 7,737 charges; employers accounted for 2,617; and individuals submitted 5,446.

Source patterns in the 1965 charges showed AFL–CIO unions filing 5,607 charges; the Teamsters Union, 1,401; other national unions not affiliated with AFL–CIO, 447; and 282 from local unaffiliated unions.

In charges against employers the marked change in fiscal 1965 was in the 3,815 allegations of refusal to bargain, an increase of 727 above the 3,088 of fiscal 1964, or a gain of 24 percent.

The predominant allegation against employers continued to be illegal discrimination against employees, accounting for 7,367 allegations or 67 percent of the total charges against employers. However, the number of such allegations in 1965 was below the 7,654 of 1964, amounting to 72 percent of the total charges against employers in that year.

In charges against unions, allegations of illegal restraint or coercion of employees in exercising their right to engage in, or refrain from, union activity formed 48 percent of fiscal 1965's filings against unions. The 2,305 such cases, however, were 146 below the total of 2,451 for fiscal 1964.

Illegal discrimination against employees by unions was charged in 1,515 cases, or 32 percent of the total. This category of charges was 251 below 1964's total of 1,766.

Charges of illegal secondary boycotts by unions, including cases involving jurisdictional disputes, rose to 1,717 in fiscal 1965, a 6-percent gain or 91 over the 1,626 of the prior year.

There were 393 charges during 1965 of unions picketing illegally to obtain recognition or for organizational purposes, a drop of 26 below the 419 of 1964.

c. Division of Trial Examiners

NLRB trial examiners conduct formal hearings in unfair labor practice cases, including cases where objections to employee representation elections have been consolidated with alleged unfair labor practices, where formal complaints have been issued, and where there has been no intervening disposition of the cases. Trial examiners also conduct hearings in cases remanded by the NLRB and U.S. circuit courts of appeals.

After hearing, a trial examiner issues a decision and recommended order, which then goes to the five-member Board for decision. Exceptions to the trial examiner's decision may be filed within 20 days.

In fiscal 1965, trial examiners issued 875 decisions and recommended orders, a gain of more than 19 percent above the 734 of fiscal 1964. Also noteworthy, 127 of the trial examiners' decisions in 1965 were not

contested, amounting to 15 percent of their decisions and representing a substantial gain over the 81 noncontested decisions of the prior year, which comprised 11 percent of total decisions.

During fiscal 1965, trial examiners conducted 917 hearings involving 1,318 cases. In fiscal 1964 there were 989 hearings involving 1,443 cases.

In fiscal 1965 trial examiners also issued 18 backpay decisions and 13 supplementary decisions.

d. Processing of Unfair Labor Practice Cases

A marked development in the processing of unfair labor practice charges by the Agency has been the high rate of cases closed without protracted litigation. This was continued in fiscal 1965 during which withdrawal of charges by the parties, settlements and adjustments, and dismissals after investigation showing lack of merit in charges, closed a high proportion of the cases at the regional office level.

Unfair labor practice cases originate when parties outside the Agency file charges. NLRB may not initiate cases. Charges are filed at NLRB regional offices. They then are investigated to determine if they have merit, under supervision of regional directors acting for the NLRB General Counsel who has sole responsibility for investigations, issuance of formal complaints, and further prosecution of unfair labor practices.

Cases may be settled by the parties before or after the issuance of formal complaints. Cases also are withdrawn after filing and before issuance of complaints; and a substantial number of charges are dismissed. Some cases are settled by stipulation following trial examiners' decisions. Remaining cases may go the full course of litigation—through formal complaint, trial examiner's hearing, decision by the Board, possibly to a U.S. appeals court for review or enforcement, and in some instances ultimately to the U.S. Supreme Court.

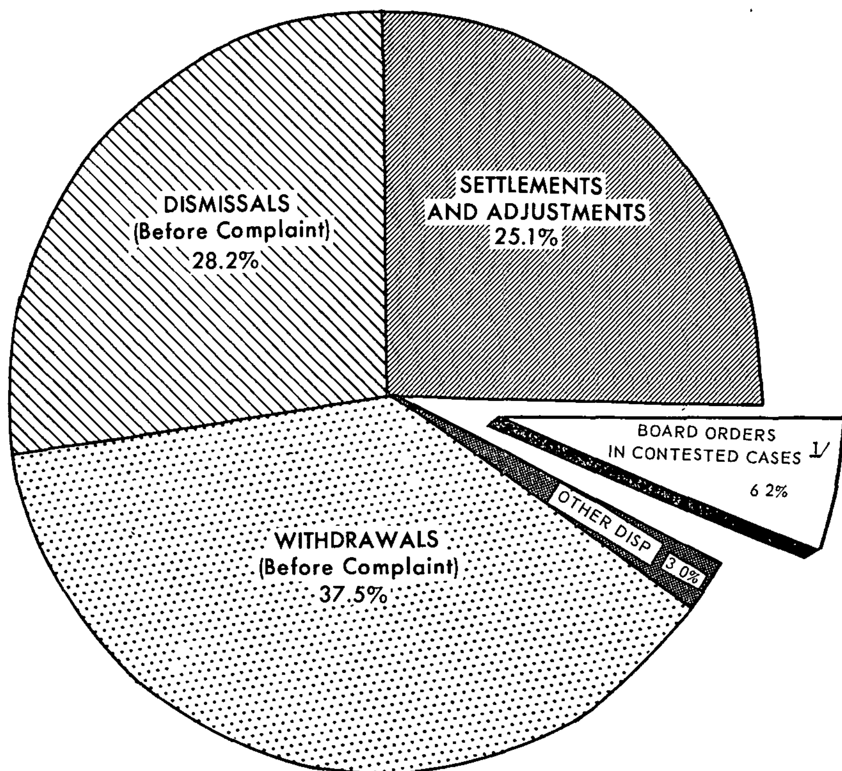
In fiscal 1965, approximately 66 percent of the 15,219 unfair labor practice cases closed either were withdrawn or dismissed before issuance of complaint, and during the year about 25 percent of the cases closed were settled or adjusted without need of trial examiners' decisions. (See chart 2.) These actions were consistent with the levels of the past 4 years. There were small percentage drops in dismissals, 28.2 percent in fiscal 1965, 30.1 percent in fiscal 1964; as well as in withdrawals, 37.5 percent in 1965 and 38.4 percent in 1964. But settlements and adjustments in 1965 increased to 25.1 percent compared to 23.9 percent in 1964. In numbers, the NLRB regional offices in 1965 secured settlement or adjustment of 3,824 cases without need of trial examiners' decisions, as against 3,596 in 1964, a gain of more than 6 percent. (See table 7.)

Chart 2

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES

(BASED ON CASES CLOSED)

FISCAL YEAR 1965



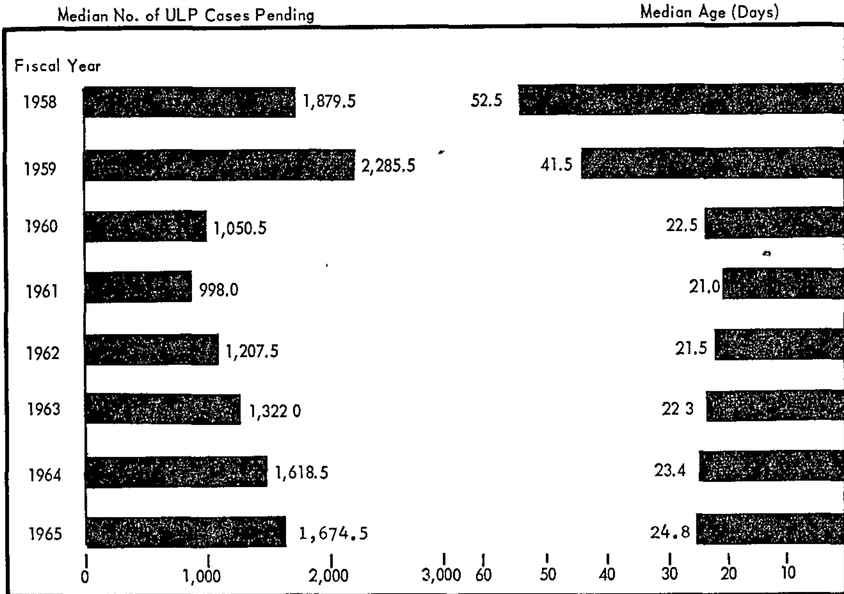
1/ CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

Settlements and adjustments, withdrawals, and dismissals have accounted for disposition of 90.8 percent of fiscal 1965's unfair labor practice cases; approximately 6.2 percent of the total went to the Board in Washington for decision, as compared with the 5.4 percent of fiscal 1964. The other 3 percent had other disposition.

With the growth in number of unfair labor practice cases the proportion of cases found to have merit also has increased. This has multiplied the Agency's workload since merit cases require either settlements or adjustment procedures, or result in issuance of formal complaints. (See chart 4.)

Chart 3

NUMBER AND AGE OF UNFAIR LABOR PRACTICE CASES PENDING UNDER PRELIMINARY INVESTIGATION, MONTH TO MONTH



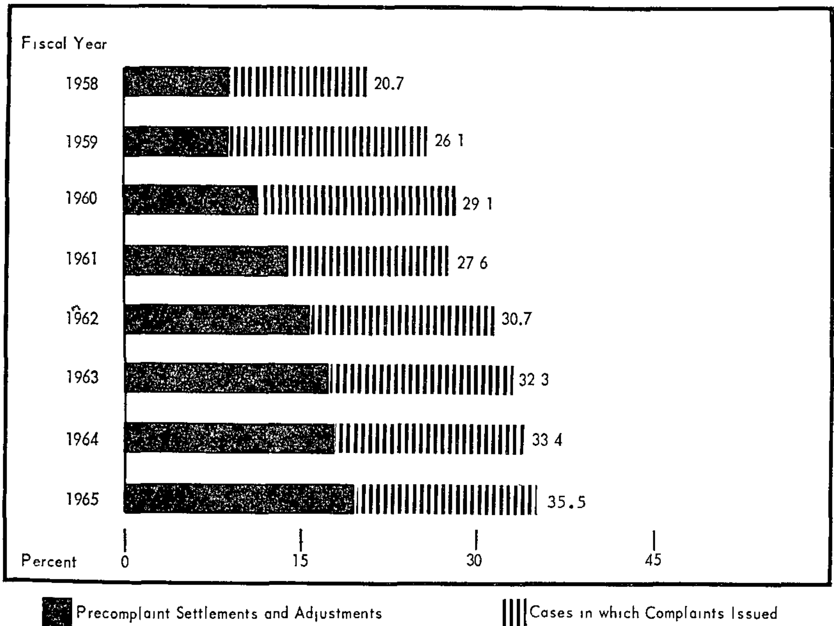
In fiscal 1965, meritorious unfair labor practice charges rose to 35.5 percent, compared to fiscal 1964's showing of 33.4 percent with a lesser total of cases. However, more than half the meritorious charges were settled or adjusted in 1965. Thus, fewer formal complaints were issued in 1965 (1,804) than in 1964 (1,890). (See chart 5.) Approximately 81 percent of the complaints were issued against employers, 16 percent against unions, and the remaining 3 percent against both employers and unions.

With increased workload on NLRB regional offices resulting from the higher number of unfair labor practice cases filed, and the increased number found to have merit, the median time in fiscal 1965 from filing of charges to complaint issuance was 59 days. Median time in fiscal 1964 was 56 days. Time from filing of charges to issuance of complaint in regional offices includes 15 days in which parties have the opportunity to adjust a case and remedy violations without resort to formal Agency processes.

Included in 1965 case-processing developments, employees found to have been illegally discharged or who suffered similar discrimination under the Act were awarded $2,759,550 in total backpay (lost wages) under formal decisions, or settlements and adjustments of charges. The prior year's backpay figure was $3,001,630. (See chart 9.)

Chart 4

UNFAIR LABOR PRACTICE MERIT FACTOR



	1958	1959	1960	1961	1962	1963	1964	1965
Precomplaint Settlements and Adjustments (Percent)	9.7	9.7	11.9	14.1	15.3	17.5	17.8	19.4
Cases in Which Complaints Issued (Percent)	11.0	16.4	17.2	13.5	15.4	14.8	15.6	16.1
Total Merit Factor (Percent)	20.7	26.1	29.1	27.6	30.7	32.3	33.4	35.5

In 1965 about 4,644 employees received backpay and 5,875 were offered job reinstatement, fewer than the 5,142 receiving backpay but more than the 4,044 offered reinstatement in 1964. In 1965, however, of employees offered reinstatement, 5,081 or 86 percent accepted, and returned to work, compared to the 74-percent acceptance rate of 1964.

e. Processing of Representation Cases

Setting a new record, the Agency in fiscal 1965 closed 11,980 representation and union deauthorization cases. This was 339 above the fiscal 1964 total of 11,641, and exceeded the former record (in fiscal 1962) by 272 cases. The 11,980 cases of 1965 included 60 bargaining unit clarifications, and 28 amendments of bargaining agent certifications. Fiscal 1965 was the fourth full year of Agency experience with delegation by the five-member Board to NLRB's regional direc-

Chart 5

COMPLAINTS ISSUED IN UNFAIR LABOR PRACTICE PROCEEDINGS

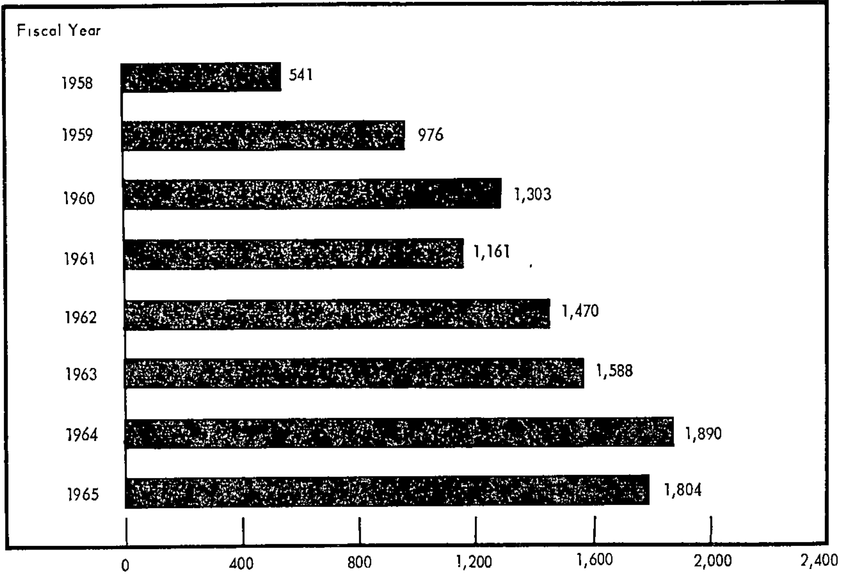
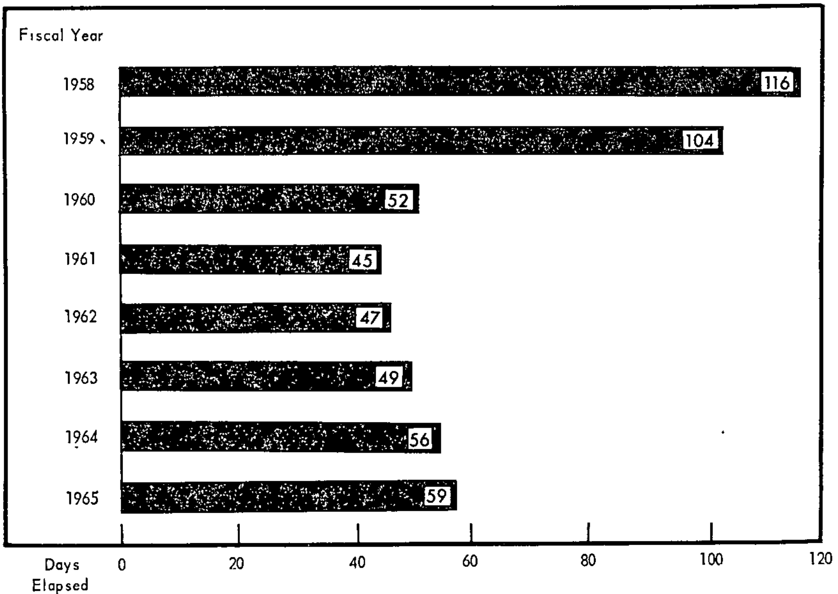


Chart 6

MEDIAN DAYS FROM FILING OF CHARGE TO ISSUANCE OF COMPLAINT

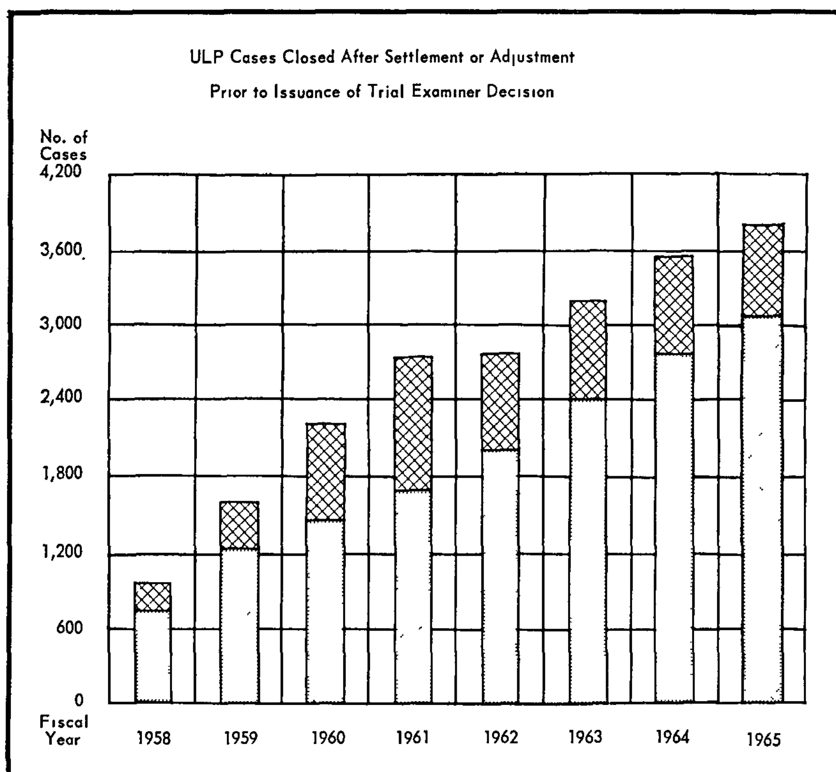


tors of the authority to handle contested representation cases, along with the processing of uncontested cases. (See table 1B.)

Employee election cases in 1965 formed the bulk of representation cases closed, and reflected the annually increasing number of consent

Chart 7

UNFAIR LABOR PRACTICE CASES SETTLED



Fiscal Year	Pre-complaint	Post-complaint	Total
1958	725	262	987
1959	1,238	352	1,590
1960	1,480	748	2,228
1961	1,693	1,038	2,731
1962	2,008	744	2,752
1963	2,401	796	3,197
1964	2,750	846	3,596
1965	3,003	821	3,824

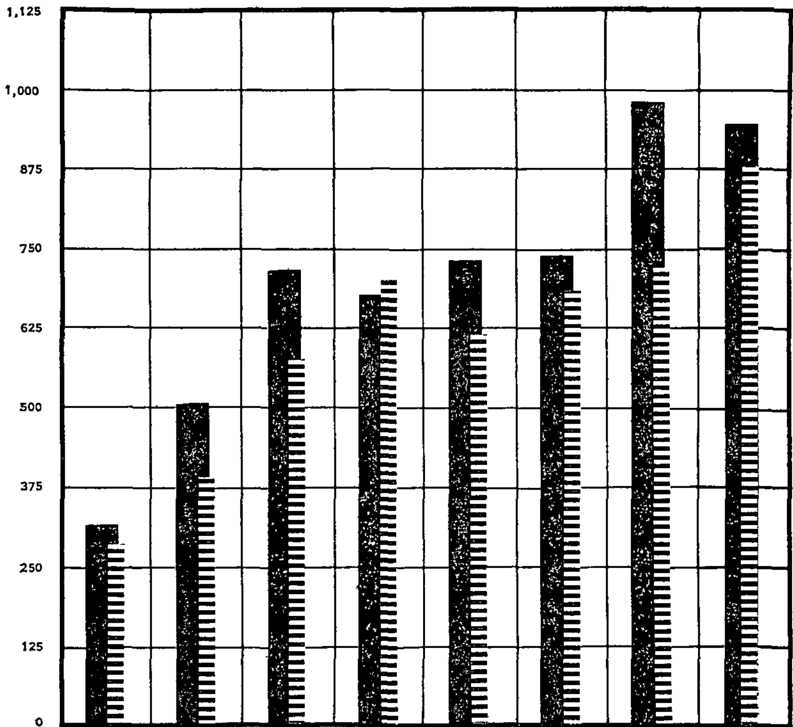
elections (noncontested). During the year, 7,954 cases were closed by elections, or 67 percent of the 11,892 total. Of the remainder, withdrawals accounted for closing of 2,964 cases, about 25 percent of the total, and 974 or 8 percent were dismissed.

There were election agreements in 6,279 or 79 percent of the cases closed as a result of elections of all types. This was 252 above the number of fiscal 1964. Contested cases, in which regional directors ordered elections following hearings, numbered 1,552 cases, about 20

Chart 8

TRIAL EXAMINER HEARINGS AND DECISIONS

(PROCEEDINGS)



FISCAL YEAR	1958	1959	1960	1961	1962	1963	1964	1965
HEARINGS HELD	333	503	728	667	740	745	989	917
DECISIONS ISSUED	289	382	572	692	623	675	734	875

percent of the 7,954 election closures; and 34 were expedited cases, less than 1 percent of closures, in which elections were held under the Act's 8(b)(7)(C) provisions pertaining to picketing for recognitional or organizational purposes.

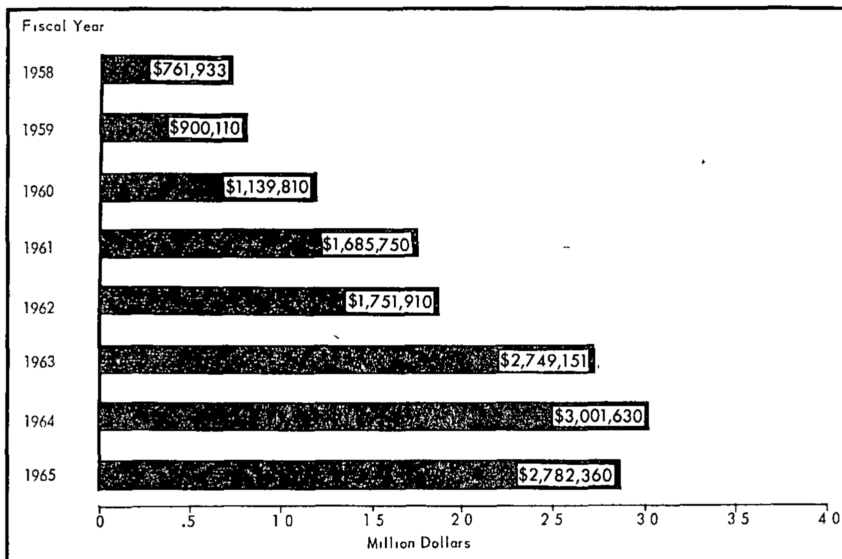
Following appeal or after transfer from regional offices, the Board ordered elections in 89 cases, in excess of 1 percent of election closures.

In fiscal 1965 NLRB regional directors issued 1,749 decisions in contested cases. The Board during the year received 451 requests for review of regional directors' decisions, 25.8 percent of the total. In the processing of 426 requests, the Board denied review in 342; granted review in 63 (remanding 2 of these); and 21 cases were withdrawn before the review requests could be acted upon.

Board rulings were issued in 59 cases following review of regional directors' decisions. In those, regional directors were affirmed in

Chart 9

AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES



34 cases; 8 regional directors' decisions were modified; and the Board reversed regional directors in 17 cases.

The reversals amounted to only 1 percent of the 1,749 regional directors' decisions, and the modifications would amount to only about one-half of 1 percent.

The Board also received 89 requests for review of regional directors' supplemental decisions on objections to conduct of elections, and challenges to ballots in elections. Acting on 86 requests, the Board granted review in 23 (remanding 5 of these), denied review in 59; remanded 5; and 4 requests were withdrawn before the Board could rule on them.

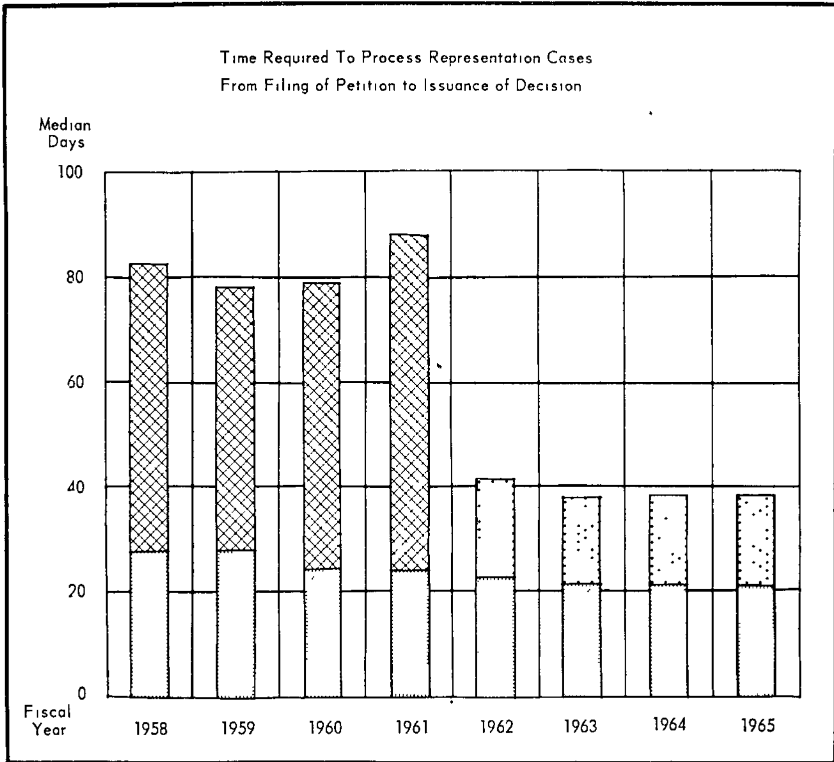
After review, the Board issued 24 decisions, affirming the regional directors in 11, modifying 2 decisions, and reversing regional directors' decisions in 11.

f. Elections

Increasing agreement of parties to the holding of employee elections without need of formal NLRB proceedings, such as hearings, was noted in fiscal 1964 and continued in fiscal 1965 with gains both in number and in percentage of total elections. These voluntary arrangements result in substantial manpower and monetary savings to the Agency.

A total of 7,824 elections were conducted in fiscal 1965. These included 7,176 collective-bargaining elections petitioned for by unions

Chart 10



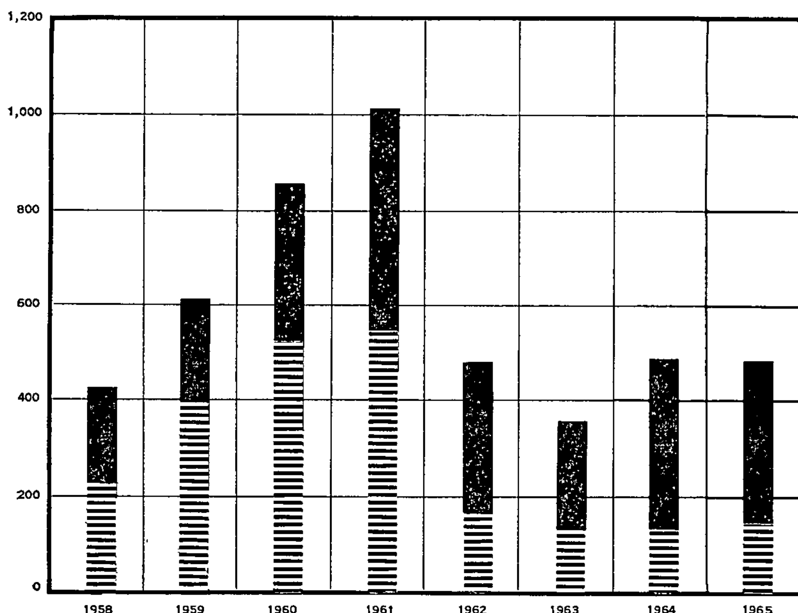
FISCAL YEAR	FILING TO CLOSE OF HEARING	CLOSE OF HEARING TO BOARD DECISION	CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION
1958	28	54	-
1959	28	49	-
1960	24	54	-
1961	24	65	-
1962	23	-	18
1963	22	-	17
1964	22	-	17
1965	21	-	18

or employees and 400 petitioned for by employers; 200 to determine whether incumbent unions continued to represent a majority of employees; and 48 to decide whether unions should continue to have the right to make union-shop agreements with employers. (See chart 12.)

Of the total number of elections, 6,193 or 79 percent were conducted by voluntary agreement of the parties, compared to the 5,879 and 78 percent of fiscal 1964. In fiscal 1963, voluntary elections were 74 percent of the total.

Chart 11

BOARD CASE BACKLOG



PROCEEDINGS		1958	1959	1960	1961	1962	1963	1964	1965
	C	199	210	330	460	323	256	344	336
	R	222	399	522	549	165	122	142	148
TOTALS		421	609	852	1, 009	488	378	486	484

Unions won 4,680 representation elections in fiscal 1965, or 60 percent of the total, a gain of 384 over the 4,296 and 57-percent victory margin of fiscal 1964.

Union-won representation election figures provide this breakdown—(1) AFL–CIO affiliates were winners in 3,017 or 64 percent of the total union victories (63 percent in 1964); (2) other national unions not affiliated with AFL–CIO won 32 percent (34 percent in 1964); local unaffiliated unions won in 4 percent (4 percent in 1964).

Among non-AFL–CIO unions, the Teamsters Union won 1,179 or 25 percent of the 4,680 election victories.

Nearly 550,000 employees voted in the 1965 elections of all kinds, averaging 70 employees per election, a drop of 3 from the 73 average in 1964. The predominance of small bargaining units in elections conducted by the Agency continued in 1965 the trend of recent years. About 75 percent of the elections were in units of 59 or fewer em-

ployees, and 25 percent were in units of 9 or fewer workers, close to the percentages of 1964.

In the 1965 elections for certification of a bargaining agent (excluding decertification elections), 531,971 employees were eligible to vote, of whom 90 percent or 480,280 cast valid ballots.

In the elections, 300,144 employees, 56 percent of the eligibles, voted for union representation. In 1964 union representation was voted for by 53 percent of the eligibles; in 1963 it was 54 percent.

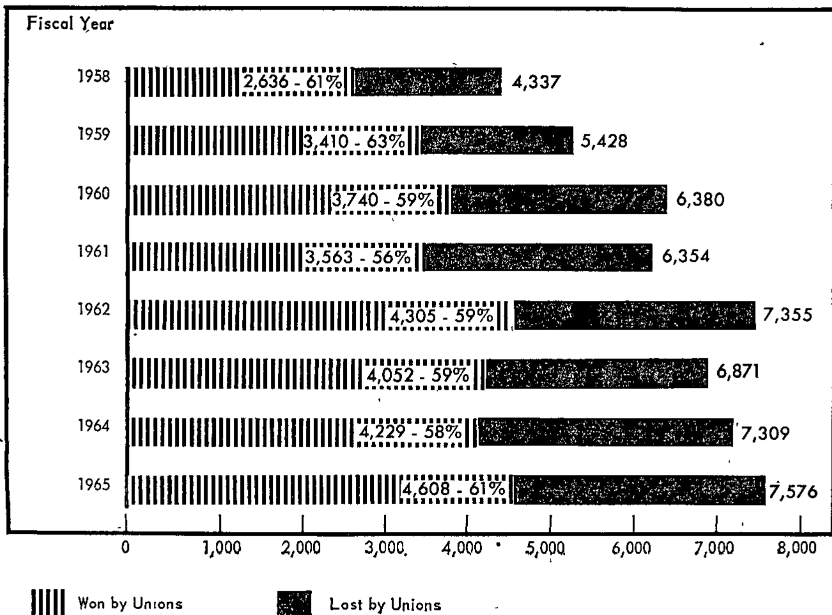
Another result of the elections was that unions were certified to represent 325,698 employees, more than 61 percent of those eligible to vote.

Industrial classification of the 1965 elections showed again, as in recent years, that a substantial majority were held in manufacturing plants, which accounted for 4,546 or 58 percent of the 7,776 elections of all kinds. Within this category food-manufacturing plants led with 657 elections. (See tables 11–16.)

Retail trade establishments accounted for 959 elections, about 12 percent of the total; in wholesale trades there were 852 elections, 11 percent of the total. There were 649 or 8 percent of the elections in transportation, communications, and other public utilities. The remaining elections were held among employees of a variety of other industries and services.

Chart 12

COLLECTIVE BARGAINING ELECTIONS HELD
Number and Percent



In fiscal 1965 there were 200 decertification elections, in which employees decide whether to retain their bargaining agents, about a 9-percent drop from the prior year's 220.

Decertification election results for 1965 showed that unions won in 72 contests, thus continuing their right of representation of 7,847 employees. Unions lost in 128 elections, involving 4,718 employees. The figures show, as in 1964, that while unions lost considerably more decertification elections than they won, they retained bargaining rights in the larger employee units. The unions won in units averaging 109 employees; they lost in units of an average 37 employees. In 1964 the unions lost 153 decertification elections involving 5,399 employees; they won in 67 elections embracing 8,333 employees. In elections won in 1964 the average unit had 124 employees; in elections lost the average was 35-plus.

Union deauthorization elections, in which employees decide whether incumbent unions should retain the right to negotiate union-shop agreements, in fiscal 1965 continued to show the characteristics of recent years. Although there was a high percentage increase in the number of such elections, the total was only 48, a very small amount compared with other types of employee balloting. In fiscal 1964 there were 34 deauthorization elections, thus the increase in 1965 was more than 41 percent. In union-shop agreements employees are required to join a union on or after 30 days of employment or the effective date of the union-shop agreement, whichever is later.

The 1965 deauthorization elections involved 3,975 employees. Unions lost the right to make union-shop agreements in 35 cases, or 73 percent of the 48 total. In 13, or 27 percent, the unions retained the right. Unions retaining the right represented 1,216 employees; those losing the right represented 2,759 employees. In the 13 cases where unions retained union-shop authorization, the average size of bargaining units was 94 employees. In the cases lost the average bargaining unit had 79 employees.

g. Decisions and Court Litigation

The total of Agency decisions in fiscal 1965 showed an increase over the prior year, marked by output of the five-member Board which exceeded that of fiscal 1964 by 20 percent. The Agency in 1965 issued 3,707 decisions in 4,345 cases as shown in chart 13, exclusive of 45 decisions as to clarification of bargaining units and amendments to certifications in 47 cases. The total output for 1964 was 3,588 decisions.

Board Members issued 1,616 decisions (1,348 in 1964) in 2,115 cases. Regional directors in 1965 issued 2,136 decisions in 2,277 representation cases, a drop from the 2,240 decisions in 2,275 cases of 1964.

The 1,616 decisions by the Board included 1,124 in which there was contest over either the facts or application of the law. Among those were 655 decisions in unfair labor practice cases; 11 supplemental unfair labor practice rulings; 25 decisions involving employee backpay; 69 determinations in jurisdictional disputes over job assignments under the Act's section 10(k), more than double the 32 of the prior year; 182 decisions on representation questions; 3 decisions as to clarification of bargaining units; and 179 rulings on objections and challenges in employee elections. The remaining 492 decisions were in cases not contested before the Board.

In the Board-issued decisions, there were 907 contested unfair labor practice cases. Board decisions may cover a number of related cases. Of the 907, the Board found violations of the Act in 735 or 81 percent compared with the 1964 findings of violations in 719 or 83 percent of the 865 contested cases.

The relatively small number of contested unfair labor practice cases which reach the Board Members point up the processes which dispose of the vast bulk of charges filed with the Agency against employers and unions without the need for all-stage litigation.

The processes, as shown in chart 2 and table 7, include settlements and adjustments, withdrawals, and dismissals.

Demonstrating effectiveness of the processes, although 10,360 unfair labor practice cases against employers were disposed of by the Agency in fiscal 1965, only 707 such cases were contested before the Board. And of the 707, the Board found violations in 582. The contested cases would amount to 6.8 percent of the total 10,360 cases, and those in which violations were found would equal about 5.6 percent. Board findings of violations were made in 82 percent of the 707 cases; in 1964 violations were found in 87 percent of the 670 cases.

In the 1965 findings, employers were ordered to reinstate 978 employees, with or without backpay, and 281 employees were awarded backpay only, without reinstatement. Employers in 41 cases were ordered to cease illegal assistance or domination of labor organizations; and in 226 cases employers were ordered to bargain collectively with employee representatives—a 29-percent increase over the 175 orders of the prior year.

By the same processes, there were 4,859 cases against unions disposed of in fiscal 1965 with only 200 contested cases going before the Board for decision, or about 4.1 percent of the total. Violations were found in 153 cases, or approximately 3.1 percent of the total cases, and 77 percent of the 200 contested cases as compared with the 68 percent of violations in 1964's 195 cases.

Illegal secondary boycott findings were predominant in the Board orders against unions. There were 63 of these decisions. In other

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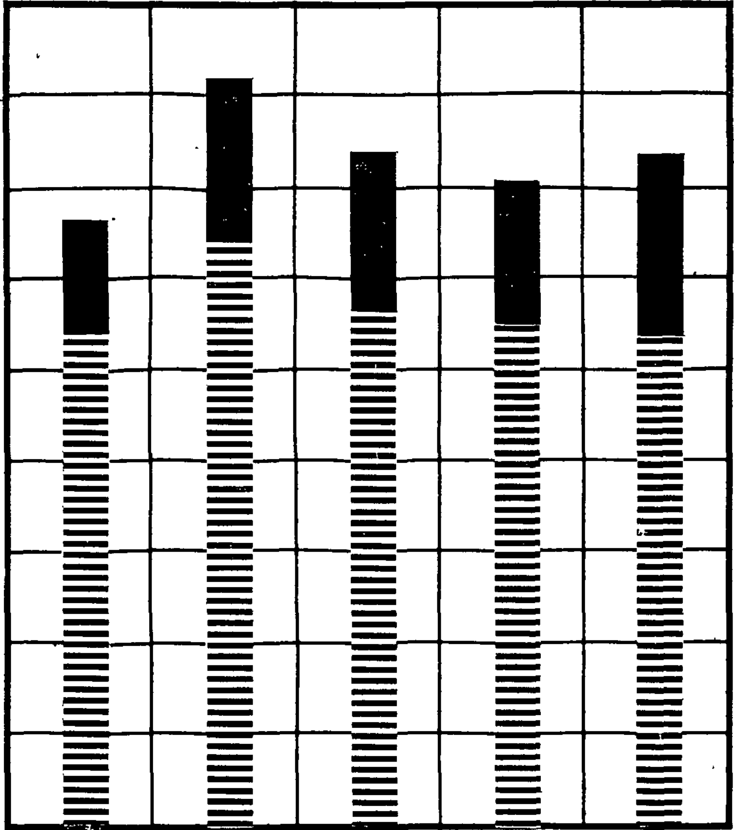
Chart 13

DECISIONS ISSUED (REVISED 1/)

(Excludes UD, AC and UC decisions)



PROCEEDINGS	1961	1962	1963	1964	1965
C	655	903	854	776	1,000
R	2,718	3,211	2,857	2,812	2,707
TOTALS	3,373	4,114	3,711	3,588	3,707

1/ Chart revised this year to include supplemental decisions in unfair labor practice cases and decisions on objections and/or challenges in election cases. (Totals shown for each year from 1961-64 in previous annual reports have been revised upwards accordingly.)

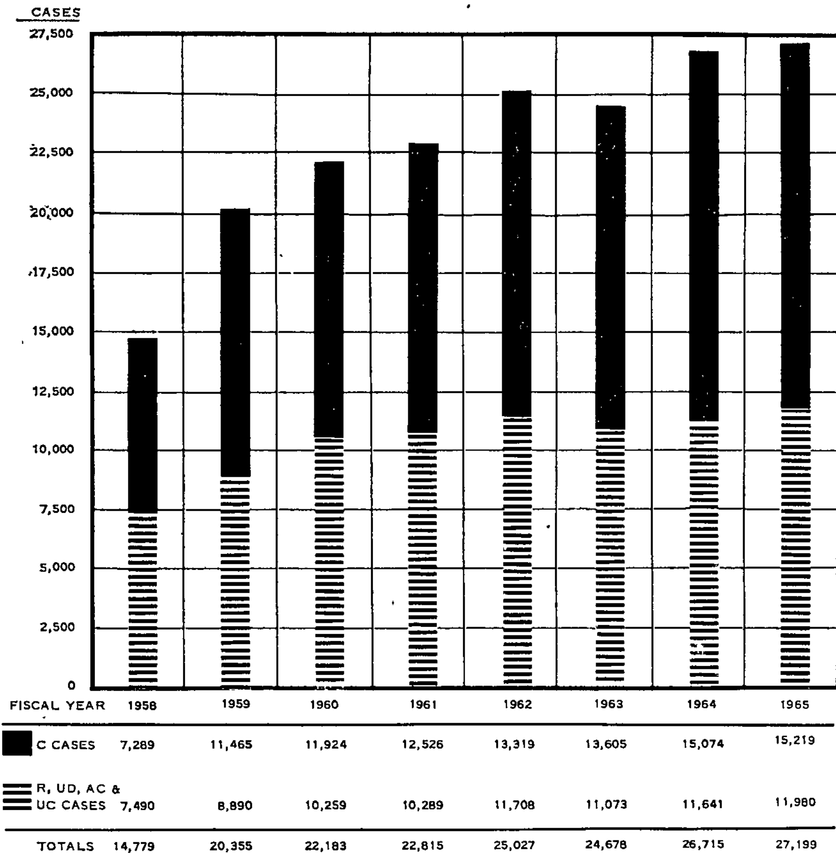
areas, unions in 5 cases were ordered to cease obtaining or receiving unlawful employer assistance; and unions were ordered to give 104 employees backpay. As to 27 of those employees, unions and employers were held jointly liable for the backpay.

Cases closed at all levels of the Agency in fiscal 1965 were the highest in the last 7 fiscal years, gaining 2 percent over 1964's total. Unfair labor practice case closings were 1 percent above 1964. Representation cases closed rose 3 percent above 1964. (See chart 14.)

In court activity affecting NLRB-related cases, the Agency's success in litigation continued at a high level. In U.S. courts of appeals, although there was a drop in the number of court decisions (222 in fiscal 1965 as compared with the 259 of fiscal 1964) the Agency in 1965

Chart 14

CASES CLOSED



FISCAL YEAR	1958	1959	1960	1961	1962	1963	1964	1965
C CASES	7,289	11,465	11,924	12,526	13,319	13,605	15,074	15,219
R, UD, AC & UC CASES	7,490	8,890	10,259	10,289	11,708	11,073	11,641	11,980
TOTALS	14,779	20,355	22,183	22,815	25,027	24,678	26,715	27,199

obtained enforcement of its orders in whole or in part in 80 percent of the cases as against 78 percent in 1964.

In 1965 appeals courts enforced NLRB orders in full in 122 cases; 47 were enforced with modification; 7 were remanded to the NLRB; and 36 NLRB orders were set aside. In seven cases involving contempt proceedings the respondents complied with NLRB orders after the contempt petitions had been filed; in two other cases appeals courts held the respondents in contempt; and in one case the court denied the Agency's petition.

In the U.S. Supreme Court, two of seven NLRB orders were affirmed in full in fiscal 1965, two orders were set aside; and three cases were remanded to the Board.

U.S. district courts in fiscal 1965 granted NLRB injunction requests in 91 percent of the contested cases litigated to final order, as against the 85 percent of the prior year. There were 90 injunction petitions granted, 9 were denied, 19 were withdrawn, and 9 were dismissed; also cases involving 125 petitions were settled or placed on the court's inactive dockets, and 10 petitions were awaiting action at the end of the year. In the year there were 42 other cases involving miscellaneous litigation decided by appellate and district courts. NLRB-related injunction litigation in the district courts in 1965 was 13 percent below 1964 in terms of cases instituted—236 in 1965 against 270 in 1964.

h. Other Developments

The Board and the General Counsel, in keeping with the policy of frank and full exchange of views on Agency decisional activity, during the year met in a number of sessions with representatives of management and labor, including the National Association of Manufacturers and the U.S. Chamber of Commerce. The meetings produced frank discussion of the Agency's decisions, policies, and practices.

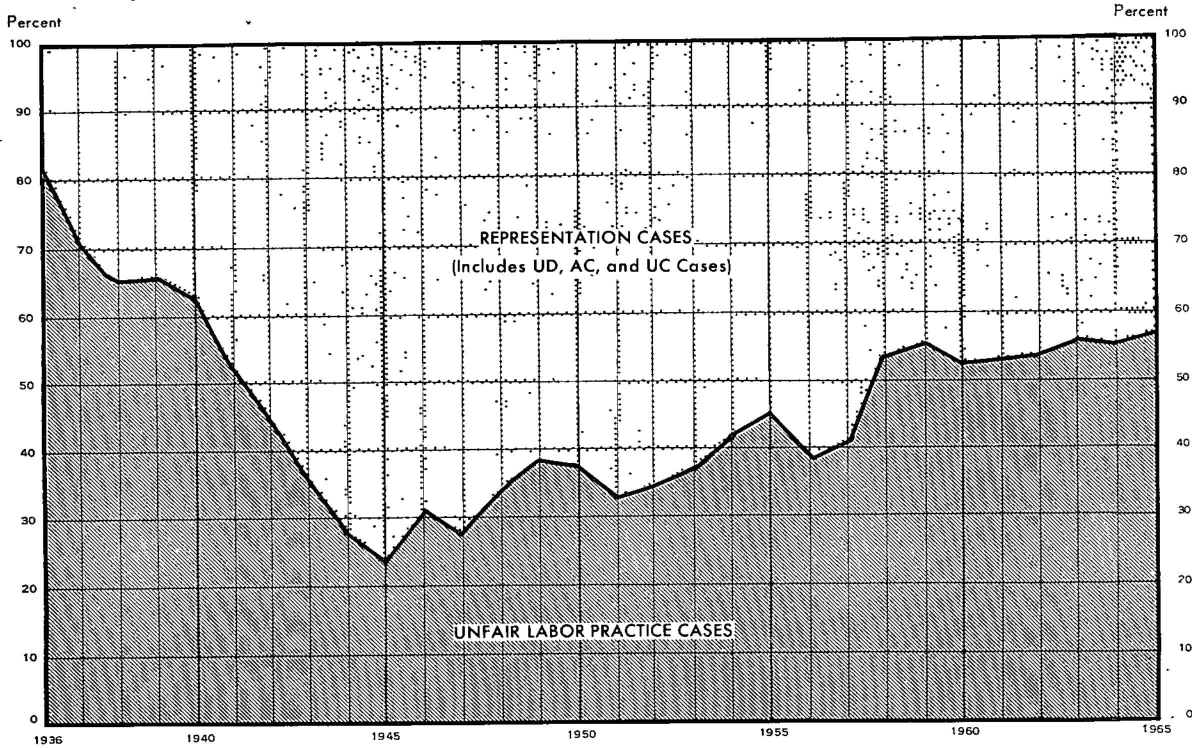
Similarly, there were meetings between Agency officials and the Labor Law Section of the American Bar Association wherein there was study of procedure involved in case handling and offers of ABA assistance on possible future changes to help meet NLRB's growing caseload.

On April 20, 1965, Sam Zagoria, of New Jersey, took office as a Member of the NLRB. Mr. Zagoria, former administrative assistant to Senator Clifford P. Case of New Jersey, and prior to that an award-winning newswriter, succeeded Boyd Leedom.

On January 12, 1965, the Agency opened a new regional office in Brooklyn, New York, following earlier announcement of the opening of a subregional office in Peoria, Illinois. The Agency also announced

Chart 15

COMPARISON OF FILINGS OF UNFAIR PRACTICE CASES AND REPRESENTATION CASES



This graph shows the percentage division of the NLRB caseload between unfair labor practice cases and representation cases during fiscal years 1936-1965

intention of establishing a second regional office in Los Angeles, California. The new offices will relieve work overloads in areas producing high rates of cases going before the Agency.

Agency officials participated in White House ceremonies to mark the signing of an agreement by management and labor leaders in the building and construction industry to reconstitute the National Joint Board for the Settlement of Jurisdictional Disputes. Agency officials also conferred with principals involved in Joint Board operations to devise procedures whereby the NLRB, in carrying out its authority and responsibility in jurisdictional disputes, may give appropriate weight to awards of the Joint Board.

i. Note on Statistical Tables for 1965 Annual Report

To increase usefulness of the statistical tables found in appendix A of this report, the Agency has added some new tables and has expanded others. The changes are intended to advance the statistical information on Agency activity both in form and in detail. Also, a glossary of terms used in the tables has been updated, and a subject index has been added.

Some of the changes in the tables have been made following suggestions from outside sources. The Agency welcomes any further constructive suggestions of this nature.

3. Decisional Highlights

In the course of the Board's administration of the Act during the report year, it was required to consider and determine many complex problems arising from the innumerable factual variations in the cases reaching it. In some cases new developments in industrial relations, as presented by the factual situations, required the Board's accommodation of established principles to those developments. In others, the Board was required to make an initial construction of statutory provisions.

Chapter II on "Jurisdiction of the Board," chapter III on "Board Procedure," chapter IV on "Effect of Concurrent Arbitration Proceedings," chapter V on "Representation Cases," and chapter VI on "Unfair Labor Practices" discuss some of the more significant decisions of the Board during the fiscal year. The following summarizes briefly the more significant decisions in certain areas.

a. Representation Issues

The "separability for unit purposes between selling and nonselling personnel in the retail store industry" was of primary concern to the

Board in several cases in which bargaining units of retail department store employees less than storewide in scope were approved.[1] In the absence of prior bargaining history and with no union seeking a storewide unit, the Board concluded after evaluation of conventional unit determination criteria that, although a storewide unit in retail establishments is "basically appropriate" or the "optimum unit," it is not the only appropriate unit. In approving less than storewide units based upon functional divisions, the Board also relied upon the employer-recognized "different outlook and interest of the white collar employee . . . in retail stores" and the nature of the employee complement where the nonselling employees are usually male heads of families concerned with permanent employment and the selling force is composed largely of women, working part-time on a temporary basis.

b. The Bargaining Obligation

The scope of the obligation of an employer to bargain with the representative of his employees was further delineated through a number of significant Board decisions. Not only were the terms "employer" and "employee" further defined, but the Board's *Fibreboard* decision concerning the obligation to bargain about the subcontracting of unit work, which was affirmed by the Supreme Court during the report year, received explication in the course of a substantial number of decisions requiring its application.

Concluding that the duty of an employer who has taken over an "employing industry" to honor the employees' choice of a bargaining agent is "a public obligation arising by operation of the Act," and not one derived from a private contract or necessarily turning upon the incidents of a sale, lease, or arrangement between employers, the Board held [2] that successful bidders upon the periodic renewal of fixed-term service contracts, who then hired the employees of the replaced employer, were bound by Board certifications of representatives for those employees. In thus applying the well-established "employing industry" concept to the situation where the successor employer does not acquire assets but does perform the identical operation, with the same employees, the Board noted that under any other rule it would be "virtually impossible for employees to achieve collective-bargaining rights in an employing industry which is periodically subject to a possible change of employers. . . ."

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[1] *Allied Stores of New York, Inc., d/b/a Stern's, Paramus,* 150 NLRB 799; *Arnold Constable Corp.,* 150 NLRB 788, *Lord & Taylor,* 150 NLRB 812.

[2] *Maintenance, Inc.,* 148 NLRB 1299; *Consolidated American Services,* 148 NLRB 1521, p. 65, *infra*.

Supreme Court decisions requiring that the term "employee" in the Act be broadly construed controlled the Board's decision in *Chemrock Corp.*,[3] in which it held that "where . . . the only substantial change wrought by the sale of a business enterprise is the transfer of ownership, the individuals employed by the seller must be regarded as 'employees' of the purchaser as that term is used in the Act." Since the work performed by the employees in question was continued without change by the purchaser, who sought to retain them to do that work without recognizing any obligation toward their designated representative, the employees were viewed by the Board as bearing a "much closer economic relationship to the employing industry" than an applicant for employment, who is clearly an "employee."

During the report year the Supreme Court affirmed, as discussed *infra*, p. 118, the correctness of the principle established by the Board in its *Fibreboard* decision that the subcontracting of unit work is a subject concerning which an employer must bargain with the union. Board decisions during the year have further defined that principle and articulated the limits of its application.

In the cases the Board has emphasized that its "condemnation . . . of the unilateral subcontracting of unit work was not intended as laying down a hard and fast new rule to be mechanically applied regardless of the situation involved."[4] In adhering to a case-by-case approach the Board has identified recurrent factors which in its view place particular limits upon the scope of the *Fibreboard* doctrine. It has emphasized that some contracting in accordance with an employer's established practice may not constitute violations.[5] Although the Board has made it clear that the principle is not limited in its application to those situations in which the subcontracting results in permanent elimination of an entire department or unit, or of individual jobs, it has also made it clear that unless the action results in "significant detriment" to the employment expectations of the unit employees it may not constitute a violation of the statute.[6]

In addition to the limitations of the requirement of a departure from the employer's usual method of conducting its business, and that the subcontracting have a significant impact on the job interests of unit employees, the Board has recognized that the union may waive its right to consultation through contract provisions according employers the right to unilateral action in making decisions in this area.[7] Special circumstances have also been found to warrant an employer's unilateral action in making business decisions eliminating unit work. Such spe-

[3] 151 NLRB 1074, p 66, *infra*
[4] *Westinghouse Electric Corp* (*Mansfield plant*), 150 NLRB 1574, p 73, *infra*
[5] *Shell Oil Co*, 149 NLRB 283.
[6] *American Oil Co*, 151 NLRB 421
[7] *International Shoe Co*, 151 NLRB 693, p 76, *infra*

cial circumstances were present in *New York Mirror*[8] where the newspaper publisher's unilateral termination of publication was found to have been prompted "solely by pressing economic necessity," and full recourse was had to bargaining negotiations with the employees' representatives to reach a satisfactory contractual settlement of all issues concerning the severance and termination of employment. Circumstances justifying unilateral action were also found in cases where the employer engaged in "temporary subcontracting necessitated by a strike where such subcontracting did not transcend the reasonable measures necessary in order to maintain operations in such circumstances."[9]

A significant development in remedial provisions prescribed by the Board in plant relocation situations occurred in another case. Although in cases where an employer has relocated his plant at a distant location in order to avoid his statutory bargaining obligation, the Board has not heretofore imposed a bargaining obligation at the new location until the representative reestablished its majority, in *Garwin Corp. et al.*,[10] the Board concluded that such an order should be issued "if the purposes of the Act are to be served in this type of case." Approaching the problem as one of balancing the interests of the newly hired employees, whose very jobs existed only by virtue of the unfair labor practices and the inadequacy of the Board's usual offer-of-reinstatement remedy, against the value of a bargaining order wherever the employer remains which will dissipate the consequences of a deliberate violation of the statute, the Board concluded that the balance should be struck in favor of the statutory objective of a meaningful remedy. In recognition, however, of the interests of the new hires at the relocated plant, the Board qualified its bargaining order to provide that unless the union could reestablish its majority at the new plant, any contract obtained as a result of the order to bargain would bar a timely petition by other parties for an election only for a period of 1 year from the date of execution of the contract.

c. Racial Discrimination and the Duty of Fair Representation

The principle that the rights guaranteed an employee by section 7 of the Act includes the right to fair representation by the designated bargaining agent, established in the Board's *Hughes Tool Co.* case decided last year, was further amplified in two cases in which factually variant union actions and practices motivated by racial discrimination were considered by the Board. In *Local 1367, ILA*,[11] the Board found that

[8] 151 NLRB 834

[9] *Shell Oil Co*, 149 NLRB 283; *Empire Terminal Warehouse Co.*, 151 NLRB 1359.

[10] 153 NLRB No. 59, p 116, *infra*.

[11] 148 NLRB 897, p. 82, *infra*.

a local union comprised of white members only and its parent district organization, acting as joint representatives, in contravention of section 8(b)(1)(A) violated their duties of fair representation by maintaining and enforcing a contract provision which allocated longshoremen job referrals on a 75–25-percent ratio between the white local and the sister Negro local, and by enforcing a "no doubling" arrangement forbidding the assignment of white and Negro gangs to work together in ship hatches. The discriminatory work apportionment provision, being based upon local union membership, was also found violative of section 8(b)(2), and, because of the invidious and illegal nature of the racially discriminatory clauses, their inclusion in the contract negotiated by the union constituted a breach of the duty to bargain fairly and in good faith owed to the employees by the unions in violation of section 8(b)(3). In *Local Union No. 12, United Rubber Workers*,[12] although racially discriminatory provisions had been eliminated from the contract, the local union continued to support segregated plant facilities. It had also refused to process grievances asserted by Negro employees seeking the elimination of the segregated facilities, as well as the recovery of backpay lost through the application of the racially discriminatory layoff priorities established by the since-eliminated contract provisions. The Board found that the refusal to process the grievances was for racially discriminatory reasons, and therefore a violation of the duty of fair representation owed the employees. In holding the union action also to be a violation of their bargaining obligation, the Board emphasized that "the statutory agent's duty is to represent without regard to race." Rejecting the contention that the union's refusal to process the grievances concerning segregated plant facilities was within the wide range of discretion to be allowed the statutory representative, the Board stated that "the range of discretion allowed to a statutory representative is accompanied and limited by a requirement that such representative consistently exercise complete good faith and honesty of purpose. Obviously, a statutory representative's conduct to maintain an unlawful end finds no defense in the representative's belief, however sincerely held, that the end is desirable."

d. Enforcement of Union Rules

The efforts of unions to enforce rules of their own making designed to regulate the actions of their members under certain circumstances may or may not be protected by the proviso to section 8(b)(1)(A) even though coercive in their impact upon the employee-members. When cases involving such efforts come before the Board the question usually is whether in enforcing its rule the union has remained within

[12] 150 NLRB 312, p. 83, *infra*.

the area of union-member relationship or affected the area of employer-employee relationship. In *Local 138, IUOE*,[13] the Board held that a union may not through its internal procedures impose a fine upon a member for filing charges with the Board even though the member thereby violated the union's rule requiring exhaustion first of its prescribed grievance procedure. The Board noted that the union rule "requiring exhaustion of internal union remedies and its enforcement by means of a fine is a reasonable and lawful exercise of a union's right to administer its internal affairs." However, upon consideration of "the overriding public interest involved" in immunizing recourse to the Board's processes by employees from coercive measures such as a fine, the Board concluded that its affirmative duty to protect employees who participated in the Board's processes required that "no private organization should be permitted to prevent or regulate access to the Board, and a rule requiring exhaustion of internal union remedies by means of which a union seeks to prevent or limit access to the Board's processes is beyond the lawful competency of a labor organization to enforce by coercive means." In so holding the Board rejected the contention that section 101(a)(4) of the Reporting and Disclosure Act authorized the union's action since, in its view, the congressional purpose in enacting that section was to restrict union efforts to prevent suits by its members while preserving in limited form the exhaustion of remedies requirements.

To similar effect, in another case a threat by a union officer that a member would be fined if he filed a charge with the Board was found to be a violation of section 8(b)(1)(A). However, in *Local 248, UAW*,[14] the Board held that union action in levying fines on members who crossed their union's picket line to work during a strike in violation of a union rule was protected by the proviso to section 8(b)(1)(A). Finding that no effort was made by the union to affect the employment status of the fined members, the Board concluded that the union had "properly maintained the distinction between treatment of the individual as a member of the Union and treatment of him as an employee." Lack of interference with the employment relationship was also a basis for the Board's conclusion in *Tawas Tube*[15] that the union acted within permissible limits in expelling from membership two individuals who filed a petition with the Board seeking decertification of the union as bargaining representative. Noting the repudiation of the union inherent in the employees' action probably precluded the expulsion from effectively deterring their resort to the Board, the Board viewed the public interest in protecting resort to the Board

[13] 148 NLRB 679, p 83, *infra*.
[14] 149 NLRB 67, p. 84, *infra*
[15] 151 NLRB 46, p 85, *infra*.

as not outweighing the union's interest in enforcing reasonable internal rules to protect its very existence as an institution.

e. Self-Help Enforcement of Hot Cargo Agreements

Although many of the implications of section 8(e) of the Act have been resolved in litigation, additional problems of construction continue to arise as unions seek to obtain contract clauses affording the fullest permissible protection to their work unit and standards. In *Greater Muskegon General Contractors Association*,[16] a construction union struck to obtain inclusion in the contract of a clause which provided that the union members could "refuse to work on any job where any of the work, irrespective of craft," was performed under conditions less favorable than the union standards for that craft. Finding that the clause extended "beyond protection of the work and work standards of the employees represented by the union," the Board concluded that the employer's acceptance of such a clause permitting employees to refuse to work in the event he does business with another employer considered objectionable by the union, was the equivalent of an agreement by the employer not to do business with any other employers within the meaning of section 8(e). The Board also found the clause objectionable because it sanctioned "private, economic action of the employees in the event the employer breaches the agreement. This proposal looks not to the court for enforcement but to strikes." It accordingly held that where "a limitation upon contracting at a construction site is intertwined with a provision permitting such self-help as striking or otherwise refusing to perform services," the clause exceeds the prescribed bounds of the first proviso to section 8(e), and is therefore unlawful.

4. Fiscal Statement

The obligations and expenditures of the National Labor Relations Board for fiscal year ended June 30, 1965, are as follows:

Item	Amount
Personnel compensation	[1] $20,417,391
Personnel benefits	[2] 1,492,459
Travel and transportation of persons	1,347,930
Travel and transportation of things	66,699
Rent, communications, and utilities	890,098
Printing and reproduction	445,627
Other services	610,269
Supplies and materials	248,858
Equipment	193,244
Insurance claims and indemnities	8,581
Total Agency	25,721,156

[1] Includes $16,241 for reimbursable personnel compensation

[2] Includes $804 for reimbursable personnel benefits.

[16] 152 NLRB No. 38, p. 102, *infra*.

II

Jurisdiction of the Board

The Board's jurisdiction under the Act, as to both representation proceedings and unfair labor practices, extends to all enterprises whose operations "affect" interstate or foreign commerce.[1] However, Congress and the courts [2] have recognized the Board's discretion to limit the exercise of its broad statutory jurisdiction to enterprises whose effect on commerce is, in the Board's opinion, substantial—such discretion being subject only to the statutory limitation [3] that jurisdiction may not be declined where it would have been asserted under the Board's self-imposed jurisdictional standards prevailing on August 1, 1959.[4] Accordingly, before the Board takes cognizance of a case, it must first be established that it has legal or statutory jurisdiction; i.e., that the business operations involved "affect" commerce within the meaning of the Act. It must also appear that the business operations meet the Board's applicable jurisdictional standards.[5]

A. Enterprises Subject to Board Jurisdiction

In the course of decisions issued in fiscal 1965, the Board had occasion to delineate further its legal jurisdiction and the appropriateness of its exercise in cases involving such varied enterprises as gambling casinos, Federal credit unions, and research and educational institutions.

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[1] See secs 9(c) and 10(a) of the Act, and also the definitions of "commerce" and "affecting commerce" set forth in secs 2 (6) and (7), respectively. Under sec 2(2), the term "employer" does not include the United States or any wholly owned Government corporation, any Federal Reserve bank, any State or political subdivision, any nonprofit hospital, any person subject to the Railway Labor Act, or any labor organization other than when acting as an employer "Agricultural laborers" and others excluded from the term "employee" as defined by sec. 2(3) of the Act are discussed below under "Representation Cases," pp 45–55.

[2] See Twenty-fifth Annual Report (1960), p 18

[3] Sec 14(c)(1) of the Act.

[4] These self-imposed standards are primarily expressed in terms of the gross dollar volume of the business in question; Twenty-third Annual Report (1958), p 8 See also *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261 (July 30, 1959), for hotel and motel standards.

[5] While a mere showing that the Board's gross dollar volume standards are met is ordinarily insufficient to establish legal or statutory jurisdiction, no further proof of legal or statutory jurisdiction is necessary where it is shown that its "outflow-inflow" standards are met. Twenty-fifth Annual Report (1960), pp 19–20. But see *Sioux Valley Empire Electric Assn*, 122 NLRB 92 (1958), as to the treatment of local public utilities.

1. Gambling Casinos

In *El Dorado, Inc.*,[6] the Board concluded that it would effectuate the purposes of the Act to assert jurisdiction over employers operating gambling casinos whose annual revenues from gambling operations exceed $500,000. In doing so it rejected the contention made by the employers and the intervening Nevada Gaming Commission that the gambling industry in Nevada is essentially local in character. The industry, it found, is of a scope which transcends merely local importance and substantially affects commerce, since it directly employs 39,000 persons, supplies income directly to an additional 77,000; attracts 70 million tourists to the State, and generally supports 60 percent of the State's economy. The Board also rejected the contention made by the employers and the State that it should decline jurisdiction because the close regulation of the industry by statutory State agencies should be free of any interference created by application of the National Labor Relations Act which assertedly would assure "contractual tenure" to casino employees, and thereby prevent their dismissal for cheating or similar activities.[7] The Board concluded that, despite the unique problems of enforcement existing in the gambling industry, union representation of employees would not thwart the State's efforts in dealing with undesirables. Moreover, the State's own experience with the bargaining history of some employees in the industry shows that representation had not interfered with the State's enforcement of strict standards.[8]

2. Federal Credit Union

In *Lansing Automakers Federal Credit Union*,[9] the Board asserted jurisdiction over a Federal credit union operated under a charter from, and under the supervision of, the Bureau of Federal Credit Unions of the Department of Health, Education and Welfare. The credit union was a nonprofit corporation engaged in extending consumer credit to employees of the Oldsmobile Division of General Motors in Lansing, Michigan, to whom its membership was restricted. Although the Board found that the operations of this employer do not precisely fit any of the standards fashioned for specific types of retail enterprises,

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[6] *El Dorado, Inc, d/b/a El Dorado Club*, 151 NLRB 579; nine related representation cases involving gambling casinos were consolidated for hearing and determination.

[7] The various units included generally employees working as dealers, shills, Keno writers, runners, deskmen, and slot mechanics.

[8] The Board distinguished *Walter A. Kelley*, 139 NLRB 744, wherein it declined to assert jurisdiction over the horseracing industry, in view of the fact that gambling is the dominant industry in the State, dependent upon substantial and closely related interstate activity, and a labor dispute could disrupt commerce substantially.

[9] 150 NLRB 1542.

and as to more generalized standards, neither the nonretail standard nor the retail standard was designed to apply to the operation of a credit union where sources of income are limited to interest on loans, it determined that the impact of a credit union on commerce may be appropriately assessed by applying the $500,000 monetary standard which has been adopted for the retailer. The Board further stated, however, that it will require that this amount be satisfied in terms of annual gross income such as from loans, deposits, and investments.

3. Educational Institutions

Among the other jurisdictional determinations by the Board were two in which it declined to exercise jurisdiction over research and advanced instruction facilities operated by universities, and one in which it exercised jurisdiction over a nonprofit organization administering a joint union-management trust fund established to promote the job-oriented training and education of seamen for the maritime industry.

In *Leland Stanford Junior University* [10] the Board declined to exercise jurisdiction over the Stanford Linear Accelorator Center, a department of the university. The center was found to be "engaged in pure basic research with increased knowledge of the basic properties of matter its only foreseeable end product." Although funded through a lease and contracts between the Atomic Energy Commission and the university covering the erection, maintenance, and operation of the center, the research conducted under the direction of the faculty and graduate students at the university is not performed for the Government, has no national defense impact, and is not commercially utilizable. The center's location at Stanford was sought by the university to enable it to maintain its forefront position in this field of research which had been pioneered by its faculty. The Board viewed its decision in *Woods Hole Oceanographic Institution* [11] as distinguishable since there virtually the only function of the employer was the performance of research for the Federal Government.

Similar consideration led the Board to decline to exercise jurisdiction over the computation center of the Massachusetts Institute of Technology. The center in that case [12] is an electronic computer facility built and maintained on the campus with funds contributed by private industries, but operated and administered by the institute for "education, research and problem solution in the field of machine methods of data processing." The center is used by faculty, students, and research fellows for problem-solving and research projects related to

[10] 152 NLRB No. 73
[11] 143 NLRB 568, Twenty-eighth Annual Report (1963), pp 35–36
[12] *Massachusetts Institute of Technology,* 152 NLRB No 64.

the educational curriculum of the institute and of other educational institutions participating in the use of the center. In view of the institute's control over the center, the nature of its projects, and its utilization establishing the center as an integral part of an overall educational function without commercial orientation, the Board declined to exercise jurisdiction over the center.

However, in another case [13] the Board exercised jurisdiction over a nonprofit organization administering a trust fund established jointly by the Seafarers International Union and maritime employers to promote the job-oriented training and education of seamen for the maritime industry. The organization was established as a result of collective bargaining between the SIU and the employers. Its stated purposes were to improve the skills and efficiencies of the employees in the unit and to build up a pool of skilled seamen for the benefit of the companies. This was accomplished through various programs ranging from the award of scholarships to accredited educational institutions and training school programs, to unemployment benefits paid to subsidize student seamen during training. Under these circumstances the Board concluded that the organization was only incidentally engaged in educational activities but rather had an essentially commercial purpose designed to promote the activities of the companies under contract to SIU.

B. Representatives of Railroad Employees as "Labor Organizations"

Picketing by unions representing nonoperating personnel of railroads subject to the Railway Labor Act, which took place away from the situs of the primary dispute with the railroad, presented the Board in the *McCormick* case [14] with the issue of whether such unions were "labor organizations" within the meaning of the National Labor Relations Act and therefore within the jurisdiction of the Board. Four craft unions [15] representing some railroad employees, but whose membership were "comprised overwhelmingly of nonrailroad employees," and two unions representing railroad employees exclusively, had coordinated their bargaining negotiations with the railroad. When negotiations failed, they as a group decided to strike and set up a master strike team to direct and coordinate all strike action. The picketing, found by the Board to be secondary because placed and timed to interrupt work at Cape Kennedy and the Merritt Island Launch Site, was engaged in only by the two unions representing rail-

[13] *Maritime Advancement Programs,* 152 NLRB No. 34

[14] *International Brotherhood of Electrical Workers et al (B B. McCormick and Sons, Inc , et al),* 150 NLRB 363.

[15] IBEW, IAM, Sheet Metal Workers, and Boilermakers

road employees exclusively. Although the secondary picketing was engaged in by the two unions which were not "labor organizations" because their membership included "only individuals employed by employers who are subject to the Railway Labor Act, who therefore are not employees," the Board found that these two unions, as a part of a joint venture with the "labor organizations" in the "pursuit of a common aim" in striking were "agents" of the "labor organizations" and therefore were found responsible for the illegal picketing activity.

In holding that the craft unions, as principals, were "labor organizations" subject to the Act, the Board [16] noted that they were "predominantly nonrailway labor unions" with only a small proportion of their total membership working for railroads. The railroad employee members, although usually in distinct locals, have full voice in all decisions of the international unions. The Board regarded as immaterial the fact that the individuals immediately involved in the dispute were not "employees" within the Act, and rejected the contention that otherwise prohibited secondary activity is exempt when taken by a "labor organization" representing railroad employees in furtherance of a dispute with the railroad.

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[16] Chairman McCulloch and Members Leedom, Fanning, and Brown for the majority. Member Jenkins, dissenting, was of the view that activities of "individuals employed by an employer subject to the Railway Labor Act," in furtherance of a labor dispute with that employer, were not within the purview of the NLRB, particularly in view of the disparity resulting from the Board's patent lack of jurisdiction over actions of the employing railroad

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III

Board Procedure

A. Proof in ULP Proceeding of Preelection Majority of Union Losing Election

Last year, in *Bernel Foam Products*,[1] the Board held that a majority union which chooses to participate in a Board-conducted election with knowledge of the employer's unlawful refusal to extend recognition and bargain, and thereafter loses the election, is not thereby precluded from filing refusal-to-bargain charges based upon the employer's pre-election misconduct. That holding was amplified by the Board in *Irving Air Chute*[2] where, in relying upon the *Bernel Foam* rule to dismiss an election petition and enter a bargaining order based upon preelection misconduct, the Board held that such relief would not be granted unless, as had occurred in that case, "the election be set aside upon meritorious objections filed in the representation case." Absent that circumstance, the Board will not "direct a bargaining order even though the unfair labor practice phase of . . . [the proceeding] . . . established the employer's interference with the election."[3]

Applying this requirement to the facts in *Kolpin Bros.*,[4] where the union sought a bargaining order upon the basis of a preelection card majority although it had not filed objections to the election which it lost, the Board held that "the Union is not entitled to a bargaining order, even assuming the validity of its authorization cards." The Board stated that where "the election has not been set aside . . . [upon meritorious objections] . . . and its validity remains unimpaired, we will presume that the election, which the Union lost, truly expressed the employees' desires as to representation."

B. Allocation of Burden of Proof

The General Counsel's failure to establish as part of his case-in-chief that subcontractor's employees using a separate gate reserved for their use at the primary premises were engaged in work "unrelated to the normal operations of the employer"[5] resulted in dismissal in one case of a complaint alleging that the union's picketing of that gate violated

[1] *Bernel Foam Products Co , Inc ,* 146 NLRB 1277. See Twenty-ninth Annual Report, pp. 38–39

[2] *Irving Air Chute Co., Inc ,* 149 NLRB 627.

[3] Chairman McCulloch and Members Fanning and Brown for the majority. Member Leedom, dissenting in relevant part upon the basis of his dissent in *Bernel Foam,* would direct a new election rather than enter a bargaining order.

[4] *Kolpin Bros. Co., Inc.,* 149 NLRB 1378.

[5] *Local 761, IUE* v. *N.L R.B.* (*General Electric Co.*), 366 U.S. 667, 681.

the Act.[6] Noting that the picketing of the plant of a primary employer by his own employees is "presumptively legitimate and permissive," the Board held it was incumbent upon the General Counsel to rebut that presumption by affirmative evidence "that the work done by the men who use the gate is unrelated to the normal work operations of the plants, and that the performance of the work does not necessitate the curtailing of plant operations." [7] Not having done so, the General Counsel failed to establish a *prima facie* case.

C. Concurrent Section 8(b)(4) (B) and (D) Proceedings

The overlap in coverage of section 8(b) (4) (B), prohibiting secondary activity for a cease-doing-business objective, and section 8(b) (4) (D), the jurisdictional disputes section of the Act, whereby under some circumstances a single course of union conduct may constitute a violation of each provision,[8] was a matter of concern to the Board in *Automatic Sealing Service.*[9] There the Board considered a trial examiner's decision holding the respondent union violated section 8(b) (4) (B) by conduct which had been previously considered by the Board in a proceeding pursuant to section 10(k) of the Act in which it found that there was reasonable cause to believe that section 8(b) (4) (D) had been violated, and in which it made an affirmative award resolving the jurisdictional dispute.[10] In dismissing the complaint, the Board noted that "[i]n a related proceeding involving the identical conduct" it had resolved the underlying jurisdictional dispute and made an affirmative award of the work. "In these circumstances, we deem it unnecessary to decide whether, as found by the Trial Examiner, Respondent's conduct also violates Section 8(b) (4) (B) of the Act." [11]

[6] *Local No. 1, IBEW (Mallinckrodt Chemical Works)*, 148 NLRB 340

[7] The criteria, among others relevant, were set forth by the Board in *Local 761, IUE (General Electric Co.)*, 138 NLRB 342, after reversal of its earlier decision, 123 NLRB 1547, by the Supreme Court which remanded the case for further findings *Local 761, IUE* v. *N L.R B., supra.*

[8] See, i.e , *Local Union 825, IUOE (Nichols Electric)*, 138 NLRB 540, enforcement denied 326 F. 2d 218 (C.A. 3), and *Local 825, IUOE (Nichols Electric)*, 140 NLRB 458, enforcement granted 326 F. 2d 213 (C.A. 3), where the Board entered orders in separate proceedings upon finding violations of sec. 8(b) (4) (B) and 8(b) (4) (D), respectively, by the same sequence of events

[9] *New York Paper Cutters' & Bookbinders' Local Union No. 119 (Automatic Sealing Service, Inc.)*, 148 NLRB 1350.

[10] *New York Paper Cutters' & Bookbinders' Local Union No. 119 (Automatic Sealing Service, Inc.)*, 146 NLRB 435, Member Fanning dissenting See also: *Local 1248, ILA (Hampton Roads Maritime Assn)*, 152 NLRB No. 91.

[11] Chairman McCulloch and Members Brown and Jenkins for the majority. Member Fanning, dissenting, was of the view that the case was properly before the Board under sec. 8(b) (4) (B) and should not have been considered under sec 8(b) (4) (D), a view he had expressed in his dissenting opinion in the 10(k) determination. Member Leedom, dissenting, would find a violation of sec. 8(b) (4) (B), noting that "the instant case presents the question of whether the Respondent engaged in lawful secondary boycott activity, and manifestly, this question was not disposed of by deciding in the 10(k) proceeding that the Respondent did not have a valid jurisdictional claim to the disputed work."

D. Employer's Agents as Individual Respondents

Section 2(2) of the Act provides, *inter alia*, that "[t]he term 'employer' includes any person acting as an agent of an employer, directly or indirectly, . . ." In two cases the Board was called upon to decide whether violations of the Act committed by agents of employers, in one case a county sheriff and in the other an attorney, warranted holding the agent personally liable as a respondent under the foregoing definition of "employer."

In *Thunderbird Hotel* [12] the operators of a hotel and gambling casino had, for their own convenience, made arrangements with the local sheriff to provide each of their guards with a special deputy's commission, the holding of which was considered a condition of employment. The commissions, valid only on the hotel premises, were issued routinely by the sheriff's office on request, subject only to a background check for any criminal record of the applicant. Upon learning of organizational activities among the guards, the sheriff called a meeting of all chief security guards of the hotels and casinos along the "strip," including that of the Thunderbird Hotel, and discussed the situation with them. The following day he called in one of the guards at the Thunderbird and asked for information concerning the union organizational meeting and who had attended. When the employee admitted his own participation but refused to identify others, the sheriff revoked his special deputy's commission "because of his disloyalty to his security chief at the Thunderbird Hotel and also to [the] sheriff" in that "he did not notify his security chief of the secret meeting he attended with union officials, nor did he notify his chief of his efforts to organize the security guards of the strip hotels. . . ." When the employee informed his employer of the revocation of his special deputy's commission, he was immediately terminated as lacking a prerequisite for employment. The sheriff subsequently questioned other guard employees also concerning the organizational activities.

Rejecting the contention that the guards were "employees" of the sheriff by virtue of the special deputy commissions and therefore excluded from protection of the Act as employees of a State or political subdivision, the Board concluded that the totality of circumstances established a pattern or design of conduct from which it could be inferred that the sheriff and the hotel were acting in concert when the employee's commission was revoked by the sheriff because of his union activities, which eventuated in his discharge by the hotel. In addition to finding the discharge a violation of the Act, the Board also found that the sheriff violated the Act by interrogating employees concern-

[12] *Thunderbird Hotel, Inc., et al.*, 152 NLRB No. 144.

ing their union activities. It therefore entered an order against him as an agent of the other respondents directing him to cease and desist from such activities. However, the Board found it unnecessary "under the particular circumstances of this case" to require the posting of a notice signed by the sheriff.

In *Valley Gold Dairies*,[13] the Board considered a case in which an attorney was named as an individual respondent because of violations committed by him as an agent of the employer respondent. Although finding that the interrogation of employees by the attorney, ostensibly in preparation for hearing, exceeded lawful bounds and that the company "has thereby violated Section 8(a)(1) by the conduct of its agents," the Board did not agree that the attorney's conduct "exceeded the bounds of mere advocacy" and that he was "purposely aiding the employer in contravening the statute." Finding no separate violation by the attorney, the complaint was dismissed as to him.

[13] *Valley Gold Dairies, Inc.; John Edward Price, Attorney for Valley Gold Dairies, Inc.*, 152 NLRB No. 153.

IV

Effect of Concurrent Arbitration Proceedings

It is clear that the jurisdiction of the Board over unfair labor practices is exclusive under section 10(a) of the Act and is not "affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." However, consistent with the congressional policy to encourage utilization of agreements to arbitrate grievance disputes,[1] the Board with discretion will under appropriate circumstances withhold its processes in deference to an arbitration procedure.

A. Circumstances of Board Deferral to Available Procedure

In two cases decided during the period the Board evaluated arbitration proceedings in the light of the *Spielberg* [2] standards of fairness and regularity, deferring to the proceeding in one case and declining to do so in the other. In *Modern Motor Express* [3] the Board dismissed the complaint without passing upon the merits when it satisfied itself that the procedure and award of a local grievance committee established by the Central States area local cartage agreement "satisfied the *Spielberg* arbitration criteria." The Board rejected the trial examiner's finding that the committee had eliminated consideration of the contention that the employee was discharged for filing grievances. In *Dubo* [4] the Board, upon consideration of a case it had held in abeyance pending completion of a then pending arbitration proceeding,[5] concluded that deference should not be made to an arbitration proceeding in which the award lacked a majority concensus of the arbitration panel. In each grievance, the arbitration panel chairman had supported the award but the other two panel members dissented on different grounds. In view of the Board, an award "where no two panel members agree on any issue pertinent to our concern, appears to be too ambiguous to be recognized as a definitive disposition of the grievance dispute, which is also alleged to be an unfair labor practice."

[1] E g , *Textile Workers* v. *Lincoln Mills,* 353 U S. 448, 456 ; *United Steelworkers* v. *Warrior & Gulf Navigation Co* , 363 U S 574, 578–581.

[2] *Spielberg Mfg. Co* , 112 NLRB 1080.

[3] *Modern Motor Express,* 149 NLRB 1507.

[4] *Dubo Mfg. Corp* , 148 NLRB 1114.

[5] *Dubo Mfg. Corp.,* 142 NLRB 431.

In two other cases the Board ruled upon contentions that deferral should occur even though the party seeking recourse to the Board was not pursuing the contract grievance procedure. In *Thor Power Tool Co.*[6] the Board refused to defer to a contractual grievance procedure where "neither the Respondent nor the Union has sought to invoke arbitration [the union refused to proceed under the contract because the employee filed a charge with the Board] and the charging individual, who was the subject of the alleged unlawful discharge, does not have the right under the contract to require further action under the grievance procedure." [7] However, in *Flintkote*,[8] the union was the charging party and had participated in all steps of the contractual grievance procedure short of binding arbitration before seeking recourse to the Board on its charge that the employer had violated the Act by failing to consult the union before instituting changes in the employee classifications established by the contract. The Board, upon consideration of "all the circumstances of this case, including the contractual grievance and arbitration machinery, the position of the parties both before and during the grievance procedure that a question of contract interpretation was involved, and the Respondent's willingness to proceed to arbitration," deemed it unnecessary to pass on whether a violation of the Act had occurred. Concluding that under the circumstances "it would not effectuate the policies of the Act to issue a remedial order" the Board dismissed the complaint.[9]

B. Deferral to Agreement of Parties Resolving Issues

Another application of the Board's policy of encouraging parties to resolve disputes through voluntary non-Board procedures occurred in *Rath Packing Co.*[10] where the Board honored an agreement of the parties resolving their differences as a basis for dismissing a complaint without ruling on the merits of the case. The employer, gradually curtailing production at an old plant while increasing production at a modern plant in a nearby city, sought to provide for the displaced employees by entering into an agreement with the union representing them under which they would receive employment preference for the expansion at the new plant with the retention of certain benefits

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[6] *Thor Power Tool Co*, 148 NLRB 1379

[7] Chairman McCulloch and Members Fanning and Jenkins for the majority Member Brown, dissenting, was of the view that where, as he construed the instant case, "the parties have historically reached voluntary settlements, but an award has not yet issued, the Board should withhold action pending such award in order that it may then determine whether the arbitration proceeding complied with the *Spielberg* standards."

[8] *The Flintkote Co.*, 149 NLRB 1561.

[9] Members Leedom and Jenkins for the majority. Member Brown was of the view that the Board should "withhold action pending arbitration under the parties' own contractual arrangement for resolving disputes."

[10] 153 NLRB No. 8.

based upon total length of service with the company. After hearing on a complaint based upon charges filed by the incumbent union at the new plant, the trial examiner found that the execution of the contract constituted illegal assistance to the union at the old plant by giving its members priority of employment at the new plant, and also amounted to a discriminatory discouragement of membership in the union at the new plant. The employer was also found to have violated his duty to bargain with the union at the new plant by having negotiated with the other union concerning employment sources and procedures at the new plant. The trial examiner recommended an order appropriate to remedy those findings.

While the case was pending before the Board, however, and prior to implementation of the agreement upon which the complaint had been based, the employer and the two unions engaged in negotiations which resulted in execution of a tripartite agreement resolving the problem in a manner acceptable to all parties. The Board received the new agreement into evidence through an order to show cause procedure which provided opportunity for all parties to express their views as to the effect of the agreement on the trial examiner's findings. Upon subsequent consideration of the entire record as supplemented by the tripartite agreement, the Board found that "no useful purpose would be served by issuing a decision on the merits of the complaint" and accordingly dismissed the complaint in its entirety.

V

Representation Cases

The Act requires that an employer bargain with the representative designated by a majority of his employees in a unit appropriate for collective bargaining.[1] But it does not require that the representative be designated 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.[2] The Board may conduct such an election after a petition has been filed by or on behalf of the employees, or by an employer who has been confronted with a claim for recognition from an individual or a labor organization. Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining,[3] and formally to certify a collective-bargaining representative upon the basis of the results of the 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.

This chapter concerns some of the Board's decisions during the past fiscal year in which the general rules governing the determination of bargaining representatives were adapted to novel situations or reexamined in the light of changed circumstances.

A. Bars to Conducting an Election

Section 9(c)(1) empowers the Board to direct an election and certify the results thereof, provided the record of an appropriate hearing before the Board[4] shows that a question of representation exists. However, petitions filed under the circumstances described in the first

[1] Secs 8(a)(5) and 9(a).
[2] Sec. 9(c)(1).
[3] Sec. 9(b).
[4] A hearing must be conducted if the Board "has reasonable cause to believe that a question of representation exists."

proviso to section 8(b)(7)(C) are specifically exempted from this requirement.[5]

There are situations, however, where the Board, in the interest of promoting the stability of labor relations, will conclude that circumstances appropriately preclude the raising of a question concerning representation. In this regard, the Board has adhered to a policy of not directing an election among employees currently covered by a valid collective-bargaining agreement, except under certain circumstances. The question whether a present election is barred by an outstanding contract is determined in accordance with the Board's contract-bar rules. Generally, these rules require that a contract asserted as a bar be in writing, properly executed, and binding on the parties; that the contract be in effect no more than a "reasonable period"; and that the contract provide terms and conditions of employment which are consistent with the policies of the Act.

In a case in which a union sought to represent the employees of a single licensed department of a multidepartment discount store, the Board during the year was called upon to determine whether a contract between the licensor and another union constituted such as bar to the raising of a question concerning representation.[6] That contract purported to establish a single storewide bargaining unit composed of the employees of the licensor and of all licensees or concessionaires, who became bound by that contract under the terms of their license agreements with the licensor. Although noting the operation of the licensee's department as an integral department of the store, the Board found that under the circumstances the licensor and licensee were not joint employers and a unit limited to the licensee's employees was an appropriate one.[7] In rejecting the contention of contract bar, the Board held that the provision of the license agreement providing that the licensee would be bound by the collective-bargaining agreement between the licensor and the union "does not constitute a consummated agreement" between the licensee and the union, "as envisioned by the *Appalachian Shale* doctrine."[8] In the absence of a separate agreement between the licensee and the union, the Board found there was no contract bar and directed an election.

Similar policy considerations led the Board in another case[9] to dismiss a petition filed by a rival union upon the expiration of the contract between a certified incumbent union and the employer. The petition

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[5] See NLRB Statements of Procedure, Series 8, as amended, sec 101 23(b)

[6] *Esgro Anaheim, Inc.*, 150 NLRB 401.

[7] Chairman McCulloch and Members Leedom and Fanning for the majority. Dissenting Members Brown and Jenkins were of the view that the licensor and licensee were joint employers and would therefore dismiss the petition.

[8] *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). See Twenty-fourth Annual Report (1959), p. 24.

[9] *Frank Becker Towing Co.*, 151 NLRB 466.

had been filed less than 4 months from the date the certified union and the employer, with the approval of the regional director, executed a settlement agreement that required the employer to remedy its alleged unlawful assistance to the rival union and refusal to bargain with the incumbent by withdrawing recognition from the rival union and bargaining with the incumbent. In the Board's view, the 4 months which had elapsed had not provided the parties a reasonable time to effectuate the purposes of the settlement agreement, wherefore the processing of a representation proceeding and the direction of an election at that time would only result in frustration of the settlement agreement.

B. Unit Appropriate for Bargaining

1. Multiemployer Unit Appropriate Notwithstanding Limited Individual Bargaining

During the report period the Board had occasion to pass on the issue of whether limited individual bargaining by a member of a multiemployer group established that employer's employees as a separate unit for purposes of a decertification election. In *Kroger Co.*[10] a member of a multiemployer bargaining group had exercised a prerogative established by past practice in insisting upon individual bargaining on pension plan proposals, and had refused to be bound by or to sign the collective-bargaining agreement containing provisions for a jointly funded pension plan which had been jointly negotiated by the local union and the employers' group.[11] In seeking a decertification election, the petitioner contended that only the single-employer unit was appropriate since the bargaining history negated the existence of a multiemployer unit by showing that the employer never gave the group the authority to bind it to an agreement and had not unequivocally manifested a desire to be bound by group rather than individual action. In rejecting that construction of the bargaining history and dismissing the petition, the Board [12] noted:

The problems of each member of a multiemployer group are understandably not always identical. While it may be to the best interest of the employers and labor organizations involved to bargain as a group about all matters of general concern—the obvious reason for the formation and continuation of any multiemployer

[10] *The Kroger Co*, 148 NLRB 569

[11] In a prior proceeding, the Board held that the employer did not thereby violate its bargaining obligation under the Act. *The Kroger Co*, 141 NLRB 564, affirmed *subnom Retail Clerks Union, No. 1550 et al.* v. *N.L.R.B*, 330 F 2d 210 (C.A.D C.).

[12] Chairman McCulloch and Members Fanning and Brown for the majority. Members Leedom and Jenkins, dissenting, would have found the single-employer unit appropriate In their view, "such group bargaining as took place was for the convenience of the employers and unions involved, and was not undertaken with the intention of establishing a multiemployer unit."

unit—it may likewise be in the best interest of all concerned not to burden the group negotiations with the limited problems of an individual employer. Hence, we do not believe that the exercise of a mutually recognized privilege to bargain individually on limited matters, as in the present case, is inconsistent with the concept of collective bargaining in a multiemployer unit. Moreover, to hold that such limited separate bargaining invariably negates the existence of or destroys an established multiemployer bargaining unit would be to grant to an employer all the benefits of multiemployer bargaining without assuming any of its concomitant obligations.

2. Department Store Units Less Than Storewide in Scope

Although the Board has consistently approved storewide units of selling and nonselling employees in department stores, especially in the light of a history of bargaining in such a unit,[13] it has also directed elections in separate units of selling and of nonselling employees where there has been agreement among the parties or a history of bargaining on that basis. The Board has also recognized the differences in work and interests of many occupations in retail department stores and directed elections in a variety of small units such as restaurant employees, alterations employees, beauty salon employees, etc. In considering retail department store unit issues in three companion cases decided during the year,[14] the Board concluded that "[t]he specific facts of these cases, the current bargaining pattern in the industry, the history of bargaining in the area, and a close examination of the composition of the work force in the industry require a recognition of the existing differences in work tasks and interests between selling and nonselling employees in department stores."[15] It emphasized that although a storewide unit in retail establishments is "basically appropriate" or "the optimum unit," it is not the only appropriate unit. In the cases it found appropriate in one instance, and directed elections in, separate units composed of (1) all selling employees, (2) all nonselling employees, and (3) all restaurant employees;[16] in another case separate units of (1) all selling employees, (2) all office employees, and (3) all cafeteria employees;[17] and in the third case a separate unit of all regular full-time and part-time nonselling employees.[18]

In each of the cases there was no prior history of bargaining for the employees involved and no union sought a storewide unit. In two of the cases the employers were recognizing various unions as bargaining representatives for several separate units of employees. Applying

[13] E g., *Robertson Brothers Department Store, Inc.*, 95 NLRB 271, 272.

[14] *Allied Stores of New York, Inc , d/b/a Stern's, Paramus*, 150 NLRB 799; *Arnold Constable Corp* , 150 NLRB 788 , *Lord & Taylor*, 150 NLRB 812

[15] *Allied Stores of New York, Inc , d/b/a Stern's, Paramus, supra* at 806.

[16] *Allied Stores of New York, supra*

[17] *Arnold Constable Corp., supra.*

[18] *Lord & Taylor, supra.*

conventional criteria in making the unit determination, the Board particularly noted that less than storewide units were part of the current industry bargaining pattern in the area, and even storewide units were in some instances only the culmination of an organizational effort initially recognized for the smaller units only. The Board also relied upon the employer-recognized "different outlook and interest of the white collar employee . . . in retail stores" and the nature of the employee complement where the nonselling employees are usually male heads of families concerned with permanent employment and the selling force is composed largely of women, working part-time on a temporary basis.[19]

The "separability for unit purposes between selling and nonselling personnel in the retail store industry" [20] was also recognized in determining appropriate units in auto service departments of retail stores. In finding appropriate units of auto service employees engaged in the mechanical aspects of the operation, which units did not include salesmen, the Board noted that nonparticipation in the selling function was a factor which distinguished the community of interest of the service employees as did the mechanical skills required and their working conditions.[21]

The Board also considered the appropriateness of warehouse units in the retail store industry, reaffirming its prior recognition of the functional distinction between employees in the retail department store industry who perform warehouse functions and employees performing other functions.[22] In the *Sears Roebuck* case it ruled that the tests set forth in its *A. Harris & Co.* decision [23] did not require that all employees engaged in warehousing functions, whatever their location, must be included in a single unit in order to find a separate unit of warehousing employees appropriate. In the *Sears* case, as well as others [24] following it, the Board found appropriate units of retail store employees engaged in conventional warehousing and service

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[19] Chairman McCulloch and Members Fanning and Brown for the majority in each case. Member Jenkins, dissenting in each case, was of the view that the "integration of duties, overlapping of duties and supervision, lack of distinctive job skills, . . . and the uniformity of employee working conditions . . ." precluded separate units, and that in the light of the single organizational campaign of the union, it was "resorting to the device of dividing the store employees into . . . separate units primarily to assure winning an election at least among some segment of the employees"

[20] *Bamberger's Paramus,* 151 NLRB 748.

[21] *Ibid.; J C Penny Co., Store No. 139,* 151 NLRB 53.

[22] *Sears, Roebuck & Co ,* 151 NLRB 1356

[23] 116 NLRB 1628, Twenty-second Annual Report (1957), p. 39 There the Board made it clear that a separate retail store warehousing unit is appropriate if (1) the employer's warehousing operation is geographically separated from its retail store operations; (2) there is separate supervision; and (3) there is no substantial interchange or integration among the warehousing employees and those engaged in other store operations.

[24] See also *Associated Dry Goods Corp d/b/a J W Robinson Co ,* 153 NLRB No. 117; *Sears, Roebuck & Co ,* 152 NLRB No. 4; *Loveman, Joseph & Loeb,* 152 NLRB No 72; *The May Department Stores Co.,* 153 NLRB No 26

functions at locations apart from the retail department stores. In each case the employees were under separate supervision in an operation servicing but not integrated with the selling operations, although the units did not include all employees performing some aspect of warehousing function at other locations under other immediate supervision. However, in *Wm. H. Block*,[25] the Board found inappropriate a requested unit of only the receiving-marking-wrapping-packing employees in a retail store service building in view of the functional integration and supervision in common with other employees in the service building performing similar and related duties at the same location.

3. Units Limited to a Portion of an Integrated Service or Operation

During the report year the Board had occasion to rule on requests for representation of employees during the performance of only a portion of their assigned duties, and of employees comprising only a portion of an integrated operation. In the companion *ABC* and *NBC* cases,[26] the union sought to represent separately newsmen on radio and television networks during the performance of assignments entailing presentation of news inserts and 5-minute news broadcasts, and while acting as anchormen on news programs. The Board, in finding the units sought inappropriate, noted that the newsmen's assignments comprehended the performance of an integrated function of which the news program participation is only a small part. Furthermore, many of the other types of services performed by the newsmen were currently covered by collective-bargaining contracts between the parties. In the Board's view, such fragmentation of a single, integrated job would only lead to confusion, and approval of a unit limited to only a portion of a single, integrated function performed by certain employees would not "assure to employees the fullest freedom in exercising the rights guaranteed by the Act" as required by section 9(b).

In another case [27] similar considerations of avoiding fragmentation caused the Board to conclude that a unit limited to employees at only one plant of the functionally integrated and physically intermeshed production facilities of a single employer was not appropriate. The requested unit was limited to the employees of the parent corporation, excluding the employees in the adjacent plant of a subsidiary corporation established to manufacture materials required by the parent for

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[25] 152 NLRB No 59

[26] *American Broadcasting Co*, 153 NLRB No 20; *National Broadcasting Co., Inc.*, 153 NLRB No. 21.

[27] *Hallstead & Mitchell Co*, 151 NLRB 1460.

its production. Substantial portions of the physical plant were shared, intercompany transfers were frequent, and about half the employees sought, although on the parent's payroll, worked in maintenance, service, and shipping and receiving departments which were functionally common to both companies. However, in *Del-Mont Construction Co.*,[28] the Board found appropriate separate units of heavy equipment operators and of laborers and truckdrivers, even though employees in the two units worked together in a functionally integrated operation of water distribution line construction for the same employer. In the absence of bargaining history and in view of the skills required, limited supervision, higher wages, and lack of job interchange, the Board concluded that the heavy equipment operators constituted "a clearly identifiable and functionally distinct group" with distinguishable common interests which could constitute an appropriate unit. Having found the heavy equipment operators entitled to separate representation, the Board also found appropriate the requested unit of laborers and truckdrivers, which encompassed all the other employees of the employer.

C. Conduct of Representation Elections

Section 9(c)(1) of the Act provides that if, upon a petition filed, 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. Board elections are conducted in accordance with strict standards designed to assure that the participating employees have an opportunity to determine, and to register a free and untrammeled choice in the selection of, a bargaining representative. Any party to an election who believes that the standards have not been met may file timely objections to the election with the regional director under whose supervision it was held. In that event, the regional director may, in appropriate cases, upon an administrative investigation or after a formal hearing, either make a report on the objections, or, depending upon the choice of procedures selected by the parties, issue a decision disposing of the issues raised by the objections, which is then subject to a limited review by the Board.[29] In the event the regional director issues a report, any party may file timely exceptions to this report with the Board. The issues raised by the exceptions to the report are then finally determined by the Board.[30]

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[28] 150 NLRB 85

[29] See the Board's Rules and Regulations, Series 8, as amended, secs. 102 62 and 102.69 (c).

[30] This procedure for filing objections and exceptions and for their disposition are set out in sec 102 69 of the Board's Rules and Regulations, Series 8, as amended

1. Election Propaganda

An election will be set aside and a new election directed if it was accompanied by conduct which, in the Board's view, created an atmosphere of confusion or fear of reprisals which interfered with the employees' freedom of choice of a representative as guaranteed by the Act. In evaluating the interference resulting from specific conduct, the Board does not attempt to assess its actual effect on the employees but rather concerns itself with whether it is reasonable to conclude that the conduct tended to prevent a free formation and expression of the employees' choice. In making this evaluation the Board treats each case on its facts, taking an *ad hoc* rather than a *per se* approach in its resolution of the issues.

An election may 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 atmosphere in which the freedom of choice of a bargaining representative was impaired.

a. Appeals to Racial Self-Consciousness

The announced policy of the Board is that an election will not be set aside if a party limits itself to truthfully setting forth another party's racial attitudes and policies and does not deliberately seek to overstress and exacerbate racial feelings by irrelevant, inflammatory appeals. However, the burden will rest on the party making use of racial arguments to establish that they are truthful and germane. Where there is doubt as to whether the total conduct of such party is within the permissible limits, such doubt will be resolved against him.[31]

During the year the Board had occasion to apply this policy in two related cases, *Archer Laundry*[32] and *Aristocrat Linen Supply Co.*,[33] each of which involved an election campaign among a predominantly Negro work force. In these cases the Board agreed with the determination of the regional director that the injection of racial issues into the election campaign was not grounds for setting aside the election. The union, in cooperation with various civic groups, carried on an organizational campaign designed to appeal to racial self-consciousness and the achievement of economic equality from *de facto* inferiority by voting for the union. Distinguishing these actions from the situation in *Sewell Manufacturing*,[34] the Board agreed that an appeal to racial pride, where it is not invoked to stir up antiwhite sentiment but is in-

[31] See Twenty-eighth Annual Report (1963), pp. 58–59.
[32] 150 NLRB 1427.
[33] 150 NLRB 1448.
[34] 138 NLRB 66, Twenty-eight Annual Report (1963), pp. 58–59.

voked for the purpose of telling employees that "freedom" or "equality" has been and will be achieved by concerted action, is germane to a union election campaign.

b. Coercive and Misleading Statements

In determining whether an election should be set aside because a party has made coercive statements or misrepresented pertinent facts by statements made during the organizational campaign, the Board balances the right of the employees to an untrammeled choice of a bargaining representative, and the right of the parties to wage a free and vigorous campaign with all the normal legitimate tools of electioneering. In several cases decided by the Board during the year the question considered was whether particular statements made constituted threats directed at the employees. In *Vickers Inc.*,[35] an election was set aside where the incumbent union was found to have interfered with the election by statements of its shop committeemen threatening employees with expulsion from the union for dual unionism and the probable loss of their jobs if they supported the rival union. In the Board's view, the statements were threats directed at the employees' job status, and were calculated to come to the attention of the employees generally, without any misunderstanding as to their meaning. In view of the long incumbency of the union and the union-shop requirements of the contract, the Board concluded that these threats by the union committeemen afforded the employees a reasonable basis to be apprehensive concerning their future employment because of their support of the outside union.[36]

In *Freeman Manufacturing Co.*,[37] the Board refused to set aside an election on the grounds that the employer's preelection letters to his employees allegedly contained implied threats that unionization could cause a loss of large customers creating future job insecurity, loss of employment, or complete elimination of the employer from the competitive field. The Board held [38] that the issue of loss of customers and resultant reduction in work force was fully brought to the attention by the employer's and the union's electioneering. In its view, the letters could clearly be evaluated by the employees as partisan electioneering and were within permissible limits of campaign propaganda, and the employer's statements set forth its economic and competitive position in the industry in a noncoercive manner.

[35] 152 NLRB No 84

[36] However, the Board did not rely for its holding on the fact that a union agent stated to one employee that the agent would institute charges of dual unionism against the employee for supporting the rival union, since such statements relate to internal union affairs

[37] 148 NLRB 577.

[38] Chairman McCulloch and Member Jenkins for the majority Member Brown, dissenting, was of the view the letters clearly threatened a job cutback in the event of unionization

The Board has frequently stated that absent threats or other elements of intimidation, it will not undertake to police or censor the parties' election propaganda. However, when one of the parties deliberately misstates material facts which are within its special knowledge, under such circumstances that the other party or parties cannot learn about them in time to point out the misstatements, and the employees themselves lack the independent knowledge to make possible a proper evaluation of the misstatements, the Board will find that the bounds of legitimate campaign propaganda have been exceeded and will set aside an election.[39]

Two cases decided in the past year are representative of this problem. In *William J. Burns International Detective Agency*,[40] the Board found that letters mailed by the employer to employees, stating that the advent of the union as representative of its employees in another city had resulted in the termination of contracts by clients there, contained material misrepresentations concerning matters striking at the heart of the employment relationship, which required that the election be set aside and another election conducted. In fact, unionization had played no part in loss of the contracts, one of which had even been canceled at the employer's own initiative. Another case[41] involved the distribution of handbills by a union the day before an election, which purported to represent the comparative hourly wage rate and weekly earnings of employees at other plants under union contract. The Board found that the handbills contained material and substantial misrepresentations which required setting aside the election, since the data, which actually applied only to a few top-rate employees at each named plant, could reasonably be construed by the employees to set forth the average hourly rates or weekly earnings generally received under the union's contracts. Further, the timing of the distribution precluded any effective reply by the employer or effective evaluation by many employees.

The adequacy of an employer's disavowel of an atmosphere of fear and confusion among his employees during a preelection campaign, created by a campaign against the union conducted by third parties in the community, was considered by the Board in *Electra Manufacturing Co.*[42] Such an atmosphere was created by the actions of a community development enterprise which leased the employer its building, the local newspaper, and public advertising intimating that the em-

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[39] See *United States Gypsum*, 130 NLRB 901. Twenty-sixth Annual Report (1961), p. 73.

[40] 148 NLRB 1267. Under the circumstances, the statements were also held to be violations of sec. 8(a)(1) of the Act. See p. 62, *infra*

[41] *Grede Foundries, Inc*, 153 NLRB No. 92. Chairman McCulloch and Member Fanning for the majority. Member Brown, dissenting, was of the view that the statements involved only "puffing."

[42] 148 NLRB 494.

ployer would move in the event of a union victory. The Board found that the employer's specific public disavowals of any intention to relocate, coupled with the union's republication and distribution to the employees of such disavowals, tended to neutralize any atmosphere of fear and confusion that otherwise might have been engendered by the third party conduct, considered either alone or in conjunction with the employer's letters.

VI
Unfair Labor Practices

The Board is empowered by the Act "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." In general, section 8 prohibits 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 an unfair labor practice has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other party irrespective of any interest they might have in the matter. They are filed with the regional office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with decisions of the Board during the 1965 fiscal year which involved novel questions or set precedents which may be of substantial importance in the future administration of the Act.

A. Employer Interference With Employee Rights

Section 8(a)(1) of the Act forbids an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights as guaranteed by section 7 to engage in, or refrain from, collective-bargaining and self-organizational activities. Violations of this general prohibition may be a derivative or byproduct of any of the types of conduct specifically identified in paragraphs (2) through (5) of section 8(a),[1] or may consist of any other employer conduct which independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights. This section treats only decisions involving activities which constitute such independent violations of section 8(a)(1).

1. Discharges for Engaging in Protected Activity

The rights granted to employees by section 7 in the exercise of which they are protected by section 8(a)(1) include the right "to engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." In a number of cases decided during the past year the Board had occasion to determine whether certain instances of employee activity were "protected" from employer interference. In *Tanner Motor Livery*[2] employee picketing of their

[1] Violations of these types are discussed in subsequent sections of this chapter.
[2] *Tanner Motor Livery, Ltd*, 148 NLRB 1402

own employer during off-duty hours to protest his racially discriminatory hiring practices was held to be such protected activity. Relying upon Supreme Court precedent,[3] the Board held that the picketing was pursuant to a labor dispute, the employer's hiring policies and practices being of vital concern to employees inasmuch as they inherently affect terms and conditions of employment. Concluding that since "the object sought is lawful and the means employed are peaceful, the concerted activities are protected by the Act," the Board held that the employer violated section 8(a)(1) by discharging the two picketing employees.

Similarly, employees' inquiries to their employer and the union business agent concerning the use of nonunion workers in the performance of work covered by a union contract, in which they expressed their opposition to such employment, was found in *Sandpiper Builders* [4] to be activity for "mutual aid and protection" within section 7 of the Act, and a discharge predicated upon such conduct violative of section 8(a)(1). The inquiries were viewed by the Board as a legitimate form of union activity calculated to preserve job opportunities for union personnel and to maintain union wage standards as provided by contract. Any interruption of work caused by the inquiries was found to be minimal and insufficient to deprive the employees of the Act's protection. Also the Board held [5] that a spontaneous, brief work suspension by employees at the end of a coffee break while waiting to present their grievance concerning a promised wage increase to management, was protected concerted activity within the meaning of the Act. The Board held that the employer violated section 8(a)(1) by discharging the employees for having waited rather than returning to work, particularly since the employees did not act in outright defiance of an order to return to work nor did the stoppage occur in the face of an agreed-upon method of adjusting a grievance.[6]

In another case, where three shop stewards became dissatisfied with the union's international representative's position concerning contractual issues at bargaining sessions with management, their preparation of a petition asking the union to exclude the representative from the bargaining committee and solicitation of signatures on the petition from fellow employees was found to be protected activity within the ambit of section 7 of the Act. The Board held [7] that the em-

[3] *New Negro Alliance* v *Sanitary Grocery Co*, 303 U S 552, revised and corrected, 304 U S 542

[4] 152 NLRB No 82 See p. 63, *infra*, for discussion of the 8(a)(3) violations found in that case

[5] *Auto-Control Laboratories*, 153 NLRB No 74

[6] The Board relied upon *N.L R B.* v *Kennamental, Inc*, 182 F 2d 817 (C A 3), Fifteenth Annual Report (1950), pp 170–171, in finding the conduct to be protected concerted activity

[7] *E W Buschman Co*, 153 NLRB No. 65.

ployer violated section 8(a)(1) by discharging the stewards because of their connection with the petition. This activity, although directed to the attention of the union, was found to be clearly a right guaranteed to the employees under the Act, since they wished to assure themselves of a bargaining committee responsive to their desires concerning terms and conditions of employment. And in *Dow Chemical*,[8] the Board held that the discharge of an employee because she refused to perform weekend overtime work and influenced other employees to refrain from such work was in violation of section 8(a)(1) of the Act. In arriving at its conclusion, the Board found that the work refusals were in protest of the employer's announced change in future overtime work from voluntary to compulsory, and was protected activity. Noting that the overtime work was voluntary and not required, the Board distinguished prior cases[9] holding that a refusal to perform required overtime work lost the protection of the Act, since the conduct engaged in amounted to an imposition of the employees' own conditions of employment.

2. Limitation on Communication

Employer-imposed restrictions upon communication among employees while at their place of work has been an issue of frequent litigation when the restriction serves to limit communication about union matters.[10] Rules limiting solicitations on worktime or literature distribution in work areas of the plant are presumptively valid as necessary to maintain production and discipline, but are invalid, absent proof of special circumstances, when broader in scope. In one case decided during the report period,[11] the Board considered the type of evidence which would serve to rebut the presumption of validity and establish the illegality of a rule valid on its face. The Board found that the rule in issue, although concededly valid in scope, was promulgated "specifically for the purpose of defeating union organization" and was discriminatorily applied in that it was enforced "to preclude only discussions concerning the union." It held that evidence of that nature, establishing that the rule "was adopted for a discriminatory purpose" and was "unfairly applied," was adequate to rebut the presumption and render the rule illegal as an unjustified restriction of employee rights.[12]

[8] 152 NLRB No 122.

[9] *John S. Swift Co., Inc.*, 124 NLRB 394; *Honolulu Rapid Transit Co., Ltd*, 110 NLRB 1806; Twentieth Annual Report (1955), p 80.

[10] See, e g., Twenty-eighth Annual Report (1963), pp 66–67; Twenty-ninth Annual Report (1964), pp. 64–66.

[11] *The Wm H. Block Co.*, 150 NLRB 341.

[12] Chairman McCulloch and Members Fanning, Brown, and Jenkins for the majority. The Board decision in *Star-Brite Industries, Inc.*, 127 NLRB 1008, was overruled to the extent

Similarly, in *Ward Mfg., Inc.*,[13] the Board had occasion to scrutinize the circumstances surrounding the adoption and promulgation of another no-solicitation, no-distribution rule in effect during working hours. The fact that the rule was promulgated on the day following the filing of the union's representation petition and did not apply to all forms of solicitation and distribution was viewed by the Board as a clear indication that the rule was not adopted for the purpose of preventing disruptions of production and discipline. Concluding that "the rule was posted solely to stifle the union's organizing campaign," and hence for a discriminatory purpose, the Board held that it violated section 8(a)(1) in its adoption and promulgation as well as in its enforcement.[14]

In contrast to the presumptive validity of rules limited to work time and areas, rules limiting solicitation or literature distribution by off-duty employees during nonwork time in nonwork areas are presumptively invalid as an unwarranted interference with the employees' section 7 rights.[15] In *Bauer Aluminum* [16] the Board held that a rule prohibiting off-duty employees from entering the employer's premises without permission was invalid when interpreted and applied so as to have the effect of inhibiting nonworking employees' organizational efforts in nonworking areas. Although ordering reinstatement and backpay for two employees who were discharged and suspended respectively for violating the rule by, while off duty, stationing themselves on a company parking lot in order to distribute union literature to employees coming off shift,[17] the Board in its remedy let the rule itself stand, but ordered the employer to cease and desist from applying and enforcing it in any instance where its effect would be to prevent employees from engaging in union activities during their nonworking time in nonworking areas.[18]

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that its rule as to the quantum of evidence necessary to rebut the presumption of validity was in conflict with the instant decision. Member Leedom, dissenting, would adhere to the ruling in *Star-Brite* and find the rule to be valid.

[13] 152 NLRB No. 127.

[14] The Board found it unnecessary to evaluate the significance of that portion of the rule requiring prior approval by the plant manager for any solicitation or distribution

[15] See *Peyton Packing Co.*, 49 NLRB 828, cited with approval in *Republic Aviation Corp. v. N.L.R.B.*, 324 U S. 793.

[16] 152 NLRB No. 138.

[17] The majority deemed immaterial the question of whether the employer would have granted the employees permission to enter the premises had they so requested.

[18] Chairman McCulloch and Members Fanning and Brown for the majority. Dissenting Member Jenkins would find no violation since in his view the employees had flouted the rule, one of them on two occasions, by not requesting permission to enter the premises, and the General Counsel had not proved by a preponderance of the evidence that the employer interpreted or applied the rule, lawful on its face, so as to prevent protected solicitation.

3. Surveillance and Interrogation

Various forms of interrogation of employees regarding their organizational activities have presented a wide range of cases to the Board in the past,[19] as have the questions posed by direct surveillance of union activities by the employer.[20] Both surveillance and interrogation were present in one case [21] decided during the period. In that case the Board concluded that an employer's distribution of a letter to supervisory personnel requesting them to submit lists of union sympathizers, followed by the submission of such lists, and its elaborate polling of employees concerning their views on an election campaign which had resulted in the rejection of the union in a Board-conducted election, were violative of section 8(a) (1) of the Act. Seeking to evaluate the successful campaign it had just waged, the employer sent a memorandum to all supervisors requesting them to submit an evaluation of the "union campaign conducted by the company," including the names of employees who had been "active" or had "strong sympathies" for the union. That memorandum and a followup drew responses from a substantial number of supervisors supplying the requested information.

The Board concluded that under the circumstances, particularly in view of the number of supervisors involved, the repeated inquiries, and the lack of any effort at secrecy, it was reasonable to infer knowledge of the memorandums on the part of the employees, but that even in the absence of such knowledge, the instructions to the supervisors were still unlawful because of their tendency toward interference with employee rights. The Board stated:

> An employer cannot discriminate against union adherents without first determining who they are The Board is continually confronted with cases involving unlawful discrimination against employees where the prelude to the discrimination was the employer's attempt systematically to investigate the sympathies of his employees. The frequency of a pattern of employer conduct associating discrimination against union adherents with the employer's efforts to learn the names of union activists supports the conclusion that there is a "danger inherent" in such conduct: a tendency toward interference with the exercise by employees of their organizational rights.

Finding that the tendency toward interference was not balanced to any extent by a legitimate employer interest, particularly in view of the lack of relevancy of the names of union adherents to the employer's professed purpose of evaluating its campaign tactics, the Board held

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[19] See, e g , Twenty-eighth Annual Report (1963), p. 65; Twenty-seventh Annual Report (1962), pp 91–93.

[20] See, e g, Twenty-ninth Annual Report (1964), pp 67–68; Twenty-seventh Annual Report (1962), pp. 95–96

[21] *Cannon Electric Co*, 151 NLRB 1465

that the instructions to the supervisors, and their compliance with them,[22] were prohibited by the statute.

The second facet of the employer's campaign evaluation consisted of bringing large groups of employees into a conference room during working hours and asking them to fill out a detailed questionnaire which was ostensibly calculated to ascertain why the employees had voted as they did in the election. Employees were told that the questionnaires were to be confidential and were instructed not to sign their names, although certain questions,[23] if answered, would have obviously aided the employer in identifying a given employee if it so desired. In concluding that the questionnaires in this case were violative of section 8(a)(1),[24] the Board applied factors recently formulated by the Second Circuit [25] with a caveat that they are tentative only and not of general applicability. These factors are: (1) the background, particularly as it relates to the employer's hostility, if any, (2) the nature of the information sought, especially where it appears designed to permit ascertainment of the identity of employees and their support of the union, (3) the identity of the questioner, (4) the place and method of interrogation, and (5) the truthfulness of the reply. The Board noted that the employer's hostility to the union was clear, that the questions were obviously designed to ascertain how an employee felt about the union, the employees knew that the personnel manager would read the answers, the voluntariness of the employees in answering was highly suspect, the atmosphere of the questioning having been "redolent with compulsions," and 10 employees did not answer the possibly identifying questions.[26] In addition, the employer took no steps to insure the employees that there would be no reprisals for attitudes expressed in their answers. The Board concluded that the coercive impact of the questionnaires was further augmented by the previous instructions that had been issued to the supervisors.

4. Misrepresentation of Material Facts

Although misrepresentation of material facts by either an employer or a union in the course of election campaigning is frequently evaluated as a basis for setting aside an election,[27] in one case decided during the

[22] The Board did not pass on whether the instructions alone, absent compliance with them, would have been a violation, not deciding at this time whether to overrule *General Engineering, Inc.*, 131 NLRB 648, 649

[23] The employees were asked to state their sex, length of employment with the employer, and their department Several employees left these questions blank

[24] The Board rejected the trial examiner's ruling that the questionnaires were protected by section 8(c), stating that "the purpose of interrogation is not to express views, but to ascertain those of the person interrogated "

[25] *Bourne Co* v *N L R B*, 332 F.2d 47, 48, cited with approval in *N L.R.B.* v *Camco, Inc.*, 340 F 2d 803, 804 (C A. 5).

[26] Footnote 23, *supra*.

[27] See *supra*, pp. 53–55.

year the Board found the coercive impact of a misrepresentation to be of sufficient magnitude to constitute a violation of section 8(a)(1) of the Act. In *William J. Burns International Detective Agency*,[28] the employer had mailed letters to its employees during the election campaign in which it stated that the advent of the union as representative of its employees in another city had resulted in the termination of contracts by clients there. In considering the letters the Board stated:

> We do not agree, . . . with his conclusion that the letters were privileged communications within the meaning of Section 8(c) and therefore not violative of Section 8(a)(1). In the first place, it is not entirely accurate to say that the letters referred only to contract terminations in which Respondent's clients took the initiative. As the record clearly shows, Respondent itself terminated the Creighton University contract. Secondly, each of the letters was calculated to convince employees that the contract terminations were the direct result of union organization. Although the letters created the impression that the terminations were initiated as economic reprisals by Respondent's clients rather than Respondent, these particular impressions were created as a direct result of Respondent's misrepresentations of the facts surrounding the cancellations. Had Respondent fully disclosed all relevant and material facts to employees, there would have been no grounds for them to conclude that selection of the Union threatened their jobs. By deliberately and consciously withholding such information, Respondent engaged in material misrepresentations which transformed occurrences actually explainable in terms having nothing to do with employees' exercise of the right to select union representation, into occurrences which employees could only view as threats that selection of a union was bound to result in the loss of their jobs. Respondent's misrepresentations were thus clearly calculated to coerce the employees into rejection of the Union. To hold that coercive misrepresentations of this character are no more than the expression of "views, argument, or opinions," and under Section 8(c) are immunized against an unfair labor practice finding, would do violence to the spirit and purpose of that section. Accordingly, we find, in view of all the circumstances, that Respondent's letters to its employees interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, in violation of Section 8(a)(1).

B. Employer Discrimination Against Employees

Section 8(a)(3) prohibits an employer from discriminating against employees "in regard to hire or tenure of employment or any term or condition of employment" for the purpose of encouraging or discouraging membership in any labor organization.[29]

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[28] 148 NLRB 1267.

[29] However, the union-security provisions of sec 8(a)(3) and 8(f) create exceptions to this blanket prohibition which permit an employer to make an agreement with a labor organization requiring union membership as a condition of employment, subject to certain limitations.

1. Discrimination for Protected Activity

a. Individual Rights

In *Amco Electric*,[30] the Board upheld an employee's right to notify his union steward, during working hours, of a jurisdictional infringement at his jobsite by members of another union, when the Board held a discharge predicated upon such conduct violative of section 8(a)(3). In finding a violation of the Act, the Board held that the conduct was protected activity since it was reasonable for an employee to be concerned about such an infringement and to report it to his steward, especially where, as here, the jurisdictional conflict had substantial impact upon the work to be performed by the employee. Similarly, in *Sandpiper Builders*,[31] the Board held that an employee was engaged in protected union activity when he questioned his employer and union business agent about the use of nonunion workers in the performance of work within his union's jurisdiction covered by a union contract, and his discharge because of such conduct was in violation of section 8(a)(3) of the Act.[32]

b. Discrimination for Strike Activity

Failure to reinstate employees who had struck in a peaceful manner to protest the discharge of a minor supervisor, whose termination was the result of a dispute regarding his hours of work rather than the manner in which he performed his supervisory functions, was found in *Plastilite Corp.*[33] to be in violation of section 8(a)(3) of the Act. The strike took place only after the employer refused to discuss the matter with the employees. The Board found the protest strikers to be engaged in protected concerted activity, since the discharged supervisor's manner of performance of his duties, his willingness to assist employees, and his aid given employees in meeting their quotas substantially affected the strikers in the performance of their jobs. The Board, expressing its disagreement with the Fifth Circuit's holding in *Dobbs*,[34] which based its determination of whether a strike is protected upon its "reasonableness" in relation to the subject matter of the dispute, states that the determination of whether a "labor dispute" exists does not depend upon the *manner* in which the employees choose to press the dispute, but rather on the *matter* they are protesting. Finding that a labor dispute existed in this case, the Board held that

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[30] 152 NLRB No. 86

[31] 152 NLRB No. 82

[32] See p 57, *supra*, for discussion of the 8(a)(1) aspects of this case

[33] 153 NLRB No. 7.

[34] *Dobbs Houses, Inc.* v. *N.L.R.B.*, 325 F 2d 531 (C.A 5). The Board concluded, however, that in any event the court's standard of reasonableness was amply satisfied in the instant case.

the employees may engage in a peaceful primary strike or any other lawful manner of protest and still remain within the protection of the Act.

In *Deaton Truck Line*,[35] the Board found that truck lease cancellations predicated upon a concerted refusal by owner-operators of the leased trucks to replace expired license tags because of the employer's refusal to comply with the union's year-old request for arbitration of his contractual obligation to contribute to the increased cost of the tags, violated section 8(a)(3) of the Act. Finding that the refusal to obtain tags and render the trucks usable constituted a strike, the Board rejected the employer's contention that the action was unprotected as a breach of contract agreement not to strike since it construed the contract provision as not applicable to this dispute which was a basic one antedating the contract. In the Board's view the owner-operators' activities constituted a protected strike, since the dispute was closely related to and directly affected the owner-operators' net take-home pay.

c. Discrimination at Direction of Third Party

The Board in *Ref-Chem Co.*[36] found that the employer had discouraged union membership by discriminatorily discharging three employees at the request of a third party, on whose premises the employer provided maintenance services under a contract requiring it to remove any of his employees deemed by such party to have engaged in improper conduct. The Board noted, in finding that the discharges were in violation of the Act, that they were predicated upon the employees' solicitation, during working hours, of other employees to join and support the union. The solicitations were in violation of a no-solicitation rule placed in effect on the premises by the owner but which was discriminatory insofar as enforced against union solicitation only. The Board rejected the employer's contention that it could not be held responsible for the discharges, since its motive was to comply with the request and not to discourage union activity. The Board pointed out that the Act prohibits the discharge of employees for the purpose or with the foreseeable effect of discouraging membership in a union. It is an employer's duty to resist pressure to discriminate against its employees, and the employer cannot escape the responsibility or the consequences of its failure to discharge that duty, as occurred in the instant case.

C. The Bargaining Obligation

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 terms

[35] 152 NLRB No. 137

[36] 153 NLRB No 51.

and conditions of employment with the representative selected by a majority of the employees in an appropriate unit. Generally, the duty to bargain arises when the employees' representative requests the employer to negotiate about matters which are bargainable under the Act.

Section 8(b)(3) prohibits a labor organization from refusing "to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a)." The requisites of good-faith collective bargaining are set forth in section 8(d) of the Act.[37]

1. The "Employing Industry" and "Employees"

Absent unusual circumstances, a Board certification of the status of a union as bargaining representative must be honored for a reasonable period of time, normally at least year, as it establishes an irrebuttable presumption of the majority status of the union. A change in ownership of the "employing industry" obligated to bargain with the union is normally not such an unusual circumstance as to affect the force of the certification, for "where the employing industry remains essentially the same . . ., the certification continues effective for the normal operative period and the obligation to bargain devolves upon the successor employer."[38] In two cases involving essentially similar facts[39] employers sought to avoid the effect of certifications by contending that they were not successor employers in the same employing industry and therefore not so obligated. In each case the respondent was the successful bidder for a fixed-term contract to furnish custodial janitorial services at an established Government installation. They commenced the performance of substantially the identical operations that had theretofore been performed by the predecessor contractor—to whom they were in no manner related—servicing the same facilities for the same customer in substantially the same manner and at the same work situs. They hired for that purpose employees from the former work force who performed the same functions, and exercised the same skills. The Board held that in the circumstances of each of the cases, the advent of the respondents effected no substantial change in the employing industry encompas-

[37] As defined by sec 8(d) of the Act, the statutory duty to bargain includes the duty of the respective parties "to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party " However, "such obligation does not compel either party to agree to a proposal or require the making of a concession "

[38] See, i e , *Johnson Ready Mix Co* , 142 NLRB 437, 442

[39] *Maintenance, Inc* , 148 NLRB 1299, and *Consolidated American Services, Inc* , 148 NLRB 1521.

sing the appropriate bargaining unit for which the union had been certified, and that the respondent was under an obligation to honor the demand of the union to recognize and bargain with it [40] and its failure to do so constituted a violation of section 8(a)(5). In so holding the Board noted that the employer's duty under these circumstances to honor the employees' choice of bargaining agent "is a public obligation arising by obligation of the Act" and "not one that derives from a public contract . . . [or] . . . one that necessarily turns upon the acquisition of assets or the assumption of other obligations usually incident to a sale, lease, or other arrangement between employers." In the Board's view, under any other rule it would "be virtually impossible for employees to achieve collective-bargaining rights in an employing industry which is periodically subject to a possible change of employers. . . ."

On the other hand, during the year the Board also had occasion to further define the "employees" to whom the employer's bargaining obligation ran. In the *Chemrock Corporation* case,[41] a newly formed company purchased a growing plant during the term of the seller's contract with the union as representative of his truckdrivers. Although the purchaser continued operations of the plant without change and with the same production employees, it informed the drivers that it would deal with them only as "free agents" on an individual basis at a wage rate below the contract rate. When the truckdrivers told the employer to discuss the matter with the union it refused to do so, hired new truckdrivers, and thereafter refused to deal further with the former drivers. In holding that the employer violated section 8(a)(5) by refusing to bargain with the union concerning the conditions of employment of the truckdrivers, the Board stated that "where, as here, the only substantial change wrought by the sale of the business enterprise is the transfer of ownership, the individuals employed by the seller of the enterprise must be regarded as 'employees' of the purchaser as that term is used in the Act." In reaching this conclusion the Board was guided by the decisions of the Supreme Court in *Phelps-Dodge* [42] and *Hearst Publications* [43] holding that the term "employee" must be given a broad meaning in keeping with the statute's broad terms and purposes. In the Board's view, the truckdrivers in the instant case "possess a substantial interest in the continuation of the existing employee status and by virtue of this interest bear a much closer economic relationship to the employing enterprises than, for

[40] Chairman McCulloch and Members Fanning, Brown, and Jenkins on the principal opinion in each case. Member Leedom, concurring separately, was of the view that incoming contractor was not a successor employer but was obligated to bargain upon demand since he had no good-faith doubt of the union's majority status.

[41] *Chemrock Corp.*, 151 NLRB 1074.

[42] *Phelps-Dodge Corp* v. *N L R B*, 313 U S. 177

[43] *N L R B* v. *Hearst Publications, Inc.*, 322 U S. 111.

example, the mere applicant for employment in the *Phelps-Dodge* case."[44]

2. Representatives' Duty of Fair Representation in Bargaining

During the report year, the Board had occasion in two cases to apply its holding in the *Hughes Tool Company* case,[45] to the effect that section 8(b)(3) prescribes a duty owed by the union to employees to represent them fairly in contract negotiations with their employers. In *Local 1367, ILA*,[46] the Board found that a local union comprised of white members only and its parent district organization, acting as joint representatives, violated, *inter alia*, section 8(b)(3)[47] by negotiating and maintaining a contract provision which allocated job referrals for ship cargo work on a 75–25 percent ratio between the white local and a sister local comprised solely of Negro members. The allocation was clearly based upon considerations of race and local union membership, as was a contract provision establishing a "no doubling" arrangement forbidding the assignment of white and Negro gangs to work together at ships' hatches. Finding that the work allocation provisions were based upon "the irrelevant, invidious, and unfair consideration of race and union membership" in breach of the union's duty of fair representation owed the employees it represents, the Board, construing section 8(d) of the statute, held that "it is not in the public interest for patently invalid provisions to be included in collective labor agreements. We conclude that when a statutory representative negotiates a contract in breach of the duty which it owes to employees to represent all of them fairly and without invidious discrimination, the representative cannot be said to have negotiated the sort of agreement envisioned by Section 8(d) nor to have bargained in good faith as to the employees whom it represents or toward the employer."[48]

In another case,[49] the Board found that a local violated section

[44] Chairman McCulloch and Members Fanning and Brown for the majority Member Brown would also find that the refusal to hire the drivers was discriminatorily motivated Member Jenkins, dissenting, would find no violation of sec 8(a)(5) since, in his view, the purchaser did not assume any of the contractual obligation of the seller toward the employees of the seller, and the truckdrivers refused the purchaser's offer of employment by not reporting for work He further regards the cases relied upon by the majority as inapposite to the factual situation presented

[45] *Independent Metal Workers Union, Local No. 1 (Hughes Tool Co.)*, 147 NLRB 1573, discussed in Twenty-ninth Annual Report (1964), pp. 72–73

[46] *Local 1367, International Longshoremen's Association, et al (Galveston Maritime Association, Inc)*, 148 NLRB 897.

[47] For the 8(b)(1)(A) and (2) aspects of these cases, see *infra*, pp. 82–83.

[48] Members Leedom, Brown, and Jenkins for the majority. Chairman McCulloch and Member Fanning, dissenting on this point, would find no violation of sec. 8(b)(3) which in their view prescribes a duty owed by the union only to employers and not to employees.

[49] *Local Union 12, United Rubber, Cork, Linoleum & Plastic Workers of America (Business League of Gadsden)*, 150 NLRB 312.

8(b)(3) by refusing, for racially discriminatory reasons, to process grievances of its Negro members in the bargaining unit. The grievances sought backpay for an allegedly racially discriminatory layoff of Negro employees and the elimination of racial segregation in plant facilities and services. The Board held that the bargaining duty of fair representation may be breached by inaction, such as refusal to process the grievances, because it is the statutory agent's affirmative duty to represent unit employees without regard to race. The Board emphasized that a "union's duty not to discriminate unfairly against nonmembers in presenting grievances . . . is no different from its duty not to discriminate unfairly against members in presenting grievances, and that the touchstone is not the irrelevant consideration of membership but the relevant requirement of fair representation of all employees in the unit."[50] With respect to the plant facilities, which included the company golf course, the Board found their use to be conditions of employment and a proper subject of bargaining. Noting that "the range of discretion allowed to a statutory representative is accompanied and limited by the requirements that such representative consistently exercise complete good faith and honesty of purpose,"[51] the Board found respondent's refusal to process the grievances relating to plant facilities was based upon its belief that some discriminatory employment conditions should continue and was, therefore, in violation of its duty of fair representation, since "manifestly racial discrimination bears no . . . relationship" to the union's role as bargaining representative.

3. Bargaining Attitude

In several cases during the past fiscal year, the Board restated the statutory requirement that parties to negotiations come to the bargaining table prepared to negotiate in good faith and not attempt to preclude discussion of relevant issues. In one case,[52] the Board held that two unions violated section 8(b)(3) by their admitted demand and insistence that a member of an employer association accept their area contracts without affording the employer any opportunity to bargain and without any intention to bargain in good faith with the employer. The Board noted that the union admitted that it compelled the employer to execute the contract. Accordingly, the Board concluded that the admitted allegations of the complaint, taken as a whole,

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[50] Members Leedom, Brown, and Jenkins for the majority and Chairman McCulloch and Member Fanning, dissenting, adhered to their respective views expressed in *Independent Metal Workers Union, Local No 1 (Hughes Tool Co), supra,* and *Local 1367, International Longshoremen's Association, et al (Galveston Maritime Association, Inc), supra*

[51] Quoting *Ford Motor Co v Huffman,* 345 U S 330

[52] *Operative Plasters' & Cement Masons' International Association Local 2 (Arnold M Hansen),* 149 NLRB 1264.

set out ultimate facts to support a refusal-to-bargain allegation, and the fact that the employer was apparently willing to abide by a major portion of the contract was immaterial.

An employer's overall approach to and its conduct of bargaining was one aspect evaluated by the Board in the *General Electric* case,[53] in which it found violations of section 8(a)(5) of the Act in the employer's (a) failure to timely furnish relevant information requested by the union, (b) attempts to bypass national negotiations by dealing separately with local unions on matters in issue and soliciting their nonsupport of the international union's strike position, (c) manner of its presentation of an insurance proposal on a take-it-or-leave-it basis, and (d) overall attitude or approach as evidenced by the totality of its conduct. The employer in that case had developed a unique bargaining technique for national negotiations which included recourse to an extensive communications campaign among the employees for the purpose of marketing its bargaining position directly to them. The approach also included a policy of determining through its own research what the employer considered right for the employees, and then making a "fair and firm offer" to the union from which it would not deviate except upon new considerations or information. The Board viewed these two major facets of the employer's bargaining technique, its campaign among the employees, and its conduct at the bargaining table as complementing each other and "calculated to disparage the union and to impose, without substantial alteration, respondent's 'fair and firm' proposal, rather than to satisfy the true standards and good faith collective-bargaining required by the statute."

With respect to the employee communications campaign, which included efforts to bypass the international union and deal directly with the locals, the majority noted that its purpose was to disparage and discredit the union, "to seek to persuade the employees to exert pressure on the representative to submit to the will of the employer, and to create the impression that the employer rather than the union is the true protector of the employees' interest." Thus, it was pointed out, the employer failed to meet its statutory obligation "to deal with the employees through the union, and not with the union through the employees."

The Board also found that the employer's policy of disparaging the union by means of the communications campaign was implemented by

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[53] 150 NLRB 192 Members Fanning and Jenkins would find no violation in the manner of presentation of the insurance proposal Member Jenkins, concurring otherwise separately, would find the violations upon the basis of conduct alone, without reference to bargaining techniques Member Leedom concurred with the specific violations found but would not find bad faith upon the basis of the respondent's overall bargaining conduct

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its conduct at the bargaining table. Although recognizing that this technique eliminated the "auction" form of bargaining, the Board observed that it also devitalized collective bargaining by making it "tantamount to mere formality, and served to transform the role of the statutory representative from a joint participant in the bargaining process to that of an advisor." The employer's approach was found to be, in practical effect, akin to entering "into negotiations 'with a predetermined resolve not to budge from an initial position,' " an attitude which the Supreme Court has condemned as inconsistent with good-faith bargaining.[54] Furthermore, the Board noted that by its statement to the union that after telling the employees its offer was final it would look ridiculous if it changed its proposals, the company "consciously placed itself in a position where it could not give unfettered consideration to the merits of any proposals the union might offer."

A union's "adamant refusal to execute the agreement" reached in the course of negotiations with the employer unless it included either a provision that certain allegedly past-due payments to the union pension fund be made or the matter submitted to arbitration, was found by the Board to be in violation of section 8(b) (3), in another case decided during the past year.[55] The union insisted upon the inclusion of either of those proposals as a prerequisite for executing an agreement notwithstanding the fact that the employer denied that it ever had any obligation to make the claimed payments to the pension fund. The Board noted that a party is not free to condition execution of an agreement upon acceptance of a disputed nonmandatory subject of bargaining,[56] as in the instant case. In another case,[57] the employer's refusal to participate in a bargaining session where a representative of the State Mediation Board was to be present was held not to constitute a violation of section 8(a)(5), nor give rise to an inference of bad faith on the part of the employer. It was the Board's view that section 8(a) (5) does not impose acceptance of mediation as a necessary element of good-faith bargaining,[58] and therefore the employer's refusal to mediate was not, *per se*, a refusal to bargain within the meaning of the Act. Although noting that in the proper context a refusal to mediate might be a factor indicating an effort to avoid bargaining, the Board found that the evidence in the instant case was wholly inadequate to show that the employer's negative attitude toward mediation resulted from a rejection of the union or reflected a desire to delay or obstruct

[54] Quoting and citing *N.L.R.B.* v. *Truitt Mfg Co*, 351 U S 149, 154.

[55] *Bricklayers and Masons Union Local No 2 (Chris Paschen Company, Inc.)*, 152 NLRB No. 163.

[56] *N L.R.B.* v. *Wooster Division of Borg-Warner Corp.*, 356 U.S. 342.

[57] *Midas International Corp.*, 150 NLRB 486.

[58] Sec. 8(d) of the Act requires only the notification of Federal and State mediation agencies as a condition precedent to terminating or modifying a collective-bargaining agreement.

bargaining. Accordingly, it was concluded that standing alone, the employer's refusal to mediate was not inconsistent with a genuine acceptance of, and a willingness to meet with, the union for the purpose of bargaining in good faith.

4. Subjects for Bargaining

Both the employer and the statutory representative of an appropriate employee unit must bargain as to all matters pertaining to "wages, hours, and other terms and conditions of employment." In other matters which are lawful, bargaining is permissible though not mandatory. But insistence on inclusion in a contract of clauses dealing with matters outside the category of mandatory bargaining subjects specified in the Act, as a condition of bargaining on mandatory matters, constitutes an unlawful refusal to bargain.[59]

In two cases of note decided during the year the Board considered the status as mandatory subjects for bargaining of issues relating to arrangements preliminary to actual negotiations. The Board has avoided establishing rigid rules regarding the legality of a parties' adamant insistence on conditions preliminary to actual bargaining, including insistence upon a stenographic transcript of the bargaining sessions, but has rather attempted to examine each case in terms of whether or not the position was taken to avoid or frustrate the legal obligation to bargain.[60] During the year the Board had the opportunity to apply this policy in two cases in which employers insisted upon the presence of a stenographer to make a verbatim transcript as a condition to engaging in bargaining negotiations. In one case[61] the Board held that a union did not violate section 8(b)(3) by its refusal to bargain with an employer association unless the association withdrew its insistence that a stenographer be present during bargaining sessions to make a verbatim transcript of the negotiations. The Board majority[62] noted that it was neither endorsing nor condemning the practice of utilizing a stenographer during negotiations, but only determining that, under all the circumstances, the union demonstrated its good faith. In so holding it stated:

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[59] See *N.L.R.B.* v *Wooster Division of Borg-Warner Corp*, 356 U S. 342 (1958); Twenty-third Annual Report (1958), pp 104–106.

[60] See *Allis-Chalmers Mfg. Co.*, 106 NLRB 939, 950; *East Texas Steel Castings Co*, 108 NLRB 1078, 1084–1085.

[61] *St. Louis Typographic Union No. 8* (*Graphic Arts Association of St. Louis, Inc*), 149 NLRB 750.

[62] Chairman McCulloch and Members Leedom and Jenkins for the majority. Members Fanning and Brown, although concurring in the dismissal of the complaint, would find that the employer's adamant insistence upon its demand for a transcript was itself a rejection of the bargaining duty and constituted an undermining of the collective-bargaining relationship. They viewed the majority opinion as rendering a disservice in that it would "elevate to the status of mandatory collective bargaining those disagreements involving preliminary arrangements for or the mechanics of bargaining"

It is wholly consistent with the purposes of the Act that the parties be allowed to arrive at a resolution of their differences on preliminary matters by the same methods of compromise and accommodation as are used in resolving equally difficult differences relating to substantive terms or conditions of employment. In neither case will we presume to pass upon which is the preferable position or to dictate terms of an agreement, but will, rather, concern ourselves only with whether the parties are acting in good faith.

A similar issue was presented to the Board in *Southern Transport, Inc.*,[63] where the respondent employer insisted, despite the union's objection, on a stenographic record of negotiating meetings as a precondition for any future meetings. However, the Board found that the employer's conduct in this instance, when viewed against the background of the Board's finding of the employer's unlawful refusal to bargain in an earlier case, had as its purpose the continued avoidance of negotiating meetings with the union, and that the employer was seeking to avoid, delay, and frustrate any meaningful bargaining with the union, thereby violating section 8(a)(5).

5. Scope of Bargaining Required Over Decision To Subcontract Operations

During the report year the Supreme Court affirmed (see discussion, *infra*, pp. 118–119) the correctness of the principle established by the Board in its *Fibreboard* decision that the subcontracting of unit work is a subject concerning which an employer is obligated to bargain with the union.[64] In a number of decisions issued in the course of the past fiscal year, the Board has further defined that principle and articulated its limits.

In its application of the *Fibreboard* principle to the factually variant cases coming before it for decision, the Board has emphasized that "our condemnation . . . of the unilateral subcontracting of unit work was not intended as laying down a hard and fast new rule to be mechanically applied regardless of the situation involved." [65]

In applying these principles, we are mindful that the permissibility of unilateral subcontracting will be determined by a consideration of the setting of each case. Thus, the amount of time and discussion required to satisfy the statutory obligation "to meet at reasonable times and confer in good faith" may vary with the character of the subcontracting, the impact on employees, and the exigencies of the particular business situation involved. In short, the principles in this area are not, nor are they intended to be, inflexibly rigid in application [66]

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[63] 150 NLRB 305. Chairman McCulloch and Member Leedom joining in the principal opinion, concurring Member Brown did not agree with the basis upon which the finding of a refusal to bargain was reached for reasons set forth in his concurring opinion in the *St Louis Typographical Union* case, see footnote 62, *supra*.

[64] See Twenty-eighth Annual Report (1963), pp 80–81

[65] *Westinghouse Electric Corp (Mansfield Plant)*, 150 NLRB 1574

[66] *Shell Oil Co.*, 149 NLRB 305

In adhering to this case-by-case approach in its decision of individual cases, the Board has identified recurrent factors which, in its view, place particular limits upon the extent of the employer's obligation under *Fibreboard*. Although the Board has emphasized that the *Fibreboard* doctrine is not limited in its application to those employer subcontracting actions which result in "the permanent elimination of an entire department . . . the entire unit . . . or any individual jobs," it has consistently limited the doctrine to those in which a "significant detriment" has occurred and resulted in a "real change in . . . [the employees'] . . . terms and conditions of employment." [67] As stated in the *Westinghouse* decision,[68] in the cases in which a violation had been found "it has invariably appeared that the contracting out involved a departure from previously established operating practices, effected a change in conditions of employment, or resulted in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit."

Thus, in the *Kennecott Copper* case,[69] the employer had subcontracted the rebuilding of a mobile mining machine formerly performed by unit employees, without prior consultation with the union. Although the employer sent the repair job out because of time urgency and the desire to avoid overtime pay because of personnel limitations, all unit employees continued to work their regular workweek.[70] In finding no violation of the employer's bargaining obligation under the statute, "on the particular circumstances of this case" the Board noted that the employer's action "resulted in no significant detriment to the employees" in the unit and that the employer "did bargain about its action as soon as the union protested." Other cases in which no significant detriment to the employees was found included situations in which the subcontracting was prompted by the fact that the work, although possibly performable by the unit employees, was of a nonrecurrent nature and would have interfered with their primary duties.[71] Similarly, no significant detriment was found where the work required skills not normally within unit work or, where the employees had the skills, the employer did not have available the equipment required for efficient performance of the job.[72]

Viewing "significant detriment" as a measure of the impact upon

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[67] *American Oil Co*, 151 NLRB 421

[68] *Westinghouse Electric Corp (Mansfield Plant)*, *supra*

[69] *Kennecott Copper Corp*, 148 NLRB 1653

[70] See also *General Tube Co*, 151 NLRB 850, where the possible loss of nominal overtime was found not to have "a substantial impact upon the unit employees' terms and conditions of employment"

[71] *Superior Coach Corp*, 151 NLRB 188

[72] *Shell Oil Co*, 149 NLRB 283, *Central Soya Co, Inc*, 151 NLRB 1691; *American Oil Co*, 151 NLRB 421

employees' job interests resulting from a change in terms or conditions of employment, the Board has not found such detriment where the employer's subcontracting is in accordance with an existing practice which may in itself be viewed as a condition of employment.[73] Thus, in finding no violation in the *Westinghouse* case, *supra*, the Board stated:

> Here, however, there was no departure from the norm in the letting out of the thousands of contracts to which the complaint is addressed. The making of such contracts was but a recurrent event in a familiar pattern comporting with the Respondent's usual method of conducting its manufacturing operations at the Mansfield plant. It does not appear that the subcontracting engaged in during the period in question materially varied in kind or degree from that which had been customary in the past. Nor has it been shown that the subcontracting engaged in had any significant impact on unit employees' job interests.[74]

Under these circumstances, the fact that employees capable of performing the work were temporarily in a reduced wage classification has not been viewed as a detriment outweighing the employer's privilege to adhere to his prior practice.[75] In *Shell Oil Company*[76] and *Bettis Atomic Power Laboratory*[77] no violation was found in the subcontracting of work capable of being performed by unit employees then in layoff status with recall rights. In the latter case, in which the employer subcontracted maintenance work similar to that performed by unit employees previously, the Board stated:[78]

> . . . we are unwilling to find that Respondent's subcontracting had a sufficiently detrimental effect upon the unit to constitute a modification of terms and conditions of employment. In cases where, as here, the employer has demonstrated a willingness to bargain generally as to the overall subcontracting problem, and has not embarked, suddenly and in a context of surprise, upon a course of occasional maintenance subcontracting without opportunity for the union to bargain on behalf of unit employees, an alleged change in terms and conditions of employment must, at the very least, be substantiated by a showing that the subcontracting impaired "reasonably anticipated work opportunities for those in the bargaining unit."

Union efforts in the course of contract negotiations to impose contractual limitations upon an employer's subcontracting in accordance with an established practice have been held by the Board not to "sus-

[73] The Board sustained the rejection of union contentions that the issuance by the Board of the *Fibreboard* decision created a new right in the employees' representative, nullifying the import of past practices as to subcontracting. *Shell Oil Co*, 149 NLRB 283; *Fafnir Bearing Co.*, 151 NLRB 332

[74] *Westinghouse Electric Corp.* (*Mansfield Plant*), 150 NLRB 1574.

[75] *American Oil Co.*, 152 NLRB No. 7.

[76] *Shell Oil Co*, *supra*.

[77] *Westinghouse Electric Corp*, *Bettis Atomic Power Laboratory*, 153 NLRB No. 33.

[78] Members Fanning and Brown for the majority Chairman McCulloch, dissenting, would have found a violation of sec 8(a)(5) on the grounds that significant detriment had been suffered by those unit employees in layoff status who were still entitled to recall under the provisions of the collective-bargaining agreement and, in his view, were deprived of "reasonably anticipated work opportunities" in that if the unit work had not been subcontracted, they would have been recalled to perform it

pend the . . . [employer's] . . . right to maintain its established practice, any more than a demand by the union to modify the existing wage structure would suspend Respondent's obligation to maintain such wage structure during negotiations." [79] Nor does the union's inability to obtain a modification or elimination of an employer's established subcontracting practice through contract negotiations constitute a waiver or relinquishment of its claim to consultation concerning subcontracting within the *Fibreboard* doctrine, which occurs in the course of the contract term. As stated by the Board in *American Oil Company* [80] "in the absence of a specific contract clause covering the matter an employer is under a continuing duty to bargain on request with respect to subcontracting affecting unit work, and therefore, must bargain with the union in good faith upon demand as to such subcontracting even during the terms of an existing agreement." [81] Under these circumstances, of course, the employer's attitude and its willingness to discuss its subcontracting decisions upon the request of the union has been viewed by the Board as a relevant factor in assessing the employer's good-faith performance of his bargaining obligation.[82] This is of particular relevance when the employer notifies the union of a proposed action prior to its effective date and at a time when it is still within the employer's power to reverse or qualify its decision.[83]

Consistent with the foregoing cases, when a contract does contain a clause vesting in the employer the right to unilateral action as regards subcontracting of unit work, the Board has accorded the clauses their full scope. In *Shell Oil Company*,[84] the Board found that a clause providing that in the event of a subcontracting of unit work the subcontractor would pay not less than contract rates for comparable work "implicitly acknowledged . . . [the employer's] . . . right to subcontract occasional maintenance work without any obligation of prior consultation with the Union, and subject only to the payment of the prescribed

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[79] *Shell Oil Co.*, 149 NLRB 283.

[80] 151 NLRB 421.

[81] See also *Shell Oil Co., supra; Westinghouse Electric Corp, Bettis Atomic Power Laboratory*, 153 NLRB No. 33 ; *Kennecott Copper Corp* , 148 NLRB 1653.

[82] See, i e., *Georgia-Pacific Corp* , 150 NLRB 885 ; *General Motors Corp , Buick-Oldsmobile-Pontiac Assembly Div.*, 149 NLRB 396; *Westinghouse Electric Corp. (Mansfield Plant)*, 150 NLRB 1574; *Westinghouse Electric Corp., Bettis Atomic Power Laboratory*, 153 NLRB No 33; *Allied Chemical Corp. (National Aniline Div.)*, 151 NLRB No 718. And cf. *Puerto Rico Telephone Co* , 149 NLRB 950, where the Board found a violation in the employer's subcontracting telephone service expansion construction requiring skills possessed by unit employees, concurrently with its action in discharging and laying off unit employees for "economy." During the events, the employer refused to recognize the union's asserted right to file grievances concerning the layoffs, and refused to furnish the union information to support its claim of economic necessity for the layoffs, or otherwise discuss its actions with the union.

[83] *Shell Oil Co.*, 149 NLRB 305; *General Motors Corp., Buick-Oldsmobile-Pontiac Assembly Div., supra; Shell Chemical Co , a Division of Shell Oil Co* , 149 NLRB 298; *Westinghouse Electric Corp., Bettis Atomic Power Laboratory*, 153 NLRB No. 33.

[84] 149 NLRB 283.

wage rates." In other cases where no clauses specifically dealing with the right to subcontract or the elimination of operations were present in the contract, the Board held that broad management rights clauses effectively authorized the employer's unilateral actions.[85] Contract clauses were also found by the Board to have vested in management the right to determine similar issues unilaterally in two other cases. In *International Shoe Company*,[86] a clause granting the company the sole right to decide the methods of selling and distributing products was found to have constituted a waiver of the union's right to be consulted about the employer's decision to transfer the warehousing and distribution of certain product lines to another city, resulting in a substantial reduction of unit jobs. This construction was consistent with that accorded the clause by an arbitrator at the time of an earlier similar company action. And in *General Motors*,[87] the Board found that the employer's discontinuance of the work of one department and the transfer of the displaced employees to other jobs in accordance with the seniority provision of the contract "was essentially a change of method without resultant layoffs or discharges, and was permitted under the management rights provisions of its National Agreement with the Union."

The Board has also recognized that special circumstances necessitating an employer's unilateral action may effectively limit his obligation under *Fibreboard* to bargain concerning his decision. In *New York Mirror*,[88] the employer's decision to cease publication of the newspaper concurrently with the sale of its name and assets to a competitor was first communicated to the employees and to their representative in the course of publication of the final day's edition. Although the labor organization thus received no advance notification, they were informed as soon as the newspaper's operating officials knew of the decision of the corporation's executive committee. The employer fully honored the termination and severance pay provisions of its contracts and established and maintained an employment office to assist its employees to find other available jobs. The Board found that "the decision to sell and to shut down the Mirror was solely for economic reasons and was devoid of any unlawful antiunion, discriminatory motivation." Rejecting "the Respondent's broad contention that an employer's decision to terminate an entire operation regardless of its impact on employees is outside the scope of collective bargaining," the Board noted that its *Fibreboard* doctrine was not limited to

[85] *Fafnir Bearing Co*, 151 NLRB 332 *Ador Corp*, 150 NLRB 1658 *Druwhit Metal Products Co, et al*, 153 NLRB No 35, *Westinghouse Electric Corp, Bettis Atomic Power Laboratory*, 153 NLRB No 33

[86] 151 NLRB 693

[87] *General Motors Corp, Buick-Oldsmobile-Pontiac Assembly Div*, 149 NLRB 396

[88] 151 NLRB 834.

management decisions to contract out a phase of an operation. It emphasized that the principles do "not turn on the means whereby, or the extent to which, the employer terminates operations, but rather on the fact that a management decision 'eliminating unit jobs . . . is a matter within the statutory phrase "other terms and conditions of employment." ' " Mindful of the Supreme Court's observation that special circumstances might excuse or justify unilateral action by an employer without prior discussion with the union,[89] the Board concluded that "such circumstances are present here" since the decision to sell the paper and terminate publication "was prompted solely by pressing economic necessity." The Board, also noting that no party sought restoration of the operations, and that the bargaining obligation incident to the shutdown was fully satisfied, dismissed the complaint in view of its satisfaction that "in these circumstances [the] effectuation of the purposes of the Act would not require a remedial order even if a technical violation were found."

Similarly, "special circumstances" were found by the Board to justify the subcontracting of unit work in order to maintain operations during a strike of unit employees. In *Empire Terminal Warehouse Co.*,[90] the Board found that "the subcontracting in the instant case was not a permanent change in its business operations, but only a stop-gap measure necessitated by the union's strike activities." Since the subcontracting did not "transcend the reasonable measures necessary in order to maintain operations," the Board found no violation of section 8(a)(5). Similarly, in companion cases,[91] the Board found that subcontracting during a strike of a portion of the work performed by its maintenance employees did not violate the Act, even though performance of the contract was not completed until after the strike. The Board noted that, at the time the contracts in question, of temporary duration, were let, the employer "had no precise basis for determining the length of the strike, and thus normally was in no position to ascertain whether work to be contracted out will be completed before or after cessation of strike action."

6. Waiver of Right by Contract

The statutory right of employees and their duly designated representative to performance of an employer's duty to bargain concerning "wages, hours, and other terms and conditions of employment" may, under certain circumstances, be waived voluntarily pursuant to genuine collective bargaining. However, such a waiver, as with all waiv-

[89] Citing *N L R B.* v. *Benne Katz, d/b/a Williamsburg Steel Products Co*, 369 U.S. 736, 747

[90] 151 NLRB 1359.

[91] *Shell Oil Co*, 149 NLRB 283; *Shell Chemical Co., a Division of Shell Oil Co.*, 149 NLRB 298.

ers of statutory rights, must be clearly and unmistakably established and is not lightly to be inferred.[92] Whether certain contract provisions constituted a waiver by the union of bargaining rights was considered by the Board in *C & C Plywood Corporation*,[93] where the claim was asserted as an affirmative defense to what the Board found to be a *prima facie* violation of section 8(a)(5) by the employer's unilateral institution of a premium pay schedule provided the employees meet certain production standards. The employer asserted it had the authority to do so under a contract provision permitting a premium rate above the contract rate to reward any particular employee for a special fitness or skill. The Board recognized that "[i]n order to determine the validity of this waiver defense . . . [we] . . . must necessarily evaluate the testimony as to what occurred during contract negotiations, and must interpret the wage clause of the contract." Finding that there was not sufficient evidence to establish that in the course of negotiations the union waived its right to bargain about a wage incentive system, the Board also rejected the employer's construction of the premium pay clause as granting it the privilege of selecting a group of employees for unilateral changes in compensation by raising the hourly contract rate contingent upon increased productivity. The Board, therefore, found a violation of section 8(a)(5) of the Act.[94]

In another case,[95] the Board held that a "zipper" clause of a contract, even when read in conjunction with other provisions, did not give the employer the privilege to unilaterally terminate its operations. The clause provided that the parties had fully bargained with respect to bargainable subjects and had settled those issued for the term of the agreement. The employer contended that the "zipper" clause when read in conjunction with provisions concerning severance and termination pay did constitute a waiver of the union's right to consultation and bargaining. In finding no waiver, the Board stated, "This boilerplate clause, carried over from previous agreements, does no more than indicate that the parties embodied their full bargaining agreement in the written contracts. A wrapup clause of this nature affords no basis for an inference that the agreement contains an implied undertaking over and beyond those actually written in the agreement."

7. Data To Be Furnished for Bargaining

The statutory duty of an employer to bargain in good faith includes the duty to supply to the bargaining representative information which

[92] See Twenty-ninth Annual Report (1964), pp. 78–79.

[93] 148 NLRB 414.

[94] Chairman McCulloch and Members Fanning and Jenkins for the majority. Member Leedom, dissenting, was of the view that the sole issue was the proper construction of the disputed language in the contract, which the Board should leave for resolution in other forums.

[95] *New York Mirror, Division of the Hearst Corp.*, 151 NLRB 834.

is relevant and necessary in order that it might intelligently perform its function.[96] This obligation extends to relevant information which enables the representative to police and administer existing agreements. In *Anaconda American Brass Company*,[97] the Board found that the employer did not violate section 8(a)(5) of the Act, under the circumstances, by refusing to provide a union with the point value assigned job specification factors which, in accordance with the employer's standards, "determines the class of the job, and, in turn, the rate of pay for the employee holding the job." The contract provided for the availability to the union of the job specifications themselves and the current individual wage rates for the employees in the unit. In the course of prior bargaining negotiations the employer had sought to negotiate a system of joint union-employer job rating under the point system, but its proposals were rejected by the union which did not accept the job rating validity of the point system. When the employer's reclassification of a job resulted in a point value assignment lowering the wage rate, the union sought information concerning the point assignment, but dropped the request when the former wage rate was restored, thereby disposing of their grievance over the reduction. A subsequent grievance asserting that the refusal to disclose the point information was a violation of the collective-bargaining agreement was initiated and set for arbitration when the union withdrew the grievance to file charges with the Board relating to the same refusal to furnish job evaluation points. Although assuming, *arguendo*, "that the point information could be generally relevant to the administration of the agreement," the Board found that the union's only demands for the information "were not related either to a pending grievance or to the administration of the contract." Noting also that "as a result of collective bargaining, the parties had agreed to the kind of job classification information to be furnished the Union," a matter not challenged by the union, the Board concluded that the refusal to grant the request for the point information was not a violation of the employer's duty to bargain.[98]

In two other cases, however, violations were found in the employers' refusal to furnish information sought by their employees' representatives for the purpose of determining whether to process grievances under the contract. In *Metropolitan Life*,[99] the employer was held to

[96] See Twenty-ninth Annual Report (1946), pp. 76–77.

[97] 148 NLRB 474.

[98] Members Leedom, Brown, and Jenkins for the majority Member Fanning, dissenting, was of the view that the statute required that relevant information be furnished without regard to its immediate relationship to the administration of the collective-bargaining agreement, and that the majority's position would not clearly distinguish between the duty to furnish information as a statutory right, or as a contract right enforceable only through that channel.

[99] *Metropolitan Life Insurance Co.*, 150 NLRB 1478.

have violated its duty to furnish information by refusing to furnish the union with the names of policyholders whose asserted complaints were the basis of the discharge of an employee for cause. The union sought the information in order that it might make an appropriate decision whether to file grievances over the discharge and resolve the issue by arbitration. In another case,[1] the contract contained a no-subcontracting of unit work policy declaration, as well as a provision covering plant or department removal to a new location and employee rights thereupon. The employer was found to have violated section 8(a)(5) of the Act by refusing to provide information requested by the union concerning the circumstances under which plant machinery was being crated and removed from the plant. The employer had refused the requested information despite the fact that 11 grievances relating to the removal of the machinery and subcontracting of work had been submitted by the union. Holding that "the information sought by the Union was necessary in order to enable the Union to evaluate intelligently the grievances filed," and noting that the contract contained no clause "dealing specifically with the furnishing of information necessary and relevant to the processing of grievances," the Board held that "the mere existence of a grievance machinery terminated in arbitration is not to be construed as a waiver of a union's statutory right to such information."

The circumstances under which information furnished is to be made available was considered by the Board in the *Lasko Metal Products* case.[2] In holding that the offer of employer's counsel to make information concerning unit employees available in his office at any reasonable time for the union to copy was adequate compliance with the employer's statutory obligation to furnish information, the Board stated:

> Although Respondent was obligated to make the information requested available to the Union, it does not follow that the Union has a right to such information under the terms and conditions it imposed. Good-faith bargaining requires only that such information be made available at a reasonable time and in a reasonable place and with an opportunity for the Union to make a copy of such information if it so desires.

8. Other Aspects

Other cases decided by the Board during the report year include one involving an employer's obligation to bargain with a guard union concerning the nonguard functions of dual-function employees having guard duties, and some involving circumstances under which preexisting bargaining obligations may be brought into question by assertion of a good-faith doubt as to the union majority. In *Potter Electric Signal Company*,[3] the employer had refused to bargain with a union

[1] *Acme Industrial Co.*, 150 NLRB 1463
[2] *Lasko Metal Products, Inc.*, 148 NLRB 976.
[3] 149 NLRB 373

representing guards only, which was the certified representative of the guards in his employ, concerning their nonguard functions. In holding that the employer had thereby violated its bargaining obligation, the Board distinguished cases holding that because a dual-function employee may be included in more than one unit, his representative in one unit may not bargain with respect to functions which have been excluded from that unit.[4] The Board pointed out that as "employees who regularly perform both guard and nonguard work may not be represented by a nonguard union for any purpose, . . . their only opportunity for full representation must come from a guard union." It viewed the legislative history of section 9(b)(3) as expressing congressional concern with the possibility of a conflict of interest if a union represented both guards and other employees. Finding that no such conflict exists in the instant case, where none of the employees performing nonguard duties were represented, and the guard union was the only one representing guard employees in any of their functions, the respondent was ordered to bargain with the guard union concerning their nonguard duties as well as their guard duties.

In two cases the Board found that circumstances asserted by the employer as warranting his professed good-faith doubt as to the majority status of an incumbent union were adequate to establish such a doubt, wherefor the employer's refusal to bargain with the union was not a violation of the statute. In *Dixie Gas, Inc.*,[5] the Board had affirmed findings of violations of section 8(a) (3) and (1) of the Act committed by the employer at the same time it certified the union as representative of the employees. However, the union made no demand for collective-bargaining negotiations until more than 2 years later, after court enforcement of the Board's unfair labor practice finding and the employer's compliance with the remedial provisions of the decree. When the union did request bargaining, the employer, informed that a decertification petition had been filed by more than half of its employees, refused to bargain on the grounds of its doubt as to the union's majority status, and itself filed a petition for an election. The Board noted that all the employer's violations had occurred prior to the beginning of the certification year and that "there is no basis for concluding that meaningful collective bargaining could not have taken place during that year." It was, therefore, unwilling to infer that the union's loss of majority was more attributable to the unremedied unfair labor practices than "to the union's 2-year failure after its certification to so much as attempt to perform its responsibilities as a collective-bargaining representative." The pendency of a

[4] *Edward C. Fiedler et al., d/b/a Carlisle & Jacquelin*, 55 NLRB 678; *Berea Publishing Co*, 140 NLRB 516.
[5] 151 NLRB 1257.

decertification petition was also relevant to the employer's asserted good-faith doubt sustained by the Board in the *Electric Motors & Specialties* case.[6] The respondent's refusal to bargain concerning renewal of its existing contract occurred after a representation hearing had been held upon a timely decertification petition filed by its employees. Finding that the employer had not engaged in unlawful conduct in connection with the decertification petition, the Board concluded it was privileged to rely upon its processing by the Board as a basis for challenging the union's majority status.

D. Union Interference With Employee Rights and Employment

1. Racially Discriminatory Union Action

Prior Board decisions holding that the rights guaranteed an employee by section 7 of the Act include the right to fair representation by his designated bargaining agent,[7] were followed by the Board in two cases[8] involving complaint allegations that unions had violated section 8(b)(1)(A) of the Act through actions based upon racially discriminatory considerations. In *Local 1367, ILA*,[9] the Board decided that a local comprised of white members only, and its parent district organization, had violated section 8(b)(1)(A) by maintaining and enforcing a work apportionment agreement with the employer association providing for a 75–25 percent work distribution between the white local and an all-Negro sister local. Found similarly violative was a "no doubling" provision forbidding the assignment of white and Negro gangs to work together. Concluding that the clauses, based upon racial considerations, constituted segregation or discrimination resulting from inherently unequal and unfair representation, the Board found the respondents had failed to "comply with their duty as an exclusive bargaining representative to represent all employees in the bargaining unit fairly and impartially." Perpetuation of the discriminatory provisions as a condition of employment, found to be "grounded upon the irrelevant, invidious, and unfair considerations of race or union membership" was also held to be a

[6] 149 NLRB 1432

[7] *Miranda Fuel Co, Inc*, 140 NLRB 181, Twenty-eighth Annual Report (1963), pp. 84–85; *Independent Metal Workers Union, Local 1 (Hughes Tool Co.)*, 147 NLRB 1573, Twenty-ninth Annual Report (1964), pp. 83–84

[8] Two other cases also involved complaint allegations of unions' actions motivated by racially discriminatory considerations. In each case, the Board found such motivation had not been established. See *Theo Hamm Brewing Co*, 151 NLRB 397; *International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL–CIO and Amalgamated Local 453 (Maremont Corp)*, 149 NLRB 482

[9] *Local 1367, International Longshoremen's Assn. (Galveston Maritime Assn)*, 148 NLRB 897.

violation of section 8(b)(2) in that it caused the employer association to discriminate against employees in violation of section 8(a)(3).[10]

Similar reasoning applied to the situation presented in *Local Union No. 12*[11] resulted in the finding of violations of section 8(b) (1)(A) and (2) in that case also. There the local union refused to process the grievances of Negro members in which they sought to recover wages lost by layoffs resulting from a racially discriminatory seniority system previously followed by the parties. Other grievances sought the elimination of racial segregation in plant facilities and services. Finding that the respondent union's refusal to process the grievances under the contract was based "upon the racially invalid interpretation which had been placed upon that and earlier contracts," and that the grievances would have been processed to arbitration but for those "racially discriminatory reasons," the Board held the union's action to constitute a breach of its duty of fair representation concerning conditions of employment owed the employees it represented and, therefore, in violation of the Act.[12]

2. Enforcement of Internal Union Rules

The forms of union actions interdicted by section 8(b)(1)(A) of the Act was also considered by the Board in other cases involving union imposition of fines upon members for filing charges with the Board and for crossing picket lines. In *Local 138, IUOE*[13] the Board held that the imposition of a fine upon a member by the union because the member filed an unfair labor practice charge against the union without having first exhausted internal union remedies constituted coercion and restraint within the meaning of section 8(b)(1)(A) of the Act. Analogizing the protection afforded by section 8(b)(1)(A) to an employee seeking recourse to the Board from union action designed to restrain that recourse, to the similar protection from employer actions provided by section 8(a)(4) and section 8(a)(1), the Board rejected contentions that the union action was immunized by the proviso to section 8(b)(1)(A) or because of a public policy embodied in the first proviso

[10] Members Leedom, Brown, and Jenkins for the majority Chairman McCulloch and Member Fanning, dissenting, would find no separate 8(b)(1)(A) violation upon the reasoning set forth in their separate opinion in *Hughes Tool, supra,* but would find a violation of sec. 8(b)(2) insofar as the work distribution and no-doubling arrangements were based upon considerations of local union membership.

[11] *Local Union No. 12, United Rubber, Cork, Linoleum & Plastic Workers of America, AFL–CIO (Business League of Gadsden)*, 150 NLRB 312.

[12] Members Leedom, Brown, and Jenkins for the majority. Chairman McCulloch and Member Fanning, dissenting, perceived no statutory basis for the majority holdings in the case in accordance with their views set forth in the dissenting opinions in *Miranda Fuel Co., Inc.,* 140 NLRB 181, and the separate opinion in *Independent Metal Workers Union Local No. 1 (Hughes Tool Co.)*, 147 NLRB 1573

[13] *Local 138, International Union of Operating Engineers (Charles S. Skura)*, 148 NLRB 679. See also *H. B. Roberts, Business Manager of Local 925, International Union of Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 NLRB 674.

to section 101(a)(4) of the Reporting and Disclosure Act of 1959. *Wisconsin Motor*[14] in which the Board held that the proviso to section 8(b)(1)(A) immunizes a union from Board remedial action with respect to the enforcement of internal union rules by means other than discrimination, was distinguished by the Board in that there the union rule did not run counter to other public policies. As regards the instant rule, however, the Board stated, "Considering the overriding public interest involved, it is our opinion that no private organization should be permitted to prevent or regulate access to the Board, and a rule requiring exhaustion of internal union remedies by means of which a union seeks to prevent or limit access to the Board's processes is beyond the lawful competency of a labor organization to enforce by coercive means." Having thus concluded that the union's action was not within the intendment of the proviso to section 8(b)(1)(A), the Board found its conclusion consistent with the congressional purpose in enactment of section 101(a)(4) of the Reporting and Disclosure Act which it found had been construed as having the purpose generally to "protect union members from retaliation for bringing suit" and prevent union resort to coercion to prevent exercise of that right.[15] The Board also applied the rationale of *Local 138, IUOE* to find a violation of section 8(b)(1)(A) in the warning of an employee by a union official that he could be fined if he took his complaint concerning discriminatory referral from the union hiring hall to the Board.[16] An additional threat that the filing of the charge could result in loss of work was also held to be a violation of section 8(b)(1)(A). The analogy of section 8(b)(1)(A) to section 8(a)(4) was also emphasized by the Board in another case where a violation of section 8(b)(1)(A) was found in union attempts to limit access to the Board processes by means of job discrimination through refusal to issue the complaining employee a work permit required under area hiring practices.[17]

The proviso to section 8(b)(1)(A), providing that that section "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership," was construed by the Board in *Local 248, UAW*[18] as protecting union action in imposing fines on members who cross the local's picket line to work during a strike of the local, and demanding payment of the fines and threatening institution of court proceedings to collect them. Fol-

[14] 145 NLRB 1097, discussed in Twenty-ninth Annual Report (1964), p 85

[15] Chairman McCulloch and Members Fanning, Brown, and Jenkins for the majority Member Leedom, concurring, would rely also upon his views set forth in his dissent to the *Wisconsin Motor* case

[16] *Millwright & Machinery Erectors Local Union 1510 (Mulberry Construction & Welding Co)*, 152 NLRB No 132

[17] *Bricklayers, Masons, and Plasterers' International Local Union No. 18 (Ferguson Tile & Marble Co)*, 151 NLRB 160

[18] *Local 248, UAW (Allis-Chalmers Mfg Co)*, 149 NLRB 67.

lowing its decision in *Wisconsin Motor*,[19] the Board found that the unions "properly maintained the distinction between treatment of the individual as a member of the Union and treatment of him as an employee" in that they at no time "attempted to affect the jobs or working conditions of any of the fined individuals." Viewing the rule prohibiting the crossing of a picket line as one related to the acquisition or retention of membership in the union within the meaning of the proviso, the Board noted that the rule involved "the loyalty of its members during a time of crisis for the union" and its enforcement was a step taken by the union "to preserve its own integrity." [20]

In *Tawas Tube Products*,[21] the rationale of *Local 248, UAW* was applied by the Board in reaching its conclusion that a union's expulsion from membership of two employees who filed a petition with the Board seeking decertification of the local union as unit representative was within the protection of the proviso to section 8(b)(1)(A). Noting that the union's disciplinary action was limited to the membership status of the employees and did not affect their employment interests, the Board expressed the view that although the action was taken in response to the employees' recourse to Board's processes, "even a narrow reading of the proviso would necessarily allow a union to expel members who attack the very existence of the union as an institution, which is literally the case here, since Local 6401 represents only the employees in the unit involved in this case." The decision in *Local 138, IUOE* was distinguished by the Board since the situation presented was one "where union members have resorted to the Board for the purpose of attacking the very existence of their union rather than as an effort to compel it to abide by the Act. We do not consider it beyond the competence of the union to protect itself in this situation by the application of reasonable membership rules and discipline."

3. Union Rules as Conditions of Employment

As noted above, the Act specifically provides that a labor organization may prescribe its own rules with respect to the acquisition or retention of membership. This authority to control the status of its members means, according to the courts and legislative history, that

[19] *Supra*, footnote 14.

[20] Chairman McCulloch and Members Fanning and Brown for the majority. Member Jenkins, concurring in the dismissal of the complaint, viewed the issue to be "whether the Act seeks to regulate the right of a union to discipline its members for refusing to respect a picket line lawfully erected by the union," and would find such regulation not encompassed by the statute since sec 7 does not insulate an employee from all consequences flowing from his choice of actions protected by that section Member Leedom, dissenting, would find a violation essentially for the reasons expressed in his dissent in *Wisconsin Motor*, since in his view the instant rule "contravenes a right guaranteed by Section 7 of the Act, namely, the right to refrain from engaging in concerted activities, including strike activity."

[21] 151 NLRB 46.

labor organizations may enforce their membership rules as they see fit.[22] It is only to the extent that a labor organization seeks to impair a member's status as an employee that the enforcement of its rules governing membership status may be questioned in a Board proceeding.

During the year the Board considered a number of cases involving the enforcement or attempted enforcement through the employment relationship of union rules, or union interpretation of the applicability of contractual provisions, as conditions of employment. One such case involved the application by a musicians union local[23] of its "freeze rule," an internal rule not incorporated in the contract which prohibited member musicians who worked a steady 5-day week from accepting engagements on the sixth or seventh days of the week without prior approval by the union. Finding that the object of the rule was to spread work among the area musicians, and that the rule was being uniformly applied, the Board concluded that the rule was, therefore, neither discriminatory on its face nor so applied. As the object of the rule and its criteria did not cause employment to be conditioned upon union membership or any other arbitrary, invidious, or irrelevant consideration, the Board disclaimed any intent to substitute its judgment as to the wisdom of the union's objective, and dismissed the complaint.

Union actions in obtaining the discharge pursuant to a valid union-security clause of employees to whom membership had been denied for reasons other than those set forth in the second proviso to section 8(a)(3), i.e., the failure to tender dues and initiation fees uniformly required, were evaluated by the Board in several cases. Among these was *A. Nabakowski Co.*[24] in which the union obtained the discharge of employees denied membership in the union because they failed to pass an objective test administered to determine their qualifications and competency in the craft. Adverting to the legislative history of the second proviso to section 8(a)(3), and Supreme Court cases construing its scope, the Board found the union's action in violation of section 8(b)(2) since the denial of membership was for a reason other than those limited by the second proviso. Similarly found to be violative of the statute was the union's action in *Roadway Express*,[25] where it annulled the membership of two individuals "because they had gained entry into the union in violation of the union's restrictive membership policy." The union policy restricted membership to those persons who at the time that they made application were already employed in a

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[22] See, e.g., *American Newspaper Publishers Assn.* v. *N.L.R.B.*, 193 F. 2d 782, 806 (C.A. 7), affirmed 345 U.S. 100; Legislative History of the Labor Management Relations Act, 1947, pp. 1097, 1141, 1142, 1420; Twenty-ninth Annual Report (1964), p. 84.

[23] *Chicago Federation of Musicians, Local 10, American Federation of Musicians (Shield Radio & T.V. Productions)*, 153 NLRB No. 11.

[24] 148 NLRB 876.

[25] 150 NLRB 43.

shop within the union's jurisdiction. The individuals involved had obtained membership although not then employed, then obtained casual employment with an employer having a union-security contract with the union. Upon becoming aware of the membership obtained in violation of its policy, the union annulled the membership and caused the discharge of the employees by having their names removed from the "extras list" of persons acceptable as casual employees without invoking the union-security provision. Although recognizing that the unions could lawfully provide for preferential treatment of men regularly working in the industry, the Board found that it "could not without violating the Act, . . . predicate its action upon the violation by employees of an internal union rule or policy relating to the acquisition or retention of membership. The Act will not countenance any form of discrimination in the hire, tenure, or other term or condition of employment which turns on the union membership status of the employee involved, except by operation of valid union-security provisions in the parties' contract."

4. Hiring Hall Referral Standards

Collective-bargaining provisions establishing referral and employment preference for qualified employees in the local geographical area or in relation to their prior experience are not in and of themselves unlawful when administered nondiscriminatorily. In cases decided in the past year, the Board has sustained such provisions when applied to the referral of new employees [26] and they have also been sustained when interpreted as requiring the discharge of nonlocal residents and their replacement by local residents referred through the union-operated hiring hall.[27] However, in *Local Union No. 269, IBEW* [28] a hiring hall referral system based upon area employment history preference was found to constitute a violation of section 8(b)(1)(A) and (2) of the Act. The work experience standards for referral embodied in the contract did not on their face reveal their "intrinsic discriminatory nature" but the Board, viewing them against a background of union conduct involved in prior settlement agreements of unfair labor practice charges, concluded that in that context their "discriminatory design becomes apparent." Under the contract in effect referral was based upon work experience gained by past employment under contracts between the union and an employer association. Those contracts over a period of years had been the subject of unfair labor practice

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[26] *Bricklayers, Masons and Plasterers' International Union of America, Local No. 15 (Park Construction Co.)*, 150 NLRB 1496.

[27] *Local 542, IUOE (Ralph A. Marino)*, 151 NLRB 497; Members Fanning and Jenkins for the majority. Member Brown concurred in the result without opinion.

[28] *Local Union No. 269, IBEW (Mercer County Div., New Jersey Chapter, National Electrical Contractors Assn.)*, 149 NLRB 768.

charges alleging they provided for an unlawful preference in referral to union members, an allegation disposed of only upon execution of settlement agreements requiring cessation of such an unlawful preference. Finding that the union had failed to comply with the settlement agreements, which failure warranted their having been set aside and the charges reinstated, the Board interpreted the job referral standards of the current contract in the light of those past actions which had been the subject of the charges. The Board found that under the current standards, based as they were upon work experience obtained in accordance with the discriminatory referral practice, the "inevitable consequence" and operative effect was to give union members continued preference in referral. The prior discriminatory conditions were perpetuated through application of the current standards. The Board also held the employer association to have violated section 8(a)(3) and (1) by being party to the maintenance of the current contract since it was clearly on notice from the prior settlements that union membership was a factor in accumulating work experience under the revised standard which they nevertheless agreed to incorporate into the contract and to observe.

5. Dues Obligation

The Act permits employers or labor organizations to make union-security agreements within the limits of section 8(a)(3). However, under the second proviso to section 8(a)(3) employees may not be discriminated against under the terms of such an agreement, except for "failure to tender the periodic dues and the initiation fees uniformly required" as a condition of union membership. During the past year, the Board considered several cases in which a union's efforts to cause an employer to discharge an employee because of his failure to satisfy the claimed dues obligation were alleged as violation of section 8(b)(2) of the Act.

In one case,[29] the union had obtained the discharge of a recalled employee under the union-security provision of the contract upon the employee's failure to satisfy the union's demand for payment of delinquent dues, which included dues computed for a period in which the employee was in layoff status and not otherwise employed. The employee had a history of refusing to meet his dues arrearage, even that which the union was lawfully entitled to collect. In finding no violation, the Board distinguished *Eclipse Lumber*,[30] in which it had held that insistence by a union on the payment of an amount in excess of

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[29] *Great Lakes District, Seafarers' International Union of North America, AFL–CIO (Tomlinson Fleet Corp.)*, 149 NLRB 1114.

[30] *The Eclipse Lumber Co., Inc.*, 95 NLRB 464; Seventeenth Annual Report (1952), p. 188.

what it may lawfully demand [31] relieves the employee of the duty to tender a lesser amount, in view of the apparent futility of such tender. Noting that in the instant case, the employee's refusal to make a tender was motivated solely by his desire to avoid paying any part of his dues obligation, and that he would not have complied even with a proper demand, the Board ruled that the waiver-of-tender holding of *Eclipse Lumber* was inapplicable where there was no proof of any willingness on the part of the employee to pay his just obligation and the employee is not deterred from making a tender by the nature of the union's unlawful demand. In another case,[32] the Board adhered to its *Western Electric Company* rule [33] holding that State regulation of union-shop agreements does not condition the construction of the obligation imposed under the National Act. In that case, the union had caused the discharge of an employee for failure to pay dues or fees pursuant to its union-shop agreement, which, although in effect continually for years, had only 2 days before come into compliance with a State law which required that "all union" agreements be approved in a referendum conducted and certified by a State board. The Board found no violation rejecting the contention that the discharge was untimely under section 8(a)(3) of the National Act, where, although there is no grace period under the State act, the discharge was made before the 30th day from the effective date of the State board's certification. It noted that, at the time the discharge was made, the dischargee had been a union member but let his membership lapse, and had been employed for more than 30 days prior to the certification of the State board referendum and his discharge. In the Board's view, there was nothing in the legislative history or decisions to support the rejected contention, which, if sustained, would result in subverting the National Act to the State act insofar as the election requirements of the State act are concerned, while subverting the State act to the Federal Act with regard to the grace period.

The legality of union collection of a "vacation service charge" to cover its cost of handling and distributing vacation checks, from a jointly administered fund, was in issue in *Luggage Workers*,[34] decided by the Board during the report period. The service charge of $1 or $2, depending upon the employees' weekly wages, was collected from both members and nonmembers. The Board found no violation of section 8(b)(1)(A) and (2) since the union did not condition delivery of the

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[31] The Board assumed, without deciding, that the employee had no dues obligation while in layoff status.

[32] *Local #34, International Molders and Allied Workers Union, AFL–CIO (Malleable Iron Range Co)*, 150 NLRB 913.

[33] 84 NLRB 1019 See also: *Northland Greyhound Lines, Inc.*, 80 NLRB 288; *Giant Food Shopping Center*, 77 NLRB 791; *Safeway Stores*, 81 NLRB 387.

[34] *Luggage Workers Union Local 60 (Rexbilt Leather Goods, Inc.)*, 148 NLRB 396.

vacation checks upon payment of the vacation service charge, nor was it a condition of membership, or an activity which in the Board's view would reasonably encourage or discourage union membership or activity.

E. Prohibited Strikes and Boycotts

1. Identity of Neutral Employers

Insulation of neutral or secondary employers from involvement in primary disputes under the secondary boycott provisions of the Act often turns on the issue of identification of the primary employer. In numerous cases, the Board has held that if an employer under economic pressure from a union is powerless to resolve the "underlying dispute,"[35] such an employer is a neutral or secondary, and the employer who has the power to resolve the dispute is the primary employer.

During the past year, this standard was applied in a case involving a dispute over the installation of precut and prefit doors at jobsites.[36] The Board found that, although a contract clause in an agreement between a Carpenters' district council and employing contractors designed to protect certain cutting and fitting work done by jobsite carpenters was not violative of section 8(e), the union had violated section 8(b)(4)(i) and (ii)(B) in threatening, and causing, work stoppages with a "cease doing business" objective by directing carpenters not to handle precut doors, even though bearing the union label. The union's conduct was directed against four contractors, three of whom had contracts with the owners of the respective projects specifying prefit doors, thereby depriving the contractors of the assignment of this work. These three contractors were viewed by the Board as secondary targets of the union's conduct which was in fact designed to force the owners of the projects to reassign the disputed work by agreeing to change the specifications, thereby compelling the contractors to alter their contracts with the mill suppliers, and the latter in turn to alter or cancel theirs with the door manufacturers. However, the unions were not found to have violated section 8(b)(4) with respect to the fourth general contractor who had control over the specifications of the doors installed, and for whom the jobsite carpenters ultimately fitted blank doors not bearing the union label, as the primary dispute was with that contractor.

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[35] E g., *International Longshoremen's Assn. and Local 1694 (The Board of Harbor Commissioners)*, 137 NLRB 1178. Twenty-ninth Annual Report (1964), pp. 89–90.

[36] *Metropolitan District Council of Philadelphia & Vicinity, Carpenters (National Woodwork Mfrs. Assn.)*, 149 NLRB 646. Members Fanning and Jenkins for the majority, Member Brown, dissenting in part, viewed the factors of control as only one aspect to be considered in determining the union's objective, and would find no violation of sec. 8(b)(4)(B).

2. Prohibited Objectives

The objectives which a union cannot lawfully seek to achieve by the inducement or encouragement defined by clause (i) of section 8(b)(4) or by threats, coercion, or restraint defined by clause (ii), are enumerated in subparagraphs (A), (B), (C), and (D) of that section.

a. Compelling Execution of Hot Cargo Agreements

Subparagraph (A) prohibits a union, *inter alia*, from resorting to 8(b)(4) (i) and (ii) conduct in order to force an employer, in the language of section 8(e), "to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person." A proviso to section 8(e) exempts from its coverage agreements between employers and labor organizations in the construction industry and certain agreements in the apparel and clothing industry contained in another proviso to the same section.

In *Centlivre Village Apartments* [37] the Board, in view of the unanimous rejection by the courts of appeals for three separate circuits [38] of its holding in *Colson & Stevens* [39] that the use of economic force to obtain a clause within the construction industry proviso to section 8(e) is prohibited by section 8(b)(4)(A), reexamined its position and accepted the courts' view that section 8(b)(4)(A) incorporates the construction industry proviso of section 8(e) by reference, thereby limiting the scope of section 8(b)(4)(A). The Board therefore ruled that a union trades council and its affiliated locals had not violated section 8(b)(4)(A) by picketing at a construction site to compel a general contractor to enter into a hot cargo agreement which was within the ambit of the construction proviso.

Consistent with its holding in *Centlivre Village Apartments*, however, the Board in several other cases continued to hold violative of section 8(b)(4)(A) picketing and other conduct by unions which had as an object the forcing of an employer to execute agreements contain-

[37] *Northeastern Indiana Building & Construction Trades Council, et al. (Centlivre Village Apartments)*, 148 NLRB 854.

[38] *Construction, Production & Maintence Laborers Union Local 383 et al.* v *N.L R B (Colson & Stevens Construction Co.)*, 323 F. 2d 422 (C.A. 9); *Essex County and Vicinity District Council of Carpenters, etc.* v. *N.L.R.B. (Calhoun Drywall Co.)*, 332 F. 2d 636 (C.A. 3); *Orange Belt District Council, et al.* v. *N.L.R.B. (Calhoun Drywall Co)*, 328 F. 2d 534 (C.A D C.); *Building & Construction Trades Council* v. *N.L.R.B (Gordon Fields)*, 328 F. 2d 540 (C A.D.C.).

[39] *Construction, Production & Maintenance Laborers Union Local 383, AFL–CIO (Colson & Stevens Construction Co.)*, 137 NLRB 1650; Twenty-eight Annual Report (1963), pp. 97–98.

ing clauses found to be prohibited by section 8(e), and not immunized by the construction industry proviso.[40] Three of these cases [41] involved clauses which protected employee refusals to cross picket lines. The clauses were found to be worded so broadly as to extend to and protect a refusal to cross an unlawful secondary picket line. In five cases [42] clauses with their own employers, which protected employee refusals to work or to handle "unfair goods" at jobsites because of the existence of certain conditions objectionable to the unions due to disputes with secondary employers, were held violative of section 8(b)(4)(A). Picketing at a construction site to secure a clause which extended to the transportation of material to and from the construction site was also held violative of section 8(b)(4)(A) as such work was viewed by the Board as not "onsite" within the meaning of the construction industry proviso to section 8(e).[43]

b. Disruption of Business Relationships

Section 8(b)(4)(B), prohibiting pressure on "any person" to cease doing business with "any other person," is intended to prevent the disruption of business relationships by proscribed tactics.

In *Centlivre Village Apartments*,[44] the Board found that a union trades council and its affiliated craft locals violated section 8(b)(4)(i) and (ii)(B) by picketing a construction site with an object of forcing or requiring a neutral general contractor to cease doing business with a subcontractor having no agreement with the union, notwithstanding the fact the picketing had the concurrent lawful object of securing a hot cargo agreement permitted by the construction industry proviso of section 8(e). Noting that in enacting section 8(e)'s construction industry exemption Congress intended that preexisting cases should be preserved as governing law in applying section 8(b)(4), the Board concluded that that proviso "has no bearing upon the determination for the purposes of section 8(b)(4)(B) of the validity of the object of strike or picketing activity, except that a strike or picketing to secure a clause protected by that proviso does not alone establish the

[40] For a more detailed treatment of these and other cases involving sec. 8(e) and construction industry proviso thereto see *infra*, pp. 101–103.

[41] *Los Angeles Building & Construction Trades Council (Portofino Marina)*, 150 NLRB 1590; *Los Angeles Building & Construction Trades Council (Couch Electric Co., Inc., et al)*, 151 NLRB 413; *Los Angeles Building & Construction Trades Council (Quality Builders, Inc.)*, 153 NLRB No. 38

[42] *Los Angeles Building & Construction Trades Council (Portofino Marina)*, *supra*; *Muskegon Bricklayers Union #5 (Greater Muskegon General Contractors Assn)*, 152 NLRB No. 38 , *Sprinkler Fitters Local 709 (A-1 Mechanical Contracting Co.)*, 152 NLRB No. 45 ; *Orange Belt District Council of Painters No. 48 (Tri-County Chapter, Painting & Decorating Contractors of America, Inc.)*, 152 NLRB No. 116 ; *Los Angeles Building & Construction Trades Council (Quality Builders, Inc.)*, *supra*

[43] *Los Angeles Building & Construction Trades Council (Portofino Marina)*, *supra*

[44] *Northeastern Indiana Building & Construction Trades Council, et al. (Centlivre Village Apartments)*, 148 NLRB 854.

existence of a proscribed object." Accordingly, where the evidence indicates that picketing, although assertedly directed at obtaining a subcontracting clause valid under the construction industry proviso to section 8(e), also has as an objective the cessation of business between a neutral general contractor and an existing and identified nonunion subcontractor, the Board will continue to find a violation of section 8(b)(4)(B).

In another case [45] involving the relationship of section 8(b)(4)(B) and a hot cargo clause, a union struck a signatory plumbing subcontractor on a construction project where the union refused to permit its members to work with a nonunion subcontractor's employees who had less favorable working conditions than those established by a union contract. Rejecting the contention that the strike was primary activity for the purpose of forcing the plumbing subcontractor to abide by a contract provision prohibiting assignment of work on a project where such less favorable conditions of employment existed, and was within a contract provision permitting self-enforcement by union members where such assignments were made,[46] the Board found a violation of section 8(b)(4)(B). The union's conduct, it stated, was not aimed at the plumbing subcontractor who had no control over the other subcontractor's work or employees, but rather was designed to force the plumbing subcontractor to cease doing business with the general contractor and the nonunion subcontractor, or to force the general contractor to cease doing business with the nonunion subcontractor.

In *Cupples Products Corporation*,[47] the Board found an 8(b)(4)(B) violation when a union picketed, allegedly for informational purposes, a jobsite where a neutral employer's employees were installing products manufactured by a nonunion manufacturer. It held that an object of the picketing was to induce and encourage employees at the jobsite to refuse to work and to apply pressure against neutral persons for the purpose of forcing the contractor to stop using the nonunion products. A contention that the picketing was "informational" as directed solely to the public was rejected. The Board noted that the picket signs failed to name the manufacturer who allegedly maintained substandard wages and conditions of employment, and that it was therefore difficult to understand how the public could have responded to the appeals. Moreover, the Board stated, the union had given advance notice to the Building and Construction Trades Council and the Carpenters' Council of its plan to picket the jobsite; and it had

[45] *Local 217, Plumbers & Pipefitters, etc. (Carvel Co)*, 152 NLRB No. 166. Chairman McCulloch and Members Brown and Jenkins for the majority, Member Fanning, dissenting in part, concurred as to the 8(b)(4)(B) finding.

[46] The disputed clause was found violative of sec 8(e) and the construction industry proviso considered inapplicable. See *infra*, p. 103.

[47] *Glaziers' Local No. 513 (Cupples Products Corp.)*, 148 NLRB 1648.

taken no action when employees at the jobsite refused to cross the picket line.

Another instance of disruption of business relationships in violation of section 8(b)(4)(B) occurred when a union picketed the site of a building being constructed for future occupancy by a member of an employer association which was involved in a contract dispute with the union.[48] Finding an unlawful attempt to enmesh neutral employers and their employees in the union's dispute with the association member, the Board rejected the contentions that the picketing was primary in nature as directed only at the association member and that the union had a right to picket the construction site owned by such member. It noted that while the union picketed the employer at its current business location during normal business hours, it only picketed the construction site during the time when construction work was normally performed. Additionally, the association member did not and had not conducted any part of its business operations from the incompleted premises, nor were any of its employees at the site.

3. Permissible Objectives

In *Houston Insulation Contractors Association*,[49] the Board found that two locals had not engaged in a boycott of a nonunion manufacturer's products in violation of section 8(b)(4)(B) by their admitted refusal to permit their members employed by two insulation contractors to handle precut insulation materials on two jobsites, one of which was within the geographical jurisdiction of a sister local. Finding that this preparatory work on materials was reserved for union members by lawful subcontracting restrictions between one local and the employer association, the Board viewed the locals' conduct as taken to protest a deprivation of unit work with the object of protecting or preserving for unit employees the work customarily performed by them. It therefore constituted protected primary activity. The Board found the contract provisions also bound the contracting employers to abide by the sister local's ban against subcontracting when work was performed within its jurisdiction, whether the sister local be regarded as third-party beneficiary of the bargaining contract or as agent of the contracting local. Therefore, the union's refusal to install the precut material on that job was also in furtherance of a valid contract work-preservation clause.

[48] *Miscellaneous Drivers & Helpers Union Local 610, Teamsters (Robert R. Wright, Inc.)*, 151 NLRB 182.

[49] *International Assn. of Heat and Frost Insulators and Asbestos Workers (Houston Insulation Contractors Assn.)*, 148 NLRB 866. Chairman McCulloch and Member Brown for the majority, Member Leedom dissenting, would find a violation at the second jobsite since he viewed the union's limitation upon the use of precut fittings to be based upon the nonunion status of the employees doing the work rather than upon work-preservation consideration.

In *Alden Press*,[50] unions engaged in patrolling at various shopping centers and at entrances to public buildings carried placards and distributed leaflets to protest a newspaper publisher's use of the services of a nonunion employer with whom the unions had a dispute. The activity in this case did not occur at places where the newspaper conducted its business operations and there was no evidence that the newspaper was being sold at any of the establishments in the area where the parading was being conducted. The Board held that such conduct came within the publicity proviso to section 8(b)(4) as "publicity other than picketing" for truthfully advising the public that the newspaper was produced in part by a nonunion employer. Although the unions' conduct entailed patrolling and carrying of placards, such circumstances alone, the Board stated, do not *per se* establish "picketing" in the sense intended by Congress. Noting that one of the necessary conditions of picketing is confrontation in some form between the pickets and employees, customers, or suppliers who are trying to enter the picketed premises, the Board found such element missing in this case as the union's activity at the shopping centers was not limited to the area of any individual business enterprise and did not come to rest at any particular establishment. Nor was the activity, admittedly undertaken as an appeal to the public not to patronize the newspaper, in the Board's view designed to dissuade customers or others from patronizing establishments in the area paraded, to halt deliveries, or to cause employees to refuse to perform services.

4. Common Situs Picketing

In several cases presenting situations involving picketing at common situs locations where business is carried on by both the primary employer and neutral employers, the Board had occasion to determine whether *Moore Dry Dock* standards [51] applied so as to shield a union's picketing activities.

In *University Cleaning Company*,[52] the Board ruled that a union violated section 8(b)(4)(ii)(B) by its threats to picket, and the picketing of, the premises of two neutral employers who utilized the janitorial services of a nonunion cleaning contractor with whom the

[50] *Chicago Typographical Union No. 16* (*Alden Press, Inc.*), 151 NLRB 1666.

[51] *Sailors' Union of the Pacific, AFL* (*Moore Dry Dock Co.*), 92 NLRB 547 (1950), in which the Board, in order to accommodate lawful primary picketing while shielding secondary employers and their employees from pressure in controversies not their own, laid down certain tests to establish common situs picketing as primary: (1) The picketing must be strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (2) at the time of the picketing the primary employer must be engaged in its normal business at the situs; (3) the picketing must be limited to places reasonably close to the location of the situs; and (4) the picketing must clearly disclose that the dispute is with the primary employer.

[52] *Local 254, Building Service Employees* (*University Cleaning Co.*), 151 NLRB 341.

union had a dispute. Among the factors which, in the Board's view, supported the conclusion that the union's objective was unlawful and not informational, as it contended, was the evidence that the picketing failed to conform with the *Moore Dry Dock* standards in that, with minor exceptions, it took place when the employees of the primary employer were not on the premises, and the further fact that the signs failed to clearly identify the employer with whom there was a dispute. In a similar case,[53] picketing and handbilling of the premises of a secondary employer who used the primary employer's janitorial services was found unlawful as the union's conduct occurred only at times when the employees of the primary employer were not performing their services on the premises and the secondary employees were in attendance. Also, the union made no effort to determine whether the primary employer or its employees were engaged in normal operations when the picketing was commenced and later renewed.

In *Northwestern Construction*,[54] the picketing of sole proprietors engaged in normal business at common situs construction projects as self-employed subcontractors was found not proscribed and in full compliance with the *Moore Dry Dock* standards. The union sought by picketing to persuade the self-employed subcontractors to hire employees to perform the work under area standards wages and benefits, thereby precluding undercutting of the work standards by the self-employed subcontractors who worked alone, without regard to overtime or fringe benefits. Terming irrelevant the fact that the subcontractors were not eligible for membership in the picketing unions and were not the subjects of an organizational attempt, the Board held that the subcontractors' normal business practice of performing work without the assistance of employees did not immunize them from otherwise permissible picketing "in furtherance of recognized economic objectives of the respective unions." Such disputes, the Board stated, are as primary in character as if the self-employed contractors had other workmen doing the work, and therefore the site may be picketed so long as the *Moore Dry Dock* standards are met. In ruling that the standards were met, the Board viewed the absence of employees of the primary employers from the construction site as not establishing that they were not engaged in their primary business operations, particularly where, as here, no employees are used in the normal business operations of the primary employees.

In another case[55] a violation of section 8(b)(4)(B) was found

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[53] *Building Service Employees, Local 105 (Industrial Janitorial Services, Inc.)*, 151 NLRB 1424.

[54] *Northeastern Washington-Northern Idaho Building & Construction Trades Council (Northwestern Construction of Washington, Inc.)*, 152 NLRB No. 99.

[55] *American Newspaper Guild, AFL–CIO, et al. (Youngstown Arc Engraving Co.)*, 153 NLRB No. 73.

although a picket line established at the place of business of the primary employer, a printing company, complied with the standards established in *Moore Dry Dock.* The union had refused to permit employees of a secondary employer situated in the same building with the primary employer to cross the picket line unless the secondary employer agreed not to prepare photoengraving plates for the primary employer directly, or indirectly through any person intending to advertise in the primary employer's newspaper. The Board held such conduct unlawful as involving appeals to employees of a secondary employer at their place of work and rejected the union's contention that because some work performed by the secondary employer was part of the primary employer's daily operation, it was an inseparable part of the primary strike and protected by the Act.[56] Noting that the union by its conduct sought to accomplish more than normally may be hoped for by primary picketing, the Board pointed out that since the union could not lawfully picket the secondary employer if it were not located in the same building with the primary employer the location in the same building could not be controlling.

5. "Ally" Doctrine

Employers who have made common cause with a primary employer by knowingly doing work which would otherwise be done by the striking employees of the primary employer, and the work is done pursuant to an agreement with the primary designed to permit him to continue to meet his contractual obligations, are viewed as an "ally" of the primary, rather than a neutral, for the purposes of identifying the "unconcerned" employer who was intended to be protected by section 8(b)(4)(B) of the Act.[57] Such an issue was presented by the Board in *Bert P. Williams, Inc.*,[58] where the union picketed the trucks of a trucking company making deliveries to the primary employer's customers pursuant to a delivery subcontract entered into with the primary after the union struck that employer. Concluding that the trucking company was the primary employer's "ally," engaged in per-

[56] This same concept of the appropriate limitations of the appeal was applied in *Northwestern Construction, supra,* where the union's picketing of one of the subcontractors was found unlawful, since secondary employees were orally induced and encouraged to cease work on the project by incidents that went beyond the mere expression of neutrality.

[57] See, e.g., *N.L R B.* v. *Business Machine & Office Appliance Mechanics Conference Board (Royal Typewriter Co.)*, 228 F. 2d 553 (C.A. 2), certiorari denied 351 U.S. 962; *Douds* v. *Metropolitan Federation of Architects, Local 231 (Ebasco Services, Inc.)*, 75 F. Supp. 672 (D C N.Y.).

[58] *Brewery Workers Union No. 8, etc. (Bert P. Williams, Inc.)*, 148 NLRB 728. Chairman McCulloch and Members Fanning, Brown, and Jenkins for the majority. Member Leedom, dissenting in part, would have found that the work would have been subcontracted even if the strike had not occurred, wherefore the delivery work was not struck work.

forming struck work pursuant to agreement, the Board found no violation of section 8(b)(4)(B). The primary employer's decision to subcontract out coincidentally with the strike was found to have been caused by the imminent failure of bargaining to insure continuance of deliveries notwithstanding a strike by its employees. As the trucker, who entered into the subcontract with full knowledge that the primary employer's operations were then subject to strike sanctions, was not a neutral employer, the Board ruled that the striking employees' right to engage in the primary activity of following the trucks and appealing to the drivers was not cut off by the fact that the delivery operations had been subcontracted out. By undertaking an integral part of the primary employer's regular business operations the trucker was held to have in effect placed himself in the primary employer's position, and thus his newly hired employees became, for all practical purposes, replacements for the primary employer's striking employees. The Board did not view its decision as impinging upon an employer's legitimate right to subcontract, and ruled that the fact that the subcontract was for a fixed term rather than for the duration of the strike did not remove the trucking company from the ally status.

But in *J. C. Driscoll Transportation, Inc.*,[59] two common carriers working from the same terminal location entered into a contract under which the first employer, operating over-the-road routes, contracted to have the other employer perform its local pickup and delivery service, and laid off its union member employees who had previously performed that work. The union struck that employer in an effort to have him resume his local service and rehire the employees, and in furtherance of that primary dispute picketed the premises of the employer contracting to perform the local delivery and pickup, and prohibited its employees from handling freight received from or destined for the primary. In finding that the union had violated section 8(b)(4)(i) and (ii)(B), the Board noted that the picketing did not conform to the *Moore Dry Dock* standard since employees of the primary employer were no longer at the picketed premises. The Board also rejected the union's contention that the contractor, who had been engaged by the primary employer prior to the strike to perform the local pickup and delivery service, was "allied" with that employer. Since it was the subcontracting which caused the strike, and not vice versa, the Board reasoned that the contractor was not performing work in a "struck work"[60] sense which but for the strike would have been performed by the union-represented employees. The Board also relied upon the fact that the contractor was not an ally in an operational or organizational sense.

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[59] *Local 25, Teamsters (J. C. Driscoll Transportation, Inc.)*, 148 NLRB 845.
[60] See, e.g., *Riss & Co., Inc.*, 130 NLRB 943.

6. Union Responsibility for Acts of Agents

In one case decided during the fiscal year the Board had occasion to consider a proposed broad theory of the responsibility of a union for the acts of its members. In *Dade Sound and Controls*,[61] the Board found on the facts of the case that union job stewards and individual members of an electrical union were acting as agents of the union when they induced member employees of secondary employers not to work and threatened secondary employers at several jobsites with work stoppages in furtherance of their dispute with a primary employer who employed members of a rival communications workers' union. The union had contended that its stewards and members were acting only as individuals from their personal preference not to work with nonunion employees, and not at the union's behest. As a basis for its unfair labor practice finding the Board rejected reasoning which would impute responsibility to the union on the theory that it "acquiesced in, tolerated, failed to take effective measures to prevent, and ratified a code of conduct by its members not to work with people regarded as nonunion." Instead, although finding no union agent present and no direct appeal to members of the union at one jobsite where the members walked off the job, the Board concluded that the conduct of the union's agents and members to the primary employer's employees at other jobsites had the effect of unlawful inducement of a work stoppage at this jobsite also, for which the union was responsible. In so ruling the Board said:

> It is well established that inducement may take many forms, and it is not limited to such obvious acts as direct orders, threats, or promises of benefit by union officials to the rank and file. An appeal by a union to its members to protect its work jurisdiction is also a form of inducement. Although there is no evidence that Respondent made a direct appeal in this regard to its members at this site, the often-voiced opposition of its agents to, and the example of its stewards and members striking in protest of, Dade's performance of sound work at other sites had the same effect.[62]

F. Hot Cargo Agreements

Section 8(e) makes it an unfair labor practice for an employer and a union to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person. It also provides that any contract "entered into

[61] *Local 349, International Brotherhood of Electrical Workers, AFL–CIO (Dade Sound & Controls)*, 149 NLRB 430.

[62] See also: Eighteenth Annual Report (1953), p. 51; Twenty-sixth Annual Report (1961), pp. 173–174.

heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void." Exempted by its provisos, however, are agreements between unions and employers in the "construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work," and certain agreements in the "apparel and clothing industry."

1. Types of Clauses

During the past fiscal year, the Board had occasion to determine whether various types of contract provisions came within the purview of section 8(e). The following cases are representative of those considered by the Board.

a. Unit Work Preservation Clauses

In *Superior Souvenir Book Co.*,[63] the Board, attaching "substantial weight" to an interpretation of the contract by an arbitrator, found a contract provision reserving to the employees the sale of souvenir books at any showing in the employer's theatre not violative of section 8(e). The Board viewed the provision as designed to define and protect unit work which should be construed as a complete ban on the performance of such work by nonunit employees. The Board noted that since the "contractual restriction was designed to regulate the relations between [an employer] . . . and its employees in the appropriate bargaining unit represented by" the union and as it was aimed at preservation of work opportunities for employees in that unit, it was "clearly outside the intended interdiction of section 8(e)."

In *Philadelphia Marine Trade Association*,[64] a local of the International Longshoremen's Association was held not to have "entered into" an unlawful clause by attempting to force a marine employer's association to accede to an interpretation of a clause which preserved for the longshoremen's unit work "historically and regularly" done by longshoremen, as comprehending also "trucker's choice" work; i.e., loading operations at piers for which independent truckers could, at their option, use their own employees or longshoremen. Finding that such work had not "historically and regularly" been done by the longshoremen, the Board therefore concluded that the union's claim amounted, at most, to a demand for a new version of the existing clause, and was not a demand for reaffirmation of an existing clause violative of section 8(e).[65]

[63] *Service & Maintenance Employees' Union, Local 399 (Superior Souvenir Book Co.)*, 148 NLRB 1033

[64] *Local 1332, ILA (Philadelphia Marine Trade Assn)*, 151 NLRB 1447.

[65] In dismissing this allegation of the complaint, the Board stated that it expressed no opinion as to whether the clause, as it appeared in the contract, was lawful.

b. Union Signatory Clauses

A clause in *Orange Belt District Council of Painters No. 48*,[66] under which employer parties agreed that they would not contract to perform work for a contractor who was not a signatory to an agreement with the trade council or sublet work within the council's jurisdiction to such a contractor, was held not violative of section 8(e), since the clause's coverage was found to be in operative effect limited to construction site work as required for exemption from section 8(e) by the construction industry proviso. However, in *Quality Builders* [67] a clause which restricted subcontracting to employers who were parties to agreements with "the appropriate union having work and territorial jurisdiction affiliated with the council in the area where the work is to be performed" was found by the Board to be a hot cargo clause within the intendment of section 8(e) and not exempted by the construction industry proviso. The clause, when considered with another clause in the agreement permitting self-enforcement by the employees, established a sanction for prohibited economic action should the signatory employer subcontract to a nonsignatory employer, and therefore, the Board ruled, it exceeded the prescribed bounds of the proviso.[68]

In *Portofino Marina*,[69] a clause which required, *inter alia*, that subcontractors abide by all the terms of the union's agreement was held unlawful, as such agreement included other clauses relating to the subcontracting of work not to be performed at the site of construction which were proscribed by section 8(e) and not within the construction industry exemption.

c. Picket Line Clauses

A clause in a bargaining contract providing, *inter alia*, "that it shall not be a violation of this agreement for a driver to refuse to cross an authorized picket line" was held by the Board to be in violation of section 8(e) insofar as it applies to refusals to cross picket lines constituting secondary activity.[70] Noting that although its decisions in the *Brown* [71] and *Patton* [72] cases concerning the permissible scope of such clauses had not been fully affirmed on review by the court of appeals,[73] the Board pointed out that the clause in issue would be

[66] *Orange Belt District Council of Painters No. 48 (Tri-County Chapter, Painting & Decorating Contractors of America, Inc.)*, 152 NLRB No 116; see also *Sprinkler Fitters Local 709 (A-1 Mechanical Contracting Co.)*, 152 NLRB No. 45.

[67] *Los Angeles Building & Construction Trades Council (Quality Builders, Inc.)*, 153 NLRB No. 38.

[68] For discussion of self-enforcement provisions see *infra*, p 102

[69] *Los Angeles Building & Construction Trades Council (Portofino Marina)*, 150 NLRB 1590.

[70] *Truck Drivers Local No. 696 (Freeto Construction)*, 149 NLRB 23

[71] *Truck Drivers & Helpers Local 728, et al., Teamsters (Brown Transport Corp.)*, 140 NLRB 1436, discussed in Twenty-eighth Annual Report (1963), p 104.

[72] *Truck Drivers Union Local 413, et al., Teamsters (The Patton Warehouse, Inc)*, 140 NLRB 1474, discussed in Twenty-eighth Annual Report (1963), pp 102–104.

[73] *Truck Drivers Union Local 413, Teamsters v. N.L.R.B. (Patton Warehouse & Brown Transport)*, 334 F. 2d 539 (C.A.D.C.), discussed in Twenty-ninth Annual Report (1964), pp. 128–130.

illegal even under the court's test; i.e., a broad picket line clause violates section 8(e) insofar as it applies to secondary picket lines.

In another case,[74] clauses which (1) immunized from employer action employees' actions in refusing to cross picket lines or enter the premises of another employer where the latter's employees were engaged in an "authorized" strike, and (2) set forth conditions under which employees would not be required to deliver through a picket line or unload to a picketed customer, were held unlawful. The clause granting disciplinary immunity, in the Board's view, failed to conform to the test of its *Patton* case—i.e., the clause permitting refusals must be confined to picket lines in conformity with the proviso to section 8(b)—and was so unlimited and so broad in scope and application as to be illegal under the court test to the extent it applied to refusals to cross unlawful, albeit "authorized," picket lines constituting secondary activity. The proviso which set forth conditions for delivery through picket lines was also found to *pro tanto* violate section 8(e) as it augmented and implemented the provisions granting immunity.[75]

d. Self-Enforcement Clauses

Several cases required the Board to consider the legality of clauses permitting employees to refuse to work when job conditions were objectionable to the union. In *Greater Muskegon Contracting Association*,[76] a construction union struck to obtain inclusion in the contract of a clause which provided that the union members could "refuse to work on any job where any of the work, irrespective of craft," was performed under conditions less favorable than the union standards for that craft. Finding that the clause extended "beyond protection of the work and work standards of the employees represented by the union," the Board concluded that the employer's acceptance of such a clause permitting employees to refuse to work in the event he does business with another employer considered objectionable by the union,

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[74] *Drivers, Salesmen, Warehousemen, etc., Local 695 (Threlfall Construction Co.)*, 152 NLRB No. 55.

[75] See also *Los Angeles Building & Construction Trades Council (Portofino Marina)*, 150 NLRB 1590; *Los Angeles Building & Construction Trades Council (Couch Electric Co., Inc, et al)*, 151 NLRB 413; *Los Angeles Building & Construction Trades Council (Quality Builders, Inc.)*, 153 NLRB No. 38.

To similar effect, a clause in an agreement of a local affiliated with a trade council in the construction industry, which provided that employees need not handle goods which had been declared "unfair" by the council, was considered by the Board as but another sanction made available to the union to enforce other unlawful clauses in the agreement, and therefore violative of sec 8(e). *Los Angeles Building & Construction Trades Council (Portofino Marina), supra;* see also *Cement Masons Local 97 (Interstate Employers, Inc.)*, 149 NLRB 1127.

[76] *Muskegon Bricklayers Union #5 (Greater Muskegon General Contractors Assn.)*, 152 NLRB No 38, Chairman McCulloch and Members Brown and Jenkins for the majority. Member Fanning, dissenting, viewed the clause as related to contracting and subcontracting "on-site" work in the construction industry, and therefore exempted from the provisions of sec. 8(e) and 8(b)(4)(A). He disagrees with the majority conclusion that the contract sanctioned conduct proscribed by sec. 8(b)(4)(B), since, in his view, the clause would sanction individual action not within sec. 8(b)(4)(B), and not union inducement which is proscribed by that section.

was the equivalent of an agreement by the employer not to do business with any other employers within the meaning of section 8(e). The Board also found the clause objectionable because it sanctioned "private, economic action of the employees in the event the employer breaches the agreement. This proposal looks not to the court for enforcement but to strikes." It accordingly held that where "a limitation upon contracting at a construction site is intertwined with a provision permitting such self-help as striking or otherwise refusing to perform services," the clause exceeds the prescribed bounds of the first proviso to section 8(e), and is therefore unlawful.

Following the rationale of the *Muskegon* case, the Board found unlawful self-enforcement clauses in construction industry agreements which permitted employee refusals to work at jobsites where (1) specific work was "performed by other than employees covered by this Agreement,"[77] (2) job had "been declared unfair" by the union in the locality where the work was to be performed,[78] (3) craftmen of other employers working within the jurisdiction of the union received less favorable terms and conditions of employment than provided by the union contract,[79] and (4) the employer failed to abide by the agreement, which included a clause limiting subcontracting to employers signatory to agreements "with the appropriate union having work and territorial jurisdiction," affiliated with the Building Trades Council.[80]

2. Scope of Exemptions

The limitation of the construction industry proviso to "work to be done at the site of the construction" was construed by the Board in several cases. A clause in a construction industry agreement requiring all materials, supplies, and equipment used on the job to be transported by members of an appropriate craft was held by the Board to be violative of section 8(e), as the clause extended to transporting material to and from the construction site, which was not viewed as on-site work within the permissible limits of the construction industry proviso.[81]

[77] *Sprinklers Fitters Local 709 (A-1 Mechanical Contracting Co.)*, 152 NLRB No. 45.

[78] *Orange Belt District Council of Painters No. 48 (Tri-County Chapter, Painting & Decorating Contractors of America, Inc.)*, 152 NLRB No. 116, Chairman McCulloch and Member Brown for the majority; Member Fanning dissenting in part, for reasons expressed in his dissent to the *Muskegon* case. See *supra*, footnote 76.

[79] *Local 217, Plumbers & Pipefitters, etc. (Carvel Co.)*, 152 NLRB No. 166. Chairman McCulloch and Members Brown and Jenkins for the majority, refusing to distinguish the instant clause from the clause in *Muskegon* because disciplinary immunity was not expressed, found the existence of contractual right not to work as implicitly including freedom from employer discipline. Member Fanning, dissenting in part, viewed the clause as not self-enforcing in that it was silent as to the steps which might be taken to enforce its provisions.

[80] *Los Angeles Building & Construction Trades Council (Quality Builders, Inc.)*, 153 NLRB No. 38. Members Brown and Jenkins for the majority, Member Fanning dissenting in part, for reasons expressed in his dissent to the *Muskegon* case. See *supra*, footnote 76

[81] *Los Angeles Building & Construction Trades Council (Portofino Marina)*, 150 NLRB 1590.

But the failure of a clause restricting subcontracting by employer parties to a master construction contract specifically to limit its coverage to construction site work was found by the Board not to remove the provision from the protection of the first proviso to section 8(e).[82] In so ruling the Board emphasized that "in examining contractual provisions which are alleged to violate section 8(e), it would consider the language used, the nature of the provisions, and the intent of the parties, including their interpretation and administration of the agreement."[83] Upon the basis of evidence that the clause was intended by the parties to apply, and had been applied, only to work performed at the construction site, and that all contractors signatory to the union's master contract performed work only on such jobsite, the Board found the clause to be within the proviso.

In another case, *Carvel Co.*,[84] the Board, although finding a disputed contract clause not protected by the construction industry proviso because of a self-enforcement provision, rejected the General Counsel's contentions that the application of the proviso was banned by (1) failure of the clause specifically to mention the statutory language of "contracting out" or "subcontracting" of unit work, or (2) the fact that the clause might affect persons and employees with whom the signatory employer had no contractual relationship. In the Board's view, "to hold the proviso applicable only where a contract provision copies the statutory language, even though the situation falls squarely within the one contemplated by such language, would . . . sacrifice substance to form." As to the second contention, the Board stated that the applicability "of the proviso does not depend on the precise relationship between [the employer] with whom the union has a contract and other employers and persons on the job . . . who may be affected by the enforcement of the contractual provision." To give the proviso such a limited applicability would, the Board notes, render it of little effect under construction site circumstances.

G. Jurisdictional Disputes

Section 8(b)(4)(D) prohibits a labor organization from engaging in or inducing strike action for the purpose of forcing any employer to assign particular work to "employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of

[82] *Orange Belt District Council of Painters No. 48 (Tri-County Chapter, Painting & Decorating Contractors of America, Inc.)*, 152 NLRB No 116

[83] Citing *Fowler-Kenworthy Electric*, 151 NLRB 770.

[84] *Local 217, Plumbers & Pipefitters, etc. (Carvel Co.)*, 152 NLRB No 166

the Board determining the bargaining representative for employees performing such work."

An unfair labor practice charge under this section, however, must be handled differently from a charge alleging any other type of unfair labor practice. Section 10(k) requires that parties to a jurisdictional dispute be given 10 days, after notice of the filing of the 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 the dispute and make an affirmative assignment of the disputed work.[85]

Section 10(k) further provides that pending 8(b)(4)(D) charges shall be dismissed where the Board's determination of the underlying dispute has been complied with, or the parties have voluntarily adjusted the dispute. An 8(b)(4)(D) complaint issues if the party charged fails to comply with the Board's determination. A complaint may be also be issued by the General Counsel in case recourse to the method agreed upon to adjust the dispute fails to result in an adjustment.

Of interest among the cases decided by the Board under section 10(k) and section 8(b)(4)(D) during the past year are those in which the union's multiple objectives in picketing were in issue as a basis for finding the existence of a jurisdictional dispute, union claims to work assignments based upon their territorial jurisdiction under contracts, and several involving the appropriate scope of the award, particularly in view of the new organization of the National Joint Board for the Settlement of Jurisdictional Disputes.

1. Multiple Objectives

In companion cases involving *Local 25, IBEW*,[86] the respondent union contended no jurisdictional dispute existed because its picketing of a construction site, at which the electrical work was being performed by members of another union, was informational picketing and did not constitute a claim to the work in question. The union had picketed and handbilled the site with signs and leaflets addressed to the public carrying the information that the electricians on the job did not work under wages and conditions established by Local Union 25. Rejecting this assertion, the Board found reasonable cause to believe that the union was claiming the work, and that a jurisdictional dispute existed,

[85] *N L R B. v. Radio & Television Broadcast Engineers Union, Local 1212, IBEW (Columbia Broadcasting System)*, 364 U.S. 573 (1961); Twenty-sixth Annual Report (1961), p. 152.

[86] *Local 25, IBEW (Sarrow-Suburban Electric Co., Inc.)*, 152 NLRB No. 52; *Local 25, IBEW (Emmett Electric Co., Inc.)*, 152 NLRB No 53.

in view of the local's business representative's prior contacts with the general contractor's superintendent at one job site, and the project owner at the other, in the course of which efforts were made to have the work assigned to a subcontractor having a contract with Local 25.[87] The issue of dual objectives was also considered by the Board in *New Orleans Typographical Union No. 17*,[88] where in an unfair labor practice proceeding under section 8(b)(4)(D) for failure to comply with an award of disputed work by the Board, the respondent union contended that its statements and strike had the objective of compelling the employer to arbitrate the dispute, which was subsequently done under a Federal district court order obtained by the union directing the arbitration. In rejecting this defense, the Board noted that "Section 8(b)(4)(D) requires only that the respondent's conduct have 'an object' proscribed by the Act. So even if the respondent's strike was for a further object of compelling Rivas to arbitrate the dispute, the strike was nonetheless unlawful because, as it appears from the record, it was designed to force Rivas to reassign the work." [89]

Contention that a notice of hearing on a jurisdictional dispute determination should be quashed since the union claiming the disputed work on behalf of employees it represented was also willing to represent the employees doing the work, was considered by the Board in *Local 1248, ILA*.[90] Representatives of a unit of stevedore employees demanded that the stevedores be assigned work of handling flexible hoses, used in the loading of liquid cargo aboard ship, instead of the employees of the storage company who were then performing the work. Although contending that the work belonged to the employees it represented under the terms of the contract with employer members of the Maritime Association, the local union also filed a petition with the Board for an election to establish it as representative of the employees

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[87] Chairman McCulloch and Member Brown for the majority. Member Fanning, dissenting, would quash the notice of hearing on the grounds that there was no jurisdictional dispute. He would find that the union's actions were taken in furtherance of its objective in maintaining area standards "to protect its overall bargaining position in the area." In his view the prior conversations relied on by the majority did not constitute a demand for the work, and the validity of the picketing should appropriately be determined under the provisions of sec. 8(b)(4)(B) or sec. 8(b)(7).

[88] *New Orleans Typographical Union No. 17, ITU, AFL–CIO (E. P. Rivas, Inc.)*, 152 NLRB No. 61.

[89] Chairman McCulloch and Members Fanning and Brown for the majority. Member Jenkins, dissenting, was of the view that since at the meeting at which respondent demanded the assignment of work, relied upon by the majority in finding the union's object in picketing, it also demanded that the dispute be arbitrated, there was insufficient evidence to find that the violation had been proven by a preponderance of the testimony taken at the hearing.

Although Chairman McCulloch and Member Fanning would adhere to their dissenting view stated in the Decision and Determination of Dispute of the instant case, 147 NLRB 191, that the disputed work should be assigned to employees represented by the respondent, as there was no majority of the Board favoring a reversal of that award they joined Member Brown in finding that the respondent violated sec 8(b)(4)(ii)(D).

[90] *International Longshoremen's Assn. and Local 1248 (Hampton Roads Maritime Assn)*, 151 NLRB 312. Chairman McCulloch and Member Brown for the majority, Member Jenkins concurring in the result.

of the storage company then performing the disputed work. Finding "no inconsistency in the maintenance of the claim to the disputed work on behalf of the other employees" and a willingness to represent the employees doing the work should they win the election, the Board denied the union's motion to quash the notice of hearing, and upon consideration of the relevant factors awarded the disputed work to the employees of the storage company.

2. Work Jurisdiction Disputes

During the past year, the Board continued to issue "affirmative" work assignment determinations in accordance with the Supreme Court's *Columbia Broadcasting* decision.[91] In two of the disputes resolved by the Board during the year, the respondent union's claim to the work was based upon a contract provision claimed to award it all work of that nature done within a defined geographical area. In *Peabody Coal Company*[92] the contract covered all mining and related work on the coal lands owned or leased by the company. At the time of execution of the contract, the employer held a lease to undeveloped coal lands adjacent to its operations. It surrendered the lease during the term of the contract to the lessor subsidiary corporation which subsequently leased it for development through another mine tipple of the parent company whose employees were represented, under Board certification, by another union. The modification of the leases to switch the coal reserves was found to have been motivated by economic considerations, since the coal was suitable for processing for the market served by coal produced at the second tipple, and could not be economically mined through the tipple operated by UMW members. Also, the second tipple required additional coal reserves to continue to operate whereas the UMW tipple had no such problem. The Board concluded that the contract provision was not of controlling significance under the circumstances in view of the prior instances of such economically motivated transfer of reserves and the fact that the instant transfer was not for the purpose of avoiding the UMW contract. Considering the other factors, including efficiency and economy of operations, and the potential job loss if the transfer could not be made, the Board assigned the disputed work to the employees covered by the certification as the second union. In another case,[93] a longshoremen's union contract covered all longshoremen's work to "the final resting place" of the cargo, and "in and around the yard and

[91] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union, Local 1212, IBEW (Columbia Broadcasting System)*, 364 U.S 573 (1961); Twenty-sixth Annual Report (1961), p. 152.

[92] *UMW, District 12 and Local 1148 UMW (Peabody Coal Co.)*, 151 NLRB 358.

[93] *Local 19, ILA (Marine Assn. of Chicago)*, 151 NLRB 89.

dock." Pursuant to this clause, the longshoremen had handled the work of unloading automobiles and driving them to a storage yard from which employees of the consignee drove them for servicing to a storage area outside the port. When this procedure was changed by the consignees's lease of a yard within the port area for servicing, the longshoremen claimed the work of driving the cars from the point of initial storage to that new service area. In assigning the work to the consignee's employees rather than to employees represented by the longshoremen's local, the Board concluded that the contract did not provide a "clear and unambiguous support" for the longshoremen's claim, since the language did not purport to be operative beyond premises under control of the signatory employers. Concluding that evidence of customary practice was inconclusive, the Board noted that the disputed work was not "characteristic of that traditionally performed by longshoremen." The Board found no basis for the longshoremen's claim on either historical or economic grounds, but rather that the continued assignment of the disputed work to the consignee's employees was supported by the fact that it was integrated with a sequence of operations most efficiently discharged when performed by the same group of employees.[94]

Employer work assignment practices, particularly when incorporated into a contract clause limiting the subcontracting of unit work, were significant factors in two of the work assignment determinations issued by the Board during the year. In *Merck & Co.*,[95] the employer's contract with the union representing employees in its mechanical force, which included job classifications in the building trades craft skills, contained a limitation upon the subcontracting of work "normally performed by bargaining unit employees." Work previously assigned these employees had included the installation of laboratory furniture in renovated buildings and, on occasion, in newly constructed buildings. The disputed work involved the installation of laboratory furniture in a newly constructed building, which the employer, under pressure of threats by a building trades union to withhold employees required on the main construction, had agreed to have performed by building trades unions under a general construction contract. Upon learning of the decision, the incumbent union threatened to strike, claiming the work for its members under the contract. Finding that the work in dispute is the same whether done in connection with a newly constructed building or a renovated one, the Board concluded that "new construction and renovation is not a mean-

[94] Chairman McCulloch and Members Brown and Jenkins for the majority Member Fanning, dissenting, would quash the notice of hearing since in his view the dispute was basically one of contract interpretation inappropriate for resolution by "the extraordinary provisions of Sections 10(k) and 8(b)(4)(D)."

[95] *Oil, Chemical & Atomic Workers Intl. Union, AFL-CIO, and its Local 8-575* (*Merck & Co., Inc.*), 151 NLRB 374.

ingful distinction in this case." In awarding the work to employees of the employer represented by the incumbent union, the Board relied upon the factors that there had been a past practice, albeit mixed, of assigning such work to those employees, both the employer and the incumbent union viewed the contract as covering the work as unit work, and the employer preferred to have the work performed by its own employees, having awarded the work to the building trades unions only under compulsion of the threat of not being able to obtain employees for the main construction.[96]

Past practice under a work division agreement between an employer and two unions concerning the assignment of certain types of telephone work was an important factor in *New York Telephone Company*.[97] Under the agreement the employer was obligated to subcontract, and for many years had subcontracted, cable pulling and the installation of telephone frames on new construction or major alterations of buildings in New York City and two adjacent counties to electrical contractors whose employees were represented by the IBEW, rather than to its own employees. Shortly after the incumbent union was certified as representative of the employer's plant department employees, the employer, for asserted reasons of economy and efficiency, began assigning the work to its own employees, except in Metropolitan New York City where it continued to observe the agreement. The IBEW threatened and engaged in strike action to require the employer to continue the prior practice under the division of work agreement in the adjacent counties also. In assigning the work, in accord with the employer's assignment, to the employees of the employer, the Board relied in part upon the greater efficiency and economy which resulted. It also found that assignment consistent with the Board's certification and with the employer's contract with the incumbent, and not inconsistent with IBEW's contract with the association of contractors. Finding that the prior practice, as continued, was a narrow exception to the employer's general practice of awarding work to its own employees, the Board concluded that it should not be accorded controlling weight.[98]

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[96] Members Brown and Jenkins for the majority. Member Fanning, dissenting, would find no basis for considering the dispute under the provisions of secs 10(k) and 8(b)(4)(D) since, in his view, the finding that the work is within the certified unit and covered by the contract precludes the finding that the incumbent union's effort to obtain the work puts it in violation of sec. 8(b)(4)(D). Since the employer in assigning the work to the building trades union was, in the words of the statute limiting the application of sec. 8(b)(4)(D), "failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work," Member Fanning would quash the notice of hearing

[97] *Local 25, IBEW* (*New York Telephone Co*), 152 NLRB No. 75.

[98] Members Brown and Jenkins for the majority. Member Fanning, dissenting, would find that the past practice, as evidenced by the division of work agreement, is entitled to "controlling significance" and would award the work in question to electricians represented by the IBEW.

3. Scope of Awards

Although in a 10(k) proceeding the Board, in most instances, has before it only a single situation, it frequently has occasion to recognize that the dispute is potentially a recurrent one, and that the effectuation of the purposes of the Act may well justify an order anticipating recurrences of the dispute. Thus, in *Prestress Erectors, Inc.*,[99] the Board had before it a dispute between the ironworkers and carpenters concerning jurisdiction over the installation of precast and prestressed concrete items heavy enough to require power equipment to move into place. Upon determining that the work should be assigned to the employees of the employer represented by the Carpenters, the Board also concluded that "the record before us makes it clear that the dispute between the unions cannot be so narrowly defined, and that, in fact, a dispute between them existed over the erection and installation of precast items in general." The Board, therefore, extended the scope of its determination and its award to cover all disputed work performed by the employer in the two counties in which the major portion of its jobs were located. In another case,[1] in which the Board found that "there is a strong possibility that similar disputes may occur in the future," the Board directed that its determination should extend to all work performed by the employer within the geographic area covered by the agreement between the prevailing union and the association of which the employer was a member.

The agreement of February 1965, entered into by all unions affiliated with the Building and Construction Trades Department, AFL–CIO, and by the Associated General Contractors of America and the Participating Specialty Contractors Employers Associations, establishing a new National Joint Board for the Settlement of Jurisdictional Disputes, was adverted to by the Board in one case as a basis for refusing to extend the award beyond the dispute which gave rise to the proceeding, even though the project was by then completed. The parties to the dispute had obtained a resolution of their dispute from the National Joint Board as it was constituted prior to the February 1965 agreement, but had found the award lacking in clarity. Also it had been rejected by one of the parties on the ground that it did not follow the terms of the agreement. Noting the reconstitution of the Joint Board and the criteria and procedure to be utilized under the new agreement, the Board stated:

> The Board has on numerous occasions asserted its belief in the desirability of voluntary settlement of disputes. This agreement seems to be an important

[99] *Local Union No. 272, Intl Assn of Bridge, Structural & Ornamental Iron Workers, AFL–CIO (Prestress Erectors, Inc.)*, 152 NLRB No. 21.

[1] *Intl. Assn. of Bridge, Structural & Ornamental Iron Workers, Local 3, AFL–CIO (Brayman Construction Co.)*, 151 NLRB 1233.

step in that direction. Because the parties might well be able to resolve recurrences of this dispute before the present Joint Board, we think it desirable at this time not to make the broader award that has been requested.

H. Recognitional or Organizational Picketing

Section 8(b)(7) of the Act makes it an unfair labor practice for a labor organization, in specified situations, to picket or threaten to picket for "an object" of "forcing or requiring" an employer to recognize or bargain with it, or employees to accept it, as the bargaining representative, unless the labor organization is currently certified as the employees' representative. But even a union which has not been certified is barred from such picketing only in three general areas delineated in subparagraphs (A), (B), and (C) of section 8(b)(7).

Recognitional or organizational picketing is prohibited under the three subparagraphs of section 8(b)(7) as follows: (A) Where another union is lawfully recognized by the employer and a question concerning representation may not be appropriately raised under section 9(c); (B) where a valid election has been held within the preceding 12 months; or (C) where no petition for a Board election has been filed "within a reasonable period of time not to exceed 30 days from the commencement of such picketing." This last subparagraph provides further that if a timely petition is filed, the representation proceeding shall be conducted on an expedited basis. However, picketing for informational purposes set forth in the second proviso to subparagraph C [2] is exempted from the prohibition of that subparagraph unless it has the effect of inducing work stoppages by employees of persons doing business with the picketed employer.

The term "lawfully recognized" in section 8(b)(7)(A), which refers to employer-union relationships protected against picketing pressures by that section, was interpreted in *Roman Stone Construction Company* [3] as including "all bargaining relationships immune from attack under sections 8 and 9 of the Act." Found unlawful in that case was a union's picketing of an employer for recognition where the employer and the incumbent union were parties to a subsisting contract, lawful on its face, which would constitute a bar to the filing of a petition for an election among the covered employees. Also, the Board found that the 6-months limitation of section 10(b) would preclude an unfair labor practice proceeding challenging the representative status of the union at the time the current contract was executed, and that under

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[2] The proviso exempts picketing for "the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization. . . ."

[3] *International Hod Carriers' etc., Local 1298* (*Roman Stone Construction Co.*), 153 NLRB No. 58.

established principles the validity of the recognition would not be affected by a loss of majority within the contract term. Under these circumstances, the Board refused to permit the incumbent union's representative status to be placed in issue as a defense to the section 8(b)(7)(A) charges. In its view, to do so "would permit a rival union to accomplish by means of picketing what it could not achieve under established Board procedures" and would offend the policy of promoting "stability in established bargaining relationships" which that section was intended to further.

In another case[4] involving the application of section 8(b)(7)(A), picketing by two unions at a construction project with the object of obtaining contracts covering work being done which their members normally performed was found lawful, notwithstanding the fact that the employer had assigned the work or threatened to assign it to members of a rival union. Finding that the employer's contract with the rival union was not intended to and did not cover the employees performing the disputed work, the Board concluded that the necessary elements for a violation of section 8(b)(7)(A), i.e., the picketing involved is for recognition as representative, and a question concerning representation cannot be raised, had not been established.

During the report year the Board in three cases was concerned with the applicability of section 8(b)(7)(C) to picketing by unions which had previously been recognized by the employers involved. In *Deaton Truck Line*[5] the picketing commenced after the expiration of the bargaining contract and lasted for more than 30 days without the filing of a petition pursuant to section 9(c). At the time most of the employees formerly comprising the unit were no longer working for the employer and there was a basis for doubting the union's majority status, although the employer continued contract negotiations with the union. In dismissing a complaint alleging a violation of section 8(b)(7)(C), the Board followed its decision in *Sullivan Electric*,[6] wherein it held that the words "recognize and bargain" in section 8(b)(7) were not intended to be read as encompassing two separate, unrelated terms but, rather, were intended to proscribe only picketing to obtain initial acceptance of the union as the bargaining representative. Therefore, in view of the prior recognition and recent bargaining between the union and the employer in the *Deaton* case, the union's picketing was found to be lawful economic pressure to compel an agreement to contract demands, and not for the object of obtaining "initial" recognition. In *Whitaker Paper*[7] the Board refused to hold

[4] *Local 106, Carpenters (L. G. Barcus & Sons, Inc.)*, 150 NLRB 1488.

[5] *Local Union No. 612, Teamsters (Deaton Truck Line, Inc.)*, 150 NLRB 514.

[6] *Building & Construction Trades Council of Santa Barbara County (Sullivan Electric Co.)*, 146 NLRB 1086; Twenty-ninth Annual Report (1964), pp. 98–99.

[7] *Warehouse Employees Union, Local 570, Teamsters (Whitaker Paper Co.)*, 149 NLRB 731.

that picketing during an economic strike by a recognized incumbent representative was converted to picketing for a recognition objective, within the meaning of section 8(b)(7)(C), because the employer permanently replaced the striking employees and the union failed to file a petition under section 9(c). Examining legislative history, the Board concluded that section 8(b)(7)(C) proscribes "blackmail picketing," where unions attempt to coerce employer recognition without filing an election petition, but that it does not impair organized employees' right to engage in economic strikes and to picket in furtherance of their demands. In another case,[8] factually similar to *Whitaker*, except that more than 1 year had elapsed from the beginning of the economic strike and the replaced strikers had therefore lost their voting eligibility, the Board, in dismissing the complaint, held this fact to be insufficient to distinguish it from the conclusion reached in *Whitaker* that picketing by a once recognized majority representative whose majority status had been lost through strike replacements was not violative of section 8(b)(7)(C).

I. Remedial Order Provisions

During the report year, the Board was confronted in a number of cases with the task of designing a remedy appropriate to the circumstances presented, and capable of effectuating the policies of the Act. Some of the remedial order issues involved the computations necessary to reimburse employees for income lost or cost incurred due to unfair labor practices, as well as such matters as the unlawful termination or removal of operations by employers.

In one case,[9] the Board ordered the employer to reimburse reinstated unfair labor practice strikers for the difference between their wages prior to the strike under the then 5-day, 40-hour workweek, and the wages they received for a period after reinstatement to a 4-day, 32-hour workweek. The shortened workweek resulted from the employer's expansion of his work force through the retention of strike replacements who continued to perform work which otherwise would have been assigned to the reinstated strikers. Rejecting the employer's contention that the reduced week was not unusual under the company's established practices, the Board concluded that, where the shorter workweek was due to the retention of the replacements, the reinstatement of the strikers did not constitute reinstatement to their "former or substantially equivalent positions." It therefore required

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[8] *Local Lodge 790, Intl. Assn. of Machinists (Frank Wheatley Pump & Valve Manufacturer)*, 150 NLRB 565.

[9] *Mooney Aircraft, Inc.*, 148 NLRB 1057 (Supplemental Decision and Order). Original Decision and Order, 132 NLRB 1194, enforced 310 F. 2d 565 (C.A. 5).

reimbursement of the strikers for the amounts lost due to the shortened week.

Although, since the decision in *Isis Plumbing*[10] and subsequent cases, the Board has included interest on backpay awards made to discriminatees, in *Local 138, IUOE*,[11] the Board, in a supplemental backpay proceeding, directed the calculation of interest on the amounts found owing, even though interest had not been provided for in the original order. The Board concluded that "the same equitable and policies considerations" which led to the inclusion of interest in *Isis Plumbing* made it "similarly fitting and proper even when the original order is silent thereon, to provide for interest on the total net backpay obligation once the amount has been adjudicated." The Board noted that its policy was thus brought into line with the "established practice in suits at law to have monetary judgments carry interest from the date of entry until satisfied." However, recognizing that it was establishing a new rule in the case at hand, the Board directed that the interest accrue only from the date of the trial examiner's supplemental decision, which did not provide for interest.

Two other cases decided during the report period are illustrative of the Board's adaption of its remedy to unusual situations. In *Kirckof Plumbing & Heating*,[12] where the respondent unions were found to have violated the secondary boycott provisions of the Act by inducing and coercing their members to honor an illegal picket line established at a common situs construction site, the Board, in addition to ordering that the union cease and desist from its illegal activities, required the union to void and expunge from its internal records all disciplinary charges made against its members which were viewed as threats made to induce them to honor the illegal picket line.[13] Additional affirmative action was ordered in *Laney Warehouse*,[14] where the employers were found to have violated section 8(a) (5), (3), and (1) of the Act. Although Board orders aimed at remedying such unfair labor practices generally require the posting of appropriate notices in conspicuous places for a period of 60 days, the record in the instant case indicated that many of the respondent employers' employees were either illiterate or semiliterate, and would therefore not be informed by a written notice that the employers were disavowing their illegal actions. Consequently, the Board ordered the employers, in addition to posting,

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[10] *Isis Plumbing & Heating Co*, 138 NLRB 716, reversed on other grounds, 322 F. 2d 913 (C A. 9) See Twenty-eighth Annual Report (1963), pp 77–78.

[11] *Local 138, IUOE (Nassau & Suffolk Contractors Assn, Inc.)*, 151 NLRB 972

[12] *Construction Labor Union No. 405, et al. (Kirckof Plumbing & Heating Co.)*, 149 NLRB 1158.

[13] Letters had been sent to a number of union members advising them of charges against them under the union constitution for having crossed a picket line established by the union.

[14] *Laney & Duke Storage Warehouse Co., Inc, et al*, 151 NLRB 248.

to read the notice to their employees, either singly or collectively, during the period in which posting of the notice was required.

In three cases involving unilateral transfer of plant operations to another location, with the resultant disruption of an established bargaining relationship, the Board adapted its remedial order provisions to the circumstances of the respective cases. In *Standard Handkerchief*,[15] the employer moved its operations to another city without prior notice to or discussion with the union, despite ample opportunity to do so through frequent contacts with union representatives immediately prior to the move. Although concluding that in making the move the employer was motivated by economic considerations, violations of section 8(a)(5) and (1) were found due to his failure to disclose the contemplated move, his failure to bargain concerning the effect of the move upon the employees, and by having engaged in discussions with the union without any purpose of reaching an agreement. Finding that informal contacts with its employees informing them of the availability of work at the new plant did not constitute valid offers of reinstatement, the Board's order provided that the employer could have the option of returning to his former location and rehiring the employees, or of reinstating his old employees at the new place of business, discharging any new hires to make room for the old employees, and creating a preferential hiring list of those employees for whom no positions were then available at the new plant. The order provided for backpay until the employees were reinstated or obtained equivalent employment elsewhere but did not provide for bargaining with the union except in the event of return to the old plant. In *Spun-Jee*,[16] the Board found that the employer's attempted withdrawal from a multiemployer bargaining association during the time negotiations were proceeding between the association and the union was untimely, and his failure to accept and be bound by the results of the negotiations was a violation of section 8(a)(5) and (1). It also held that his failure to notify the union of his intent to subcontract and transfer the operations, which in fact took place after the union's refusal to grant his request for a 1-year extension of the current contract, was in violation of section 8(a)(5) and (1), even though done for economic reasons. The Board noted that "the nature of the violation might justify us in directing Respondents to resume their New York operations," and the assumption of bargaining obligations at that location, but that since the "remedy should also be tempered by practical considerations," in view of the economic aspects of the situation "we are of the opinon that to require such reestablishment is not essential to the molding of a meaningful remedy suited to the needs

[15] 151 NLRB No. 15.
[16] 152 NLRB No. 96.

of the situation before us." The employer was, however, directed to bargain with the union concerning the possible resumption of the subcontracted and removed operations and, in the absence of agreement, concerning the effects of their discontinuance upon the employees. The order also required the employer to offer all of the terminated employees equivalent employment at the new location with a preferential hiring list if no positions were available, and provided for backpay to the former employees until such time as the bargaining obligation had been fulfilled or reinstatement was effected. The employer, however, was not required to adhere to the association agreement finally reached or bargain in an associationwide unit but was ordered to bargain in a unit comprising its own employees.

In *Garwin Corp.*,[17] the third case, however, which the Board described as the "traditional runaway shop situation" since the plant was moved to a distant city to avoid dealing with the union, the Board reexamined its remedial policy for such situations and designed one which, in its view, more effectively accomplished the objectives of the statute. The Board stated:

> . . . in cases where an employer relocates a plant at a distant site in order to avoid statutory bargaining obligations, the Board has not imposed an obligation to bargain at the new location until the statutory representative could reestablish its representative status at the new location. We are now persuaded, however, that an effective bargaining order at the runaway facility should be issued if the purposes of the Act are to be served in this type of case. The fact that discriminatees will probably not accept reinstatement at the Florida plant, coupled with the continuing coercive effects of Respondents' unfair labor practices, renders it highly probable that issuance of a conditional bargaining order will enable Respondents to achieve their primary illegal objective, i.e., to escape bargaining. In the circumstances, the interests of newly hired employees whose very jobs, and hence statutory protection, exist by virtue of: (1) Respondents' unfair labor practices, (2) the Board's unwillingness to order the return of the plant to its original location, and (3) the failure of discriminatees to displace them by accepting reinstatement, should not be preferred at the expense of a bargaining order which will dissipate and remove the consequences of a deliberate violation of statutory obligations. On balance, therefore, their interests must yield to the statutory objective of fashioning a meaningful remedy for the unfair labor practices found.
>
> For the foregoing reasons, we shall . . . require Respondents to recognize and bargain with the Union, on request, wherever Respondents ultimately decided to locate.

Under this order the employer was obligated to bargain with the union as representative of its employees and, if agreement was reached, execute a contract. As noted above, the Board recognized that in the event the employer elected to remain at the new location and bargain with the union as representative of the new hires their freedom of choice would be to some degree limited. It therefore sought to give

[17] *Garwin Corp.; S'Agaro, Inc , et al.,* 153 NLRB No 59.

effect to the "continuing interest in both terms and conditions of employment and effective representation for collective-bargaining purposes" of those new hires. It did so by providing for a minor relaxation of the Board's normal contract-bar rules to provide the employees "an opportunity to observe and thereafter determine whether they wished continued representation by the union." Accordingly, the Board provided that if upon compliance with its order the union can reestablish its majority at the new location, the normal contract-bar rules would apply. However, should the union be unable to reestablish its majority, any collective-bargaining agreement resulting from bargaining in accordance with the Board's order would be deemed a bar to a timely petition for a period of only 1 year from the date of execution of any such contract.

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VII

Supreme Court Rulings

During fiscal year 1965, the Supreme Court decided seven cases in which the Board was directly involved. Two cases involved the question whether the contracting-out of work is a mandatory subject of bargaining. Two others dealt with the problems posed by bargaining lockouts. Another concerned the legality of a plant shutdown motivated by antiunion considerations. Another involved the construction of section 9(c)(5) of the Act which states that the Board may not regard the extent to which a union has organized as controlling in determining appropriate bargaining units. The final case presented the question whether an employer was privileged to discharge employees he knows are engaged in protected activity under an honest but mistaken belief that they have engaged in misconduct. The Board was upheld on the merits in two of the cases and reversed in two. In the other three cases, adverse court of appeals decisions were overturned and remanded for further proceedings.[1]

1. Contracting-Out as a Mandatory Subject of Bargaining

In *Fibreboard*,[2] the company, when the collective-bargaining agreement with the union representing its employees expired, contracted out its maintenance work for economic reasons without first bargaining with the union; the maintenance work continued to be performed in the plant with employees of the independent contractor instead of the company's employees, who were discharged. The Board found that the company violated section 8(a)(5) of the Act by contracting out the maintenance work without first bargaining with the union about that decision, and entered an order requiring the company to reinstate the old operation, to reinstate the former employees with backpay, and to fulfill its bargaining obligation. The Supreme Court [3] sustained the Board's decision and enforced its order in full.

The Court held that the type of contracting involved in the case—"the replacement of employees in the existing unit with those of an independent contractor to do the same work under similar conditions

[1] This includes the three *Metropolitan Life Insurance Co.* cases, *infra*, p. 122, which are treated as one proceeding: *Darlington*, *infra*, p. 121 and *Adams Dairy*, *infra*, p. 119

[2] *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, 379 U.S. 203, affirming 322 F. 2d 411 (C.A D C.), enforcing 138 NLRB 550.

[3] Chief Justice Warren wrote the opinion for the Court. Justice Stewart, joined by Justices Douglas and Harlan, filed a separate concurring opinion.

of employment"—was a mandatory subject of collective bargaining under section 8(a)(5) and 8(d) of the Act. The Court pointed out that the contracting-out of work performed by the members of the bargaining unit, and the termination in employment which necessarily results therefrom, were "well within the literal meaning of the phrase 'terms and conditions of employment' " as used in section 8(d) of the Act, and that to hold that contracting-out is a mandatory subject of collective bargaining promotes "the fundamental purpose of the Act by bringing a problem of vital concern to labor and management within the framework established by Congress as most conducive to industrial peace" (379 U.S. at 210–211). The Court added (*id.*, at 213):

> The facts of the present case illustrate the propriety of submitting the dispute to collective negotiation. The Company's decision to contract out the maintenance work did not alter the Company's basic operation. The maintenance work still had to be performed in the plant. No capital investment was contemplated; the Company merely replaced existing employees with those of an independent contractor to do the same work under similar conditions of employment. . . .

Respecting the order, the Court held that the Board, upon finding that the Company had refused to bargain about a mandatory subject of collective bargaining, was empowered to require the resumption of maintenance operations and reinstatement of the displaced employees with backpay. The Court stated (379 U.S. at 216):

> There has been no showing that the Board's order restoring the *status quo ante* to insure meaningful bargaining is not well designed to promote the policies of the Act. Nor is there evidence which would justify disturbing the Board's conclusion that the order would not impose an undue or unfair burden on the Company.[4]

2. Bargaining Lockouts

In *American Ship Building*[5] the Supreme Court[6] held that an employer in a single bargaining unit violates neither section 8(a)(1) nor section 8(a)(3) of the Act "when, after a bargaining impasse has been reached, he temporarily shuts down his plant and lays off his employees for the sole purpose of bringing economic pressure to bear in support of his legitimate bargaining position" (380 U.S. at 318).[7]

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[4] After its decision in *Fibreboard*, the Supreme Court vacated the judgment in *N.L.R.B. v. Adams Dairy, Inc.*, 322 F. 2d 553 (C.A. 8), involving a similar contracting-out issue, and remanded that case to the Eighth Circuit for reconsideration in the light of *Fibreboard* (379 U S. 644). On September 8, 1965, the Eighth Circuit reaffirmed its original decision (350 F. 2d 108).

[5] *American Ship Building Co.* v. *N.L.R.B.*, 380 U S. 300, reversing 331 F. 2d 839 (C.A D.C.), enforcing 142 NLRB 1362.

[6] Justice Stewart wrote the opinion for the Court. Justice Goldberg wrote a concurring opinion, in which Chief Justice Warren joined. Justice White wrote a separate concurring opinion.

[7] However, the Court added, "we intimate no view whatever as to the consequences which would follow had the employer replaced his employees with permanent replacements or even temporary help." (380 U S. at 308, footnote 8)

The Court thus rejected the Board's view that only defensive lockouts, such as those to preserve the integrity of a multiemployer bargaining unit in the face of a whipsaw strike or to prevent unusual economic hardship caused by a strike,[8] are lawful.

Rejecting the contention that the bargaining lockout violated section 8(a)(1), the Court concluded that such a lockout is not "inconsistent with the employees' rights to bargain collectively," for the employer's intention is not "to destroy or frustrate the process of collective bargaining" but only "to resist the demands made of him in the negotiations and to secure modification of these demands." Moreover, "there is not indication, either as a general matter or in this specific case, that the lockout will necessarily destroy the unions' capacity and responsible representation." Nor, in the Court's view, did the bargaining lockout interfere with the right to strike, for nothing in the statute implies that the right to strike " 'carries with it' the right exclusively to determine the timing and duration of all work stoppages." (380 U.S. at 308–310) Respecting the contention that there was a violation of section 8(a)(3), the Court held that "this lockout does not fall into that category of cases arising under section 8(a)(3) in which the Board may truncate its inquiry into employer motivation." For "the purpose and effect of the lockout were only to bring pressure upon the union to modify its demands. Similarly, it does not appear that the natural tendency of the lockout is severely to discourage union membership while serving no significant employer interest" (380 U.S. at 312).

In *Brown*,[9] a companion case to *American Ship Building*, the Supreme Court,[10] again rejecting the Board's view, held that it was not an unfair labor practice for the nonstruck members of a multiemployer bargaining unit, after having locked out their employees in response to a whipsaw strike against one of the members of the unit, to resume operations with temporary replacements for their regular employees.[11] The Court concluded that, in the situation presented where the struck employer was operating with temporary replacements, "the continued operations of respondents and their use of temporary replacements [no] more imply hostile motivation, nod [is it] inherently more destructive of employee rights, than is the lockout itself. Rather, the compelling inference is that this was all part and parcel of respond-

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[8] See *N.L.R.B.* v. *Truck Drivers Local 449*, 353 U.S. 87; *Betts Cadillac Olds*, 96 NLRB 268.

[9] *N L.R.B.* v. *Brown et al., d/b/a Brown Food Store, et al.*, 380 U.S. 278, affirming 319 F. 2d 7 (C.A. 10), denying enforcement of 137 NLRB 73.

[10] Justice Brennan wrote the opinion for the Court Justice Goldberg wrote a concurring opinion, in which Chief Justice Warren joined. Justice White dissented.

[11] The Court noted that it was not deciding whether the nonstruck employers might permanently replace their employees if the struck member exercised his right permanently to replace strikers.

ents' defensive measure to preserve the multiemployer group in the face of the whipsaw strike" (380 U.S. at 284).[12]

3. Shutdowns Motivated by Antiunion Considerations

In *Darlington*[13] the basic issue was whether an employer owning several plants violates section 8(a)(3) of the Act when he permanently closes down one of his plants for antiunion reasons.[14] The Supreme Court held that it was not an unfair labor practice for a single employer to go completely out of business, even if such was prompted by a desire to avoid unionism. "The closing of an entire business, even though discriminatory, ends the employer-employee relationship; the force of such a closing is entirely spent as to that business when termination of the enterprise takes place" (380 U.S. at 274). But, the Court added, "a discriminatory partial closing may have repercussions on what remains of the business, affording employer leverage for discouraging the free exercise of section 7 rights among remaining employees of much the same kind as that found to exist in the 'runaway shop' and 'temporary closing' cases"[15] (*id.*, at 274–275). Accordingly, the Court concluded that "a partial closing is an unfair labor practice under section 8(a)(3) if motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may reasonably have foreseen that such closing would likely have that effect" (*id.*, at 275).

Defining the test more specifically, the Court stated (380 U.S. at 275–276):

> If the persons exercising control over a plant that is being closed for antiunion reasons (1) have an interest in another business, whether or not affiliated with or engaged in the same line of commercial activity as the closed plant, of sufficient substantially to give promise of their reaping a benefit from the discouragement of unionization in that business; (2) act to close their plant with the purpose of producing such a result; and (3) occupy a relationship to the other business which makes it realistically foreseeable that its employees will fear that such business will also be closed down if they persist in organizational activities, we think that an unfair labor practice has been made out.

Concluding that "the Board's findings as to the purpose and foreseeable effect of the Darlington closing pertained *only* to its impact

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[12] In *N.L R.B.* v. *Truck Drivers Local 449, IBT,* 353 U.S. 87, the "Buffalo Linen" case, the Supreme Court had sustained the Board's ruling that it was not unlawful for the nonstruck members of a multiemployer unit to temporarily lay off their employees in response to a strike against one of the members of the unit, for such strike threatened the integrity of the unit.

[13] *Textile Workers Union* v. *Darlington Mfg. Co.,* 380 U.S. 263, reversing and remanding 325 F. 2d 682 (C.A. 4), setting aside 139 NLRB 241.

[14] The Board had found that the Darlington mill, which was closed, was 1 of 27 textile mills owned and controlled by Deering Milliken & Co and the Milliken family.

[15] See *N L.R.B.* v. *Preston Feed Corp.,* 309 F. 2d 346 (C.A. 4) ; *N.L R.B.* v. *Norma Mining Corp,* 206 F. 2d 38 (C.A. 4).

on the Darlington employees" (380 U.S. at 276), the Court remanded the case to the Board for further proceedings consistent with its opinion.

4. Discharges for Alleged Misconduct While Engaged in Protected Concerted Activities

In *Burnup & Sims*,[16] the Supreme Court upheld the Board's view that it is a violation of section 8(a)(1) of the Act for an employer to discharge an employee he knows is engaged in protected activity, even though he was motivated by a good-faith but mistaken belief that the employee was guilty of misconduct during the course of that activity. The Court pointed out that union activity "often engenders strong emotions and gives rise to active rumors." Accordingly, "protected activity [would] acquire a precarious status if innocent employees can be discharged while engaging in it, even though the employer acts in good faith" (379 U.S. at 23).

5. Bargaining Units in the Insurance Industry

In a series of representation cases involving the Metropolitan Life Insurance Company, the Board had certified as appropriate bargaining units for the Company's insurance agents both single district offices and various geographic groupings of district offices. The company challenged these unit determinations on the ground that the Board was controlled by the extent of organization contrary to section 9(c)(5) of the Act.[17] The First Circuit accepted this contention, but it was rejected by the Third and Sixth Circuits.[18] While the Supreme Court declined to settle the issue with finality at this time, it did note that "both the language and legislative history of section 9(c)(5) demonstrate that the provision was not intended to prohibit the Board from considering the extent of organization as one factor, though not the controlling factor, in its unit determination." However, the Court concluded that, "due to the Board's lack of articulated reasons for the decisions in and distinctions among" the cases establishing bargaining units for insurance agents, the Board's action could not properly be reviewed. Accordingly, it vacated the judgments of the courts of appeals, and remanded the cases to the Board for further proceedings.[19]

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[16] *N L.R B* v *Burnup & Sims, Inc*, 379 U S 21, reversing 322 F 2d 57 (C A 5), denying enforcement of 137 NLRB 766.

[17] Sec 9(c)(5) provides that, in determining whether a unit is appropriate for bargaining purposes, "the extent to which the employees have organized shall not be controlling"

[18] *Metropolitan Life Insurance Co.* v. *N.L R.B.*, 327 F. 2d 906 (C.A. 1), denying enforcement of 142 NLRB 491; *Metropolitan Life Insurance Co.* v. *N.L.R B.*, 328 F. 2d 820 (C.A 3), enforcing 141 NLRB 337; *Metropolitan Life Insurance Co.* v. *N.L.R.B.*, 330 F. 2d 62 (C.A. 6), enforcing 141 NLRB 1074.

[19] *N.L R B.* v. *Metropolitan Life Insurance Co.*, 380 U.S. 438, vacating and remanding 327 F. 2d 906 (C.A. 1). See also 380 U.S 523, 525

6. The Cases in Which the Board Participated as *Amicus Curiae*

(a) The *Pennington* and *Jewel Tea* cases.[20] Both of these cases dealt with the extent to which collective-bargaining agreements are subject to regulation under the antitrust laws. In *Pennington*, it was alleged that the United Mine Workers had conspired with the large coal operators to force the smaller operators out of business by, *inter alia*, agreeing that the same wage scale paid by the larger operators would be sought from the smaller operators, irrespective of their ability to meet it. The Supreme Court [21] rejected the contention that, since the agreement related to wages, a subject of mandatory bargaining under the National Labor Relations Act, the agreement and the negotiations involving it were automatically exempt from the Sherman Act under section 20 of the Clayton and section 4 of the Norris LaGuardia Acts. The Court recognized that it is "beyond question that a union may conclude a wage agreement with [a] multi-employer bargaining unit without violating the antitrust laws and that it may as a matter of its own policy, and not by agreement with all or part of the employers of that unit, seek the same wages from other employers," even though such a policy would disadvantage those employers (381 U.S. at 664). But, the Court concluded, "we think a union forfeits its exemption from the antitrust laws when it is clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units" (*id.*, at 665). The Court reversed the judgment which had been entered against the union on other grounds, and remanded the case for further proceedings in accordance with its opinion.

In *Jewel Tea*, the company, a retail foodstore, claimed that the Meat Cutters Union had violated the Sherman Act by negotiating agreements with it and other foodstores which provided that meat could not be sold before 9 a.m. or after 6 p.m. The Court [22] accepted the district court's findings that there was no evidence of a union-employer conspiracy against Jewel and that night operations were not possible without night employment of butchers or an impairment of the butchers' jurisdiction. In these circumstances, the Court concluded that "the marketing-hours restriction, like wages, and unlike prices, is

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[20] *United Mine Workers* v. *Pennington*, 381 U S. 657, and *Local Union No. 189, Amalgamated Meat Cutters* v *Jewel Tea Co.*, 381 U.S. 676.

[21] The opinion for the Court was written by Justice White Justice Douglas wrote a concurring opinion in which Justices Black and Clark joined. Justice Goldberg, joined by Justices Harlan and Stewart, dissented from the Court's opinion but concurred in the reversal of the judgment.

[22] The opinion for the Court was written by Justice White. Justice Goldberg wrote a concurring opinion, in which Justices Harlan and Stewart joined. Justice Douglas, joined by Justices Black and Clark, dissented.

so intimately related to wages, hours and working conditions that the unions' successful attempt to obtain that provision through bona fide, arm's-length bargaining in pursuit of their own labor union policies, and not at the behest of or in combination with nonlabor groups, falls within the protection of the national labor policy and is therefore exempt from the Sherman Act" (381 U.S. at 689–690).

(b) The *Radio & Television Broadcast Technicians* case.[23] In this case the Supreme Court reversed an injunction issued by the Alabama court against peaceful picketing and solicitation of advertisers designed to induce them to cease doing business with radio station WSIM, with whom the union had its primary dispute. The Alabama court had taken jurisdiction on the ground that WSIM, viewed as a separate entity, failed to meet the Board's jurisdictional standards. The Supreme Court held that "several nominally separate business entities" are considered a single employer for the purposes of the National Labor Relations Act "where they comprise an integrated enterprise"; that the evidence in the record showed that, under the Board's criteria, WSIM was part of an integrated enterprise over which the Board had jurisdiction; and that, therefore, under the preemption principles of *Garmon*,[24] the State court lacked jurisdiction.

[23] *Radio & Television Broadcast Technicians Local Union 1264* v. *Broadcast Service of Mobile*, 380 U.S. 255.

[24] *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236.

VIII
Enforcement Litigation

Board orders in unfair labor practice proceedings were reviewed by the courts of appeals in 212 enforcement cases during fiscal 1965.[1] Some of the more important issues decided by the respective courts are discussed in this chapter.

A. Board Jurisdiction

The Board's exercise of jurisdiction over State-chartered nonprofit electric membership corporations was sustained by the Fourth Circuit in *Randolph Electric Membership Corp.*[2] In affirming the Board's rejection of the contention that the corporations, having been formed under a special State statute, were therefore "political subdivisions" exempt from the reach of the Act, the court noted that, as the legislative history was silent as to the purpose of Congress in using those words, the "congressional purpose in enacting the national labor laws" should guide the construction of the statute. The court stated that "it is clear that state law is not controlling and that it is to the actual operations and characteristics [of the corporations] that we must look in deciding whether there is sufficient support in the Board's conclusion . . . ." Although the State legislature had declared, and several State attorneys general had ruled, that corporations such as the respondent were "political subdivisions," the court found that title "is not decisive of the question before us, since their relation to the state and their actual methods of operation do not fit the label given them." In the court's view, the Board's findings that the corporations were not subject to substantial control or supervision by the State statute in question, were formed for the exclusive benefit of their own members, did not have the power of eminent domain, and were not empowered to exercise any portion of the State's sovereign power, amply supported the Board's conclusion.

In another case[3] in which the Board's jurisdiction turned upon the construction of the statutory terms "labor organization" and "employees" the District of Columbia Circuit enforced the Board's exer-

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[1] Results of enforcement litigation are summarized in table 19 of appendix A.

[2] *N.L.R.B.* v. *Randolph Electric Membership Corp.*, 343 F. 2d 60 (C.A. 4).

[3] *International Organization of Masters, Mates & Pilots of America, Inc., et al.* v. *N.L.R.B.* (*Chicago Calumet Stevedoring*), 351 F. 2d 771 (C.A.D.C.).

cise of jurisdiction over a union whose membership was comprised almost entirely of supervisory maritime personnel and pilots. The Board, upon proceedings pursuant to remand, had found the International Union to be a "labor organization" because, in its view, the participation in the union as members of a small number of conceded "employees" was not lacking in substance or meaning, and their numerical proportion was not insubstantial in relation to the total membership of the International. Approving these findings, the court rejected the argument that the union picketing activity was not prohibited because engaged in on behalf of the nonemployee members of the International, noting that "[n]either the language nor the legislative history of section 8(b)(4)(A) warrants reading in a requirement that a 'labor organization' must act on behalf of 'employee' members in order to violate the ban on secondary boycotts." The Board's further finding that a local union with no employee members which acted as an "agent" of the International in picketing was also liable for the violations of the Act, was likewise affirmed by the court.

The construction of statutory terms was also determinative in a Second Circuit decision[4] sustaining the jurisdictional basis for a Board order directing an international union to bargain with its business agents as "employees." The business agents were appointed by the president of the union and their duties, while diverse, principally involved communications between rank-and-file union members in the shops, and the employers of those members, including negotiations leading to the setting of rates for different types of operations, and the handling of grievances prior to arbitration. Considering the intent of Congress and the interrelation between the definitions of "employee" in section 2(3) of the Act and "supervisor" in section 2(11), the court rejected the contention "that the business agents are supervisors by virtue of their relationship to the rank and file union members." Similarily rejected was the union's assertion that the business agents were "managerial employees" excepted from a bargaining unit under Board policy excluding "those who formulate, determine and effectuate an employer's policies."[5] Noting that "[in] the absence of conflicting statutory command, the Board has broad powers to determine the exercise of its jurisdiction," the court approved the Board's "managerial employee" policy, and its determination that the business agents were not such employees since, although their task "is one that requires considerable skill and judgment, . . . they are more concerned with the day-to-day routine of industrial organization, following policy rather than establishing it."

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[4] *International Ladies Garment Workers Union* v. *N L R.B.*, 339 F. 2d 116 (C.A. 2).
[5] *American Federation of Labor, etc.*, 120 NLRB 969, 973.

B. Board Procedure

1. Change in Unit Composition Through Ruling on Challenged Ballots

It has been clearly established that the Board's power to determine the composition of a unit appropriate for bargaining purposes is entitled to acceptance in appellate court review unless found to be arbitrary and capricious.[6] In *International Ladies Garment Workers*,[7] however, the Second Circuit held that the Board in ruling upon challenged ballots could not, without affording the parties an opportunity to be heard upon the issue, narrow the unit which the Board had defined as appropriate in its direction of election even though the Board could have originally determined that the narrow unit was appropriate. The Board had sustained challenges to the ballots of certain voters for reasons other than those advanced by the union in its challenges. Finding that the employer was prejudiced by the Board action in sustaining the challenges without the employer having been informed and accorded opportunity to present argument concerning the additional grounds, the court noted that the effect of the ruling that the challenged employees were "not in the unit" resulted in narrowing the unit after the election. Although the Board had excluded the ballots upon the basis of its construction of the initial unit determination, the court viewed the Board's action as an assertion of "the power to change the boundaries of a unit after an election." The proceeding was therefore remanded to the Board for further consideration of the objections and challenges.

2. Production of Witnesses' Statements in Board Proceedings

In two cases decided during the report year, the Ninth Circuit reviewed Board decisions concerning the availability to the employer of statements of witnesses in the possession of the Government, and also considered the related issue of the applicability of rule 34 of the Federal Rules of Civil Procedure to a Board proceeding. In *Harvey Aluminum*[8] the respondent had obtained *subpoenas duces tecum* addressed to the Secretary of Labor and to the Attorney General calling for statements given their representatives by a witness who had testified on behalf of the Board in a Board proceeding. The subpenas were subsequently revoked and the statements were not made available. The court noted the Board's view that section 102.118 of its Rules and

[6] *N L R B. v. A. J. Tower Co.*, 329 U.S 324

[7] *International Ladies Garment Workers Union* v. *N L R.B*, *supra*.

[8] *Harvey Aluminum Company (Inc) et al.* v. *N L.R B.*, 335 F. 2d 749 (C.A. 9).

Regulations [9] require production of only those witnesses' statements in the possession of the Board, and that the regulation thereby implemented the *Jencks* decision,[10] "so far as practicable," as required by section 10(b) of the Act, since the Board has no power to compel other Federal agencies or departments to produce documents from their files. To the court, the *Jencks* rule requirement that prior statements of a witness relating to his testimony must be produced by the "government," "applies with equal vigor whether the statements are in the possession of the agency conducting the hearing or of another agency of the government." Although recognizing that under its ruling "the Board's efforts to enforce the Act may be hampered," in instances where it is unable to obtain copies of statements in the possession of other agencies, the court viewed it "less defensible still" to permit the Board "to have the benefit of the testimony while denying the opposing party access to statements of the witness in possession of the government by which the testimony might be impeached."

The limiting scope of Board regulation 102.118 was also considered by the Ninth Circuit in *General Engineering* [11] upon review of a proceeding in which subpenas to Board employees had been quashed upon the ground that the General Counsel had refused to consent to their testifying. The court reasoned that the provision of section 10(b) of the statute that any unfair labor practice proceedings should "so far as practicable" be conducted in accordance with the rules of evidence applicable in the district courts of the United States, was "intended to authorize the Board to depart from rules of evidence applicable in the federal district courts to the extent that this is necessary because of the peculiar characteristics of administrative hearings." It also stated, however, that "no special characteristics of an administrative hearing justify the exclusion of evidence or the revocation of subpenas which it would be error to exclude or revoke in a federal district court trial." The court concluded that the Board's "housekeeping rule" [12] cannot be invoked to exclude evidence "which was not shown to be of a kind which would be inadmissible under the general rules of evidence, such as evidence which is irrelevant or immaterial, or is privileged under some express statutory provision

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[9] Sec 102.118 of the Board's Rules and Regulations, Series 8, as amended, prohibits Board employees from producing or testifying concerning the content of any material in the Board file without consent of the Board or General Counsel providing, however, that any statements of witnesses testifying on behalf of the General Counsel shall be produced for the purpose of cross-examination.

[10] *Jencks* v. *U.S.*, 353 U S. 657 (1957).

[11] *General Engineering, Inc. & Harvey Aluminum* v. *N.L.R.B.*, 341 F. 2d 367 (C A. 9).

[12] Sec. 102.118 prohibits Board employees from producing evidentiary matter and testifying in regard thereto without the written consent of the General Counsel if the official or document is subject to the supervision or control of the General Counsel.

or under some rule of evidence cognizable in the federal district courts, such privilege being claimed, or which was not shown to have been sought pursuant to subpenas which were irregularly issued, oppressive in scope, or by reason of some other circumstance, subject to revocation under federal district court procedure." Any motions to revoke subpenas to the Board agents were to be handled in the same manner as provided for in rule 34 of the Federal Rules of Civil Procedure.

3. *Bernel Foam* Approved

During the report year the procedural rule established by the Board in *Bernel Foam Products*,[13] that a majority union which chooses to participate in an election with knowledge of an employer's unlawful refusal to extend recognition and bargain, and thereafter loses the election because of the employer's preelection misconduct, is not precluded from filing refusal-to-bargain charges, was approved by courts of appeals of three circuits. The District of Columbia [14] and Eighth Circuit Courts of Appeals [15] each rejected challenges to the *Bernel Foam* rule; the latter court concluded that "the Board's decision . . . comes within the scope of the statutory power granted it by Congress." In one case,[16] the Second Circuit approved, without comment, the *Bernel Foam* rule. However, the same court in *N.L.R.B.* v. *Flomatic Corp.*[17] indicated that in order to invoke the *Bernel Foam* rule the employer's preelection misconduct must be more "minimal" and not merely what may be "at most a moderate unbalancing of an election by an employer." Although it recognized that the *Bernel Foam* rule was "within the scope of the Board's statutory power" and "rationally supported," the court noted that:

> . . . the effect, on future similar cases, of the application of Bernel Foam in conjunction with an affirmative order to bargain should be contemplated. Hereafter, even though there is only a very slight basis for doing so, a union will take care to raise an unfair labor practice charge along with petitioning for an election. If the union should win the election, all would be well. If it lost, it would then press the unfair labor practice charge, and, following its decision in this case, the Board would be empowered to order bargaining even if the violation were minimal. Thus the union could become the exclusive bargaining agent regardless of whether it prevailed in the secret election. In cases of this kind the granting of such an advantage to the union would create an unwarranted limitation on the employees' freedom of choice.

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[13] *Bernel Foam Products Co., Inc.*, 146 NLRB 1277 ; Twenty-ninth Annual Report (1964), pp. 38–39.

[14] *IUE* v. *N.L.R B.*, *N.L.R.B.* v. *S.N.C. Manufacturing Co., Inc.*, 352 F. 2d 361 (C.A.D.C.), certiorari denied 382 U.S. 902.

[15] *The Colson Corp.* v. *N.L.R.B.*, 347 F. 2d 128 (C.A. 8), certiorari denied 382 U S. 904.

[16] *Amalgamated Clothing Workers of America* v. *N.L.R.B.*, *N.L.R.B.* v. *Edro Corp. and Anasco Gloves, Inc.*, 345 F. 2d 264 (C.A. 2).

[17] 347 F. 2d 74 (C.A. 2).

C. Employer Interference With Section 7 Rights

Courts of appeals decisions issued in the course of fiscal year 1965 included a number of significance concerning employer actions viewed by the Board as constituting interference with employees' rights protected by section 7 of the Act. Of particular interest among these were decisions involving employer attempts to obtain copies of statements given to Board agents by employees, employer enforcement of contract provisions limiting the distribution of literature, and the discharge of employees for participation in protected activity.

1. Request for Employee Statements Given Board Agents

In *Texas Industries* [18] the Fifth Circuit affirmed the Board's finding that the company violated section 8(a)(1) of the statute by questioning employees about the content of statements given Board agents and by demanding copies of these statements from the employees. The court approved the test applied by the Board,[19] which recognized the "delicate balance between the legitimate interest of the employer in preparing its case for trial, and the interest of the employee in being free from unwarranted interrogation," and that accommodation of these interests requires that the scope and manner of permissible questioning be strictly confined to the necessity of trial preparation. In explaining the basis for its ruling, applied in the circumstances of the case where the employer had received a copy of the complaint prior to interrogation of the employee, the court stated:

> It would seem axiomatic that if an employee knows his statements to Board agents will be freely discoverable by his employer, he will be less candid in his disclosures. The employee will be understandably reluctant to reveal information prejudicial to his employer when the employer can easily find out that he has done so. No employee will want to risk forfeiting the goodwill of his superiors, thereby lessening his job security and promotion opportunities. It is no answer to say that the employee is free to refuse to furnish his employer with a copy of his statement. A refusal under such circumstances would be tantamount to an admission that the statement contained matter which the employee wished to conceal from the employer. In order to assure vindication of employee rights under the Act, it is essential that the Board be able to conduct effective investigations and secure supporting statements from employees. We feel that preserving the confidentiality of employee statements is conducive to this end.

In two cases involving factually similar situations the Sixth Circuit also sustained Board findings that employers violated the Act by their questioning of employees concerning the contents of statements given Board agents. In *Surprenant Manufacturing Company* [20] the court, applying the same rule, stated, "In our opinion, the questions seeking

[18] *Texas Industries, Inc.* v. *N.L.R.B.*, 336 F 2d 128.

[19] See *Joy Silk Mills* v. *N.L.R.B* , 185 F. 2d 732 (C.A.D.C.).

[20] *Surprenant Mfg. Co.* v. *N.L R.B.*, 341 F. 2d 756 (C.A. 6).

to elicit all information given by the employee to an agent of the Board were indiscriminate inquiry which exceeded the necessities of the situation, and constituted a violation of section 8(a) (1) of the Act." The court likewise affirmed the Board's finding of a violation in *Winn-Dixie Stores*,[21] where respondents were found to have violated the Act "by requesting from employees copies of statements given to agents of the Board." In that case the requests were made against a background of interrogation and threats of reprisals also held to have violated section 8(a)(1). However, the Seventh Circuit denied enforcement of a Board order similarly finding a violation of the statute in the requests to employees by the employer's store manager that copies of statements given the Board agent be mailed directly to respondent's counsel.[22] The employees were informed that it was entirely up to them as to whether they did provide the requested copies of affidavits. In the court's view, it was "apparent that no coercion was involved or resulted from the request of copies of the affidavits." Finding that employer's counsel was following a procedure apparently approved in a prior Board decision,[23] the courts distinguished the *Texas Industries* case, *supra*, on the grounds that in that case there "was no element of counsel, in good faith, following the ground rules laid down by the Board."

2. Limitation on Employee Solicitation

The legality of contract provisions prohibiting employee distribution of literature on company premises was in issue in three circuit court decisions issued during the past year. In *Gale Products*,[24] the Seventh Circuit reversed the Board's finding that the employer had violated section 8(a) (1) by maintaining and enforcing a collective-bargaining contract provision prohibiting the distribution of union literature or solicitation of union membership anywhere on company premises at any time. The provision had been enforced against employee members of a rival labor organization. Finding no discriminatory enforcement of the contract provisions, the court viewed the prohibition as one "not unilaterally imposed by the company" but rather constituting "the fruits of collective bargaining agreed to by the employees involved. . . . Employees are free to forego their qualified rights to on the premises organization activity in favor of the available alternatives thereto. The 'desirability' of collective bargaining contract provisions from the standpoint of either the employees or the employer is not the measure of their validity."

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[21] *N.L R.B.* v. *Winn-Dixie Stores, Inc.*, 341 F. 2d 750 (C.A. 6), certiorari denied 382 U.S. 830

[22] *W. T. Grant Co.* v. *N.L.R B.*, 337 F. 2d 447 (C.A. 7).

[23] *Atlantic & Pacific Tea Co.*, 138 NLRB 325, where, under the circumstances, it was held that a mere request for a statement was not a violation of the statute.

[24] *N L.R B* v. *Gale Products, Division of Outboard Marine Corp*, 337 F. 2d 390 (C A 7).

Upon similar reasoning, the Sixth Circuit likewise denied enforcement of Board orders based upon application of contract provisions prohibiting the distribution of literature applied uniformly against all employees.[25] The court expressed the opinion that "whatever right employees had under section 7 to distribute union literature on company property may be waived by their collective-bargaining representative." It further stated that "the fact that alternative means of communication with employees were available was relevant as to the right of non-employees to distribute union literature on company premises."

The legality of a department store's prohibition of union solicitation on company time and premises was again the subject of a circuit court decision during the past year. In *Montgomery Ward*,[26] the Sixth Circuit affirmed the Board's finding that the company violated section 8(a)(1) by orally amending its valid no-solicitation rule in such a manner as totally to preclude employees from discussing union matters on company premises during business hours, including employees' free time, whether on or away from the company premises. While thus banning all union solicitation on company property, the company then "proceeded to hold an employee meeting in the area of the store protected from union solicitation for public convenience in order to solicit its employees not to join the union and to threaten them with wholly illegal discharge if they solicited union membership on their own time away from company property." At the same time the employer denied the union's request for an equal opportunity to reply to its speeches. The court distinguished its earlier decision in *May Department Stores*,[27] where it held that application of a valid no-solicitation rule and denial of union request to reply to lawful anti-union speeches on company time and premises was not a violation, by noting that in the instant case the speeches were coercive and the no-solicitation rule invalid because it was too broad. The court also approved, with some limitation, the Board's prescribed remedy by directing that, during the campaign preceding the new election, "the union be given opportunity to address the employees on company property if the company again sees fit to employ this measure."

3. Discharges for Engaging in Protected Activity

Upon review of a case in which the Board had held that an employer violated section 8(a) (1) and (3) of the Act by discharging employees

[25] *Armco Steel Corp.* v. *N.L.R.B.*, 344 F. 2d 621 (C.A. 6), and *General Motors Corp.* v. *N.L.R.B.*, 345 F. 2d 516 (C A 6).

[26] *Montgomery Ward & Co.* v. *N.L.R.B.*, 339 F. 2d 889 (C.A. 6).

[27] *May Department Stores Co.* v. *N.L.R.B.*, 316 F. 2d 797 (C.A 6), Twenty-eighth Annual Report (1963), pp. 127–128.

whose probationary period was interrupted by participation in a strike against the company, the Ninth Circuit[28] denied enforcement upon concluding that, under the circumstances, the finding could not be sustained in the absence of union animus. The employer's requirement that its employees' probationary period should not be interrupted for any reason whatever was based upon sound administrative considerations and had been incorporated into the contract and rigidly enforced by the employer. Analyzing the rationale of the Supreme Court in *Erie Resistor*,[29] the court concluded that in such a case the Board "is bound to firstly consider the effect of the employer's rule or conduct under attack on the rights of the employee to strike and secondly the claimed business purpose of the employer in promulgating the rule or adopting the course of conduct in issue. A balance in favor of one side or the other should then be struck. If the question be a close one, then it would seem that evidence concerning the motivation of the employer would become an important element." Finding that the employer and employee interests were substantially in balance, and noting the absence of union animus was conceded, the court concluded that no violation of the statute had occurred.

The issue whether employees have a protected right to refuse to cross the picket line at the premises of another employer, and if so, the extent of the protection, was considered by the Eighth Circuit in its review[30] of a Board decision holding that an employer violated section 8(a)(1) of the statute by refusing to reinstate unreplaced employees who had been discharged for refusing to make deliveries across a picket line at a customer's place of business. The Board's view that such a discharge was unlawful unless necessary to enable an employer to operate his business, a necessity it found had not been shown in this case, was rejected by the court, which concluded that the discharges and refusals to reinstate were not unlawful unless the employer was motivated by antiunion considerations in making them. In the court's view, the refusal of the drivers to cross the picket line "was merely sympathetic activity against a third employer with whom the drivers had no connection and with whose union they were not involved." As such it "was not more and not less than a refusal to work" and the discharge was within the "absolute right" of the employer "so long as its actions were not the result of anti-union bias or intended to discriminate against the employees and to discourage membership in a labor organization."

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[28] *N.L.R.B.* v. *National Seal, Division of Federal-Mogul-Bower Bearing, Inc*, 57 LRRM 2452 (C.A. 9), see Twenty-eighth Annual Report (1963), pp. 73–74.

[29] *N.L.R.B.* v. *Erie Resistor Corp.*, 373 U.S. 221, Twenty-eighth Annual Report (1963), pp. 121–122.

[30] *N.L.R B.* v. *L. G. Everist, Inc.*, 334 F. 2d 312 (C.A 8).

And in *Tanner Motor Livery*[31] the Ninth Circuit remanded, for further proceedings, a case in which the Board had found the employer violated section 8(a)(1) of the Act by discharging employees who picketed his premises to protest racially discriminatory hiring practices.[32] The court agreed that section 1 and section 7 of the Act taken together "protect concerted activities, even though not through collective-bargaining, which have to do with terms and conditions of employment." It also agreed with the Board's finding that the two employees were engaged in protected and concerted activities within the meaning of the Act. However, the court noted that although the proviso to section 9(a) of the statute provided that "any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted without the intervention of the bargaining representative," this right is qualified insofar as any adjustment may not be inconsistent with the terms of a collective-bargaining agreement, and the bargaining representative must have been given opportunity to be present at the adjustment. As the employees in the instant case were represented by a union, and there was in existence a collective-bargaining agreement, the court noted the absence of findings by the Board as to whether the objective of the picketing employees was the presentation of a grievance not inconsistent with the terms of the contract, or whether the demands actually constituted an effort to engage in collective bargaining "inimical to the effective operation of the collective-bargaining contract." It was for exploration of these further questions that the court remanded the case to the Board.

D. Employer's Support of Labor Organization

In the *Air Master* case,[33] the Third Circuit denied enforcement of an order based upon the Board's finding that the respondent company had rendered prohibited assistance to the respondent union by recognizing it as representative of its employees at a time when a real question concerning representation existed within the meaning of the Board's *Midwest Piping* doctrine.[34] The employer, in the course of contract renewal bargaining negotiations on expiration of the old contract, was informed by the union negotiators that an "overwhelming majority" of the employees, including themselves, had disaffiliated from the incumbent union and authorized the Teamsters to represent them. The employer's demand for proof was satisfied by a card check conducted immediately by a neutral third party who certified the

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[31] *N L.R.B.* v. *Tanner Motor Livery, Ltd.*, 349 F. 2d 1 (C.A. 9).
[32] For discussion of the Board case see *supra*, p 56.
[33] *N.L.R.B.* v. *Air Master Corp. et al. and Local 158, Teamsters*, 339 F. 2d 553.
[34] *Midwest Piping & Supply Co.*, 63 NLRB 1060, Tenth Annual Report (1945), pp. 33–39.

accuracy of the Teamsters' claim to representative status. Negotiations continued, resulting in a contract ultimately ratified by the members. Subsequent demands for continued recognition by the former incumbent, unsupported by proof of continued majority status, were rejected by the employer.

The court concluded that no substantial question concerning representation existed when the employer recognized the Teamsters and hence the employer had acted lawfully. It rejected the Board's contention that an incumbent union which promptly asserts its claim to majority status before the employer's signing of a contract with a rival union thereby raises "a substantial claim to representative status," for the purposes of an unfair labor practice proceeding. Incumbency in itself, the court stated, is no indication that an asserted change of affiliation is unreal or has been coerced. If an employer errs in his factual judgment of the situation and recognizes a minority union, he will be guilty of an unfair labor practice, but an employer does not interfere—

> . . . coercively with his employees' choice of a bargaining union when he correctly determines, without awaiting an election, that they have chosen a new union to supersede the incumbent. It is interference with the employees' choice, not frustration of the Board's design to hold an election, which the statute proscribes as an unfair labor practice. And the latter is not necessarily determinative of the former. Indeed, a Board conducted election is merely a means of selecting a free choice. If such a choice has in fact been made manifest and the employer honors it, the purpose of an election has been accomplished.

E. Employer Differentiation in the Employment Relationship

In one case decided during the year, the First Circuit denied enforcement[35] of an order based upon the Board's finding that in making layoffs, pursuant to an unlawfully maintained seniority system imposed by the contract, the employer violated section 8(a) (1) and (3) of the statute and the union violated section 8(b)(1)(A) and (2). The multiemployer contract provided that, in the event of acquisition by a signatory company of another signatory company, the seniority of the union employees of the latter carried over into the acquiring company. The respondent company acquired another signatory company including, however, one plant not organized or covered by the contract. Employees at the nonunion plant were given seniority under the contract from the date of acquisition only, whereas employees of the organized plants were given seniority from the date of initial employment. Sub-

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[35] *N.L.R.B.* v. *Whiting Milk Corp.*, 342 F. 2d 8

sequent layoffs affected employees from the formerly unorganized plant while employees from the organized plants with a shorter employment history were retained. The court rejected the Board's finding that the contract provision was illegal on its face because it discriminated against the nonunion employees of the acquired plant. The court concluded that the employees "whom the Union did not represent had no statutorily protected right to seniority. Whatever rights of that nature they might obtain could only be acquired by contract." In the court's view, this was "simply a case where the union bargained for benefits for all employees within the units it represents without, at the same time, bargaining for similar benefits for employees for whom it had no authority to speak. . . . This is not illegal discrimination against employees in other units not represented by the union, but only a normal and natural incident of union representation."

F. Bargaining Obligation

The statutory duty of an employer, as an incident to his obligation to bargain in good faith, to supply relevant and necessary information to the union in order that it may carry on intelligent bargaining, was in issue in the *Curtiss-Wright* case.[36] In that case, the Third Circuit affirmed the Board's finding that the union had a statutory right to job description and related wage data of employees outside the unit, where the data was shown to be relevant or related to the union's role as bargaining representative.

The court also rejected the employer's contention that the union should be required to seek the data through the grievance procedure, holding that "unless the collective-bargaining agreement both contains a broad disclosure provision and the grievance and arbitration provisions are also couched most broadly clearly indicating that demands for information are to be made through the grievance and arbitration machinery, the existence of such machinery is no defense to an employer who has refused to supply relevant data upon a union request."

G. Union Rules as a Condition of Employment

In two cases decided by the Second Circuit during the year that court affirmed Board rulings concerning the permissible scope of union-originated rules enforceable as conditions of employment. In one case,[37] the court affirmed a Board ruling[38] that a union could legally enforce its internal rules defining job classifications, where the

[36] *Curtis-Wright Corp., Wright Aeronautical Div.* v. *N.L.R.B.*, 347 F. 2d 61.
[37] *Lawrence F. Cafero* v. *N.L R.B.*, 336 F. 2d 115.
[38] See Twenty-ninth Annual Report pp. 87–88.

rules were not inconsistent with the contracts between the union and the employer, even though it resulted in placing restrictions on the employment of members employed full time in other occupations. Agreeing that it had not been established that "the union has arbitrarily or capriciously discriminated against" the employees, the court approved the Board's determination that "the employment rule pursuant to which petitioner's seniority priority was revoked, being designed to insure that available positions in the printing trade would go to those workers in the trade who most needed the employment, was not inherently discriminatory." In another case,[39] the court affirmed the Board's ruling that the union had violated section 8(b) (2) and (1) (A) by causing the employer to refuse reinstatement after a strike to an employee whom the union viewed as having voluntarily quit his employment. The employee had obtained a withdrawal card and transferred his membership to another local under the terms of a union bylaw providing that by such action the employee withdrew "from holding or seeking employment within the work or geographic jurisdiction" of the local union. The union had opposed the employee's return to work after the strike in accordance with his seniority priority, contending he had relinquished that right by transferring to the other local as he was required to do in order to maintain the interim employment he obtained during the strike. Affirming the Board's finding that the bylaw provision had not become a part of the contract between the employer and the union, "either by direct incorporation or by custom and practice," the court found it "readily apparent" that the employee lost his job because the union caused the employer "to enforce a union rule that was not incorporated in the collective-bargaining agreement" and accordingly, the employer's conduct, "resulting from the Union's causation, was arbitrary and without sound basis."

H. Prohibited Boycotts and Strikes

1. Compelling Agreement to Hot Cargo Provision

The scope of "work to be done at the site of the construction," within the meaning of the construction industry proviso to section 8(e), was in issue in one court decision during the year. In *Teamsters, Local 294*,[40] the Second Circuit agreed with the Board that a local union had violated section 8(b) (4) (ii) (A) by forcing and requiring a construction contractor to agree to an interpretation of a "site work" contract provision requiring all hauling on the site to be done by unit drivers, to

[39] *N.L.R.B.* v. *Local 50, American Bakery & Confectionery Workers Union (Ward Baking Co.)*, 339 F. 2d 324, rehearing denied Jan. 15, 1965.

[40] *N L.R.B.* v. *International Brotherhood of Teamsters, Local 294 (Island Dock Lumber, Inc.)*, 342 F. 2d 18.

include the driving of ready-mix concrete trucks making deliveries on the site. The concrete supplier at the time employed drivers represented by another union. The court found that the union violated section 8(b)(4)(ii)(A). It held that the interpretation of the agreement which the union sought to force upon the employer was violative of section 8(e) since it constituted an agreement "to boycott the products of . . . [the supplier] . . . as an employer of members of a rival union," and therefore "intended to accomplish the traditional function of a hot cargo agreement." The court further held that as the delivery of concrete to the work site was not onsite work, the "construction industry" proviso to section 8(e) did not legalize the union conduct. Since, the court observed, the proviso is limited to "work done at the site of construction," it does not sanction a "boycott against suppliers who do not work on the job site."

2. Disruption of Business Relations

Several court decisions involved the application of section 8(b)(4)(B), which prohibits secondary action to require "any person" to cease doing business with "any other person." In *Teamsters, Local 294* [41] the court, after agreeing with the Board's finding of an 8(b)(4)(A) violation, agreed also that the local union had violated section 8(b)(4)(ii)(B) by related actions. Threats by union agents to pull their members off the contractor's job or to take steps equally detrimental unless the contractor canceled his orders with the designated concrete supplier, or agreed that all deliveries of materials were to be made by members of the local, were considered by the court to have a "cease doing business" objective. The contention that the union pressure was justified as constituting job protection measures was rejected, since the court found "there was nothing primary about the efforts" of the local which "had no real labor dispute with" the contractor.

Applying the "power of control" test [42] the Sixth Circuit Court of Appeals in *Ohio Valley Carpenters District Council* [43] agreed with the Board that the council had violated section 8(b)(4)(i) and (ii)(B) by inducing and encouraging member employees to refuse to handle work on prefabricated millwork supplied to their employer by the manufacturer, with the object of forcing or requiring their employer to cease doing business with the manufacturer. Under its construction contract the employer was required to use the prefabricated millwork and, in addition, it had no capability to fabricate the millwork

[41] *Supra*

[42] See *supra*, pp. 90–91, and Twenty-ninth Annual Report (1964), pp 89–90.

[43] *Ohio Valley Carpenters District Council, etc., et al.* v *N.L.R.B.* (*Hankins & Hankins Constr. Co.*), 339 F. 2d 142.

with its own men on the jobsite. Notwithstanding these facts, the council informed the employer that his failure to cut, fix, and frame the millwork on the jobsite was in violation of their agreement. The court concurred in the Board's reasoning that "if a union demands that a contractor do something he is powerless to do except by ceasing to do business with somebody not involved in the dispute, it is manifest that an object of the union is to induce [a] cessation of business in violation of the Act," and such conduct was not rendered lawful by the contract between the union and the contractor.

Another case in which the Board found that a union had unlawfully coerced a neutral employer and his employees with a "cease doing business" objective was affirmed upon review by the Court of Appeals for the Second Circuit.[44] The court sustained the Board's finding that a union, having a contract dispute with a milk distributor operating from a leased portion of the premises of the milk processor who processed his milk, violated section 8(b)(4)(i) and (ii)(B) by instructing the processor's employees to engage in a work stoppage and, by picketing, inducing drivers of other employers to refuse to make deliveries to the processor's plant. The union had a collective-bargaining agreement covering route drivers with the distributor as a member of a multiemployer bargaining unit to which the processor also belonged. The court rejected a union contention that a clause in the agreement aimed at protecting route drivers' work justified its picketing, since the fact that one object of the union conduct was to maintain job security could not validate the illegal objective of coercing the neutral processor to cease doing business with the primary employer, the distributor. Also rejected was the defense that the picketing was primary rather than secondary activity in that the functional integration of the two employers converted them into a single employer. The "integration" of the two employers' "operations on a merely functional plane" was, in the court's view, "an improper basis for concluding that both have primary employer status under the secondary boycott provisions."

Two courts during the report year had occasion to review Board findings in companion cases holding that the National Maritime Union violated section 8(b)(4)(B) when it engaged in retaliatory picketing outside the gates of municipal wharves and at piers and docks of four different cities[45] where members of the rival MEBA[46] were working. The picketing arose out of a representation dispute between NMU and MEBA involving the SS *Maximus*. In addition to picketing that vessel (the legality of which was not in question), MEBA

[44] *N.L.R.B.* v. *Milk Drivers & Dairy Employees Local Union No. 584, IBT (Old Dutch Farms, Inc.)*, 341 F. 2d 29.

[45] See Twenty-ninth Annual Report (1964), pp. 91–92.

[46] Marine Engineers Beneficial Association.

also picketed wharves and ships in various cities which were owned by neutral employers, but was manned by members of an affiliate of NMU.[47] The NMU had no labor dispute with the employers at these wharves or the owners of these other vessels. The Board found that NMU's picketing was for an object of causing a disruption of the neutral employers' business relations with other neutral employers in furtherance of its labor dispute with MEBA.

The Second Circuit agreed with the Board that the picketing was violative of section 8(b)(4)(i) and (ii)(B), as its aim and purpose was to exert economic pressure on neutral employers to compel them to cause MEBA to end the controversy.[48] The court considered the controversy over representation rights to be within the definition of "labor dispute" in section 2(9): it rejected the union's argument that since the controversy was an interunion dispute, it was not a labor dispute within the meaning of the Act and therefore the Board lacked jurisdiction. It also rejected the further argument that because the NMU's dispute was with another union and there was no dispute with a primary employer, there could be no secondary boycott. The court observed "that Congress did not intend to confine the effect of section 8(b)(4) to a strict or precise definition of the term 'secondary boycott,'" nor did it intend to require the existence of a "primary employer as a requisite for the application of the subsection." The District of Columbia Court of Appeals, in the related case, also agreed that NMU's picketing was unlawful.[49] It concluded that the statutory definition of "labor dispute" did not purport to define the Board's jurisdiction, or establish a prerequisite to its assertion. It noted that "nowhere in the Act is there an overriding declaration that none of its provisions apply unless there is a 'labor dispute' as defined in section 2(9)." As to the union's contention that Congress in enacting section 8(b)(4) was addressing itself to "secondary boycotts" which necessarily entail the existence of a dispute with a primary employer, the court, noting that term's absence from the language of section 8(b)(4), and reviewing the legislative history on the matter, concluded that "Congress clearly desired to protect neutral employers from the ramifying effects of inter-union, as well as union-employer strife. . . . It is the victim's neutrality which we conceive to be the central element of Congressional concern in this area."

3. Common Situs Picketing

In *Local 3, IBEW*,[50] the Second Circuit affirmed a Board holding

[47] Brotherhood of Marine Officers.

[48] *National Maritime Union of America* v. *N.L.R B.* (*Weyerhaeuser Lines*), 342 F. 2d 538.

[49] *National Maritime Union of America* v. *N.L.R.B.* (*Delta Steamship Lines*), 346 F. 2d 411.

[50] *New Power Wire & Electric Corp.* v. *N.L.R.B.* (*Local 3, IBEW*), 340 F. 2d 71. See Twenty-ninth Annual Report, pp. 92–93.

that a local union, during a strike for recognition, had not violated section 8(b)(4)(i) and (ii)(B) by picketing the employing contractor's headquarters and in front of various apartment buildings where the contractor's employees were engaged in electrical rewiring work. The court agreed that the picketing at the employer's office was clearly primary situs picketing and also considered lawful the picketing of the apartment houses, which were common situs premises. Since most of the employees spent their working hours at the sites where the employer was doing his contract work, and since they frequently went to and from their jobs without stopping at the employer's office, the court agreed that there was a particular need for picketing the neutral premises where the work was being performed. Finding that in most respects the *Moore Dry Dock* criteria had been observed, the court rejected the employer's contention that the picketing failed to satisfy all those criteria because it continued at certain locations during periods when the employer had no employees working there. In the court's view, "a literal application of the *Moore Drydock* rules . . . should not be permitted to lead to the conclusion that the union was required to forego further picketing whenever it was successful in reducing the Employer's work force so that the Employer had to suspend work temporarily."

I. Recognitional Picketing

In one case involving a Board finding that the union picketed for recognition within 12 months of a valid election in violation of section 8(b)(7)(B), the Court of Appeals for the Second Circuit [51] remanded the case to the Board to redetermine, in the light of the court's opinion, whether the union's conduct constituted "picketing" within the meaning of that section. Union representatives, following its defeat at a Board-directed election, made a daily practice of affixing signs to poles in front of the employer's plant and then stationing themselves in automobiles in a parking lot across the street from the plant, where they remained until they removed the signs when they departed for the day. In the court's view, "one of the necessary conditions of 'picketing' is a confrontation in some form between union members and the employees, customers, or suppliers who are trying to enter the employer's premises." Since it was not clear whether the Board, in concluding the union had engaged in picketing, had considered "the extent of confrontation necessary to constitute picketing," the court remanded the case to the Board with directions to consider, in determining whether there was "confrontation," the

[51] *N.L.R.B. v. United Furniture Workers of America, AFL–CIO (Jamestown Sterling Corp)*, 337 F. 2d 936.

proximity of the union men in the parked cars to the plant and if they were reasonably identifiable as union representatives. The court concluded that "the test here would seem to be whether the presence of the representatives in the car was intended to and did have substantially the same significance for persons entering the employer's premises as if they had remained with the signs, or was only a necessary precaution to safeguard the signs."

J. Hot Cargo Agreements

The Ninth Circuit during the report year affirmed a Board finding that a Teamsters Union joint council, an affiliated local, and signatory employers, processors of dairy products, had violated section 8(e) by entering into and maintaining unlawful hot cargo clauses.[52] The contract clauses obligated the processors to refrain from doing business with other employers or persons engaged in distribution of milk or ice cream products who were not bound by a union agreement, or approved by the union. Among the defenses raised was the assertion that as the only milk products handled by the distributors were those of the respondent employers, the agreement was not a refusal to handle the products "of any other employer." This was rejected since, in the court's view, the rationale of *N.L.R.B.* v. *Servette* [53] "requires that the term 'products of any other employer' in section 8(e) be read to include services furnished by an employer performing a distribution function." A further contention that the contract provisions were primary in nature as unit work-preservation clauses and not within the section 8(e) ban on secondary boycotts was also rejected by the court. The thrust of each of the clauses restricting subcontracting was held to be secondary since the circumstances of permissible subcontracting depended entirely upon the third parties' relationship to the union. And another clause, which protected employee refusals to handle products of or service an employer who was engaged in a strike or lockout recognized by the unions, was considered by the court as "tantamount to an agreement that the employers will not deal with the struck plant," and therefore prohibited by section 8(e).

[52] *N.L.R.B.* v. *Joint Council 38, Teamsters (Arden Farms Co.)*, 338 F 2d 23

[53] 377 U S. 46, discussed in Twenty-ninth Annual Report, 1964, pp 104–106

IX

Injunction Litigation

Sections 10(j) and (l) authorize application to the U.S. District Courts, by petition on behalf of the Board, for injunctive relief pending hearing and adjudication of unfair labor practice charges by the Board.

A. Injunction Litigation Under Section 10(j)

Section 10(j) empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. District Court "for appropriate temporary relief or restraining order" in aid of the unfair labor practice proceeding pending before the Board. In fiscal 1965, the Board filed 18 petitions for temporary relief under the discretionary provisions of section 10(j)—8 against employers, 6 against unions, and 4 for relief against both an employer and a union.[1] Injunctions were granted in 10 cases and denied in 3. Of the remaining cases, two were settled prior to court action, three petitions were withdrawn, one was dismissed without prejudice, two were disposed of when the respondents stipulated to refrain from the alleged unlawful conduct pending final disposition of the Board proceeding, and one was pending at the close of the report period.

Injunctions were obtained against employers in three cases, one involving alleged discriminatory discharges and two in instances where the employer was refusing to bargain with the labor organization certified by the Board as representatives of their employees. Injunctions or restraining orders were obtained against unions in five cases: one enjoined a refusal to bargain and strike allegedly in violation of section 8(d) of the Act; three prohibited striking and the unions' refusal to abide by existing bargaining agreements; and another restrained the union's acts of violence and coercion of employees. In two cases, however, the injunctions obtained ran against both an employer and a union in situations where the employer's recognition of the union was alleged to be a violation of the Act.

One of the latter category of cases was *East Tennessee Packing Company*,[2] where the company refused to bargain with the incumbent union,

[1] See table 20 in appendix. Also, four petitions filed during fiscal 1964 were pending in court at the beginning of fiscal 1965.

[2] *Rains* v. *East Tennessee Packing Co.*, 240 F. Supp. 770.

an independent when certified, after its members had voted to affiliate with the Packinghouse Workers Union. It had subsequently recognized and bargained with a dissident group of employees who attempted to establish another unaffiliated union to administer the current contract which the certified affiliated union also sought to administer. The Board viewed the unchallenged contract as a bar to an election, and a complaint then issued charging the company with a refusal to bargain with the certified union and the dissident unaffiliated group with interfering with the employees' rights. In the 10(j) proceeding, the court, although expressing doubts as to the propriety of the Board's conclusion that the unchallenged contract barred an election, emphasized that the "purpose of section 10(j) of the Act was to maintain the status quo in a labor relations case pending the final outcome of the litigation. . . ." It therefore ordered the company to recognize and bargain with the certified union, and restrained the dissident group from continuing to act as representative of the employees until such time as the Board might modify or vacate the certification. In a somewhat similar situation in *Bunny Knitwear*,[3] where the company in order to forestall organization by one union had illegally assisted and extended contract recognition to another union which included a union membership requirement, the court directed the withdrawal of recognition and enjoined the union from acting as representative pending Board action.

A number of the other proceedings also involved the use of injunctive relief to prevent the destruction or avoidance of bargaining relationships pending Board adjudication. In one case,[4] the employer rescinded a current contract prior to its expiration and notified the certified union that it doubted its majority status due to employee replacements obtained during a wildcat strike. The court concluded that there was reasonable cause to believe the employer's refusal to bargain was unlawful, and directed it to continue to recognize the union until adjudication by the Board. Also, in the *Square Tube* case,[5] the district court entered an injunction under section 10(j) restraining the company from making unilateral changes in wages and other terms and conditions of employment and directing the union to bargain with respect to any modifications in the collective-bargaining agreement. In another case, however, the court denied injunctive relief as not "just and proper" under section 10(j) where

[3] *Kaynard* v. *Bunny Knit Sportswear and Local 999, Metal Plastic Workers,* Case No. 65 Civil 613 (D.C N.Y.), decided June 22, 1965 (unreported).

[4] *Alpert* v. *Trailways of New England,* Case No. 64–808–C (D.C. Mass.), decided Jan. 4, 1965, 58 LRRM 2152

[5] *Brooks* v. *Square Tube Corp.* (D C E. Mich.), 50 LC ¶ 19,155, decided July 22, 1964, 56 LRRM 2881.

the employer's refusal to bargain was predicated solely on its desire to obtain judicial review of the Board's certification of the union.[6]

Enforcement of the union's bargaining obligation was accomplished through section 10(j) proceedings in two instances. In *Caribe Motors*,[7] the court enjoined the union from refusing to bargain and from striking without first complying with the notice provisions of section 8(d) of the Act.[8] And in three related cases arising from the dock strike of January 1965 the Board sought injunctions to require certain ILA locals, who continued the strike after ratification of the contract by their membership, to return to work and abide by the terms of the agreement.[9] The locals had refused to return to work on the sole ground that agreements had not been reached in all ports between other maritime employer associations and ILA local unions. Temporary restraining orders issued by the courts were subsequently continued upon stipulation of the parties after work was resumed.[10]

In two other cases, the Board sought the interim restoration of job rights for employees alleged to have been discharged in violation of the Act, pending Board resolution of the issues. In *United Foods*,[11] the court ordered offers of reinstatement be made to four employees found to have been "selected for discharge . . . because said employees joined or assisted the union." However, in *J. P. Stevens & Co.*[12] the court denied injunctive relief for alleged discriminatees when it concluded, without considering proffered oral testimony, that contradictory affidavits before it raised substantial issues of fact requiring a full Board hearing to resolve and therefore equitable relief in the form of an interlocutory injunction was inappropriate. The Fourth Circuit Court of Appeals affirmed *per curiam* upon finding that the district court's action was not "clearly erroneous."[13] The court also adverted, however, "to the practicabilities of the situation" that the conduct complained of began 1½ years earlier, the Board proceeding had been pending over a year, and that therefore a remand to the district court "would contribute little to the effectiveness of the Act's enforcement."

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[6] *Greene* v *David Buttrick Co.*, Case No. 65–153–W (D.C. Mass.), decided Mar. 15, 1965 (unreported).

[7] *Compton* v. *Caribe Motors Corp.*, Case No. 585–64 (D C.S.R), decided Dec. 21, 1964 (unreported).

[8] Sec. 8(d) conditions strike action during the contract term to obtain a modification of the contract upon, *inter alia*, 60 days' notice to the other party to the contract, and 30 days' notice to the Federal Mediation Service and State Mediation Agencies

[9] *McLeod* v. *ILA*, No. 65–C–466 (D C S.N Y.) (unreported) ; *Penello* v. *ILA*, No. C–16,-164 (D C Md) (unreported) ; *LeBus* v. *Dock Leaders ILA Local* No. 854, No. C–15312 (D.C.E La.) (unreported)

[10] Injunctions were sought under sec. 10(j) on the alleged bargaining violation and also under sec. 10(l) on alleged violations of sec. 8(b)(4)(B) since the strike and picketing was viewed as having a "cease doing business" object.

[11] *Potter* v. *United Foods, Inc*, (D.C.S. Tex.) 51 LC ¶ 19,460, decided Jan. 16, 1965, 58 LRRM 2469

[12] *Johnston* v. *J. P. Stevens & Co.* (D.C E.N.C.) 234 F. Supp. 244, decided Sept. 26, 1964.

[13] *Johnston* v. *J. P. Stevens & Co.*, 341 F. 2d 891 (C.A. 4).

B. Injunction Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of section 8(b)(4) (A), (B), (C),[14] or section 8(b)(7),[15] and against an employer or union charged with a violation of section 8(e),[16] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under section 8(b)(7), however, a district court injunction may not be sought if a charge under section 8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provision shall be applicable, "where such relief is appropriate," to violations of section 8(b)(4)(D) of the Act, which prohibits strikes and other coercive conduct in support of jurisdictional disputes. In addition, under section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing 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 fiscal 1965, the Board filed 227 petitions for injunctions under section 10(l). Of this number, together with the 13 cases pending at the beginning of the period, 73 cases were settled, 8 dismissed, 48 continued in an inactive status, 16 withdrawn, and 9 petitions were pending court action at the close of the report year. During this period 86 petitions went to final order, the courts granting injunctions in 80 cases and denying them in 6 cases. Injunctions were issued in 38 cases involving alleged secondary boycott action proscribed by section 8(b)(4)(B) as well as violations of section 8(b)(4)(A) which proscribes certain conduct to obtain hot cargo agreements barred by section 8(e). One

[14] Sec 8(b)(4) (A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the inducement of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employer for these objects, and to prohibit conduct of this nature where an object was to compel an employer to enter into a hot cargo agreement declared unlawful in another section of the Act, sec. 8(e).

[15] Sec 8(b)(7), incorporated in the Act by the 1959 amendments, makes organizational or recognitional picketing under certain circumstances an unfair labor practice

[16] Sec 8(e), also incorporated in the Act by the 1959 amendments, makes hot cargo agreements unlawful, with certain exceptions for the construction and garment industries

case involved a strike in violation of section 8(b)(4)(C) to require recognition when the Board had certified another union as representative. Injunctions were granted in 22 cases involving jurisdictional disputes in violation of section 8(b)(4)(D), of which 8 also involved proscribed activities under section 8(b)(4)(B). Injunctions were issued in 12 cases to proscribe alleged recognitional or organizational picketing in violation of section 8(b)(7). The remaining five cases in which injunctions were granted arose out of charges involving alleged violations of various other combinations of subsections of section 8(b)(4).

Of the six injunctions denied under section 10(l), two involved alleged secondary boycott situations under section 8(b)(4)(B), one involved an alleged jurisdictional dispute under section 8(b)(4)(D), one involved alleged violations of section 8(b)(4) (A) and (B), and two were predicated upon alleged violations of section 8(b)(7) (A) and (B).

Almost without exception, the cases going to final order were disposed of by the courts upon findings that the established facts under applicable legal principles either did or did not suffice to support a "reasonable cause to believe" that the statute had been violated. Such being the basis for their disposition, the precedence value of the cases is limited primarily to a factual rather than a legal nature. The decisions are not *res judicata* and do not foreclose the subsequent proceedings on the merits before the Board. None of the cases involved legal principle of particular consequence to the nature of the injunction proceeding itself.

X

Contempt Litigation

During fiscal 1965, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 12 cases: 9 for civil contempt, 1 for criminal contempt, and 2 for both civil and criminal contempt adjudication. In four of these cases the petitions were withdrawn following compliance by respondents during the course of the proceedings.[1] In one case the petition was granted and civil contempt adjudicated,[2] and in another, the court entered an order directing respondent to pay backpay in fixed installments.[3] In two cases hearings were completed before the Special Master to whom the respective courts referred the issues for trials and recommendation.[4] The remaining four cases are pending in various stages.[5] In addition, in three cases which were commenced prior to fiscal 1965, trials before Special Masters were completed during 1965, resulting in each instance in a recommendation to the court that contempt be adjudicated.[6] Three other cases which had been commenced prior to fiscal 1965 were disposed of as follows: in one, disapproving the Special Master's recommendation, the court refused to find that the company had not bargained in good faith;[7] in another the petition was withdrawn after respondent complied in full by executing a collective-bargaining agreement;[8] and in the third, the proceedings were concluded by the entry of a court order directing the company to continue to bargain.[9]

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[1] *N.L R B.* v. *Lancashire Textile Processing Corp.*, (C A. 1) No. 6,286 , *N L R B.* v. *Delsea Iron Works Inc*, in contempt of 316 F. 2d 231 (C.A. 3) ; *N L.R.B.* v. *Solo Cup Co.*, in contempt of 332 F. 2d 447 (C A. 4) ; *N.L.R.B.* v. *Mooney Aircraft*, in criminal contempt of 328 F. 2d 427 (C.A. 5) ; In *Solo Cup*, compliance was effected during hearings before Chief Judge Thomsen, U.S.D C. for Maryland, sitting as Special Master for the Court of Appeals for the Fourth Circuit.

[2] *N.L R.B.* v. *Savoy Laundry, Inc.*, in contempt of 327 F. 2d 370 (C.A 2).

[3] *N L R.B.* v. *Roy Stealy*, (C.A. 7) No. 13,875

[4] *N L.R B.* v. *Winn-Dixie Stores, Inc*, in contempt of 324 F 2d 502 (C.A 5), contempt adjudication recommended Mar. 23, 1965 ; *N L R B.* v. *Skyline Homes, Inc.*, in contempt of 323 F. 2d 642 (C.A 5).

[5] *N L.R.B.* v. *Reinforced Steel Workers, Local 426, Intl. Assn. of Bridge, Structural & Ornamental Iron Workers, AFL–CIO*, (C.A. 6) No. 16,222 ; *N.L.R.B.* v. *Lynair, Inc*, (C.A. 6) No. 15,957 ; *N.L.R.B.* v. *Murray Ohio Mfg. Co.*, in contempt of 326 F. 2d 509 (C A 6) ; *N L R B* v. *Ripley Mfg. Co.*, (C A. 6) No 15,225

[6] *N L.R.B.* v. *Kohler Co.*, in contempt of 300 F. 2d 699 (C.A.D.C.) ; *N.L.R.B.* v. *Mooney Aircraft, Inc.*, in contempt of 310 F. 2d 565 (C.A. 5), No. 19,448 ; *N L R B.* v. *Mooney Aircraft, Inc.*, (C.A. 5) No. 20,445.

[7] *N.L.R.B.* v. *American Aggregate Co.*, 335 F. 2d 253 (C.A. 5).

[8] *N.L R.B.* v. *Harry Schwartz Yarn Co., Inc.*, (C A. 9) No 18,353.

[9] *N.L.R B.* v. *McCarthy Motor Sales Co.*, in contempt of 309 F. 2d 732 (C.A. 7).

Two opinions were issued which warrant comment. In *American Aggregate* [10] the Fifth Circuit Court of Appeals rejected the report of its Special Master who had found the company in violation of the court's bargaining order because of questionable bargaining tactics. The court, noting that there were 32 bargaining sessions between the parties at which every matter in dispute was discussed and attributing the breakdown in negotiations to the unwillingness of either the union or the company to surrender positions each took in the bargaining, on nonconverging courses, concluded that the employer was engaged in permissible hard bargaining rather than impermissible surface bargaining, and dismissed the contempt petition.

In *Kohler Company*,[11] the Master, in a report which may affect the reinstatement rights of well over 1,000 employees, upon hearings before him which had commenced in March 1963, held, *inter alia*, that (1) unfair labor practice strikers who had enjoyed a workweek of 5 days and more prior to the strike were entitled to reject as defective the company's offers to reinstate them to a 4-day workweek while retaining striker replacements, even though the company might have been economically motivated; (2) without forfeiting reinstatement rights, strikers could refuse to return because of the company's failure to bargain in good faith and reach a contract, notwithstanding that the union had included them in a list of employees desiring immediate reinstatement; and (3) unfair labor practice strikers who made application for retirement benefits or filed release-from-employment forms during the strike were foreclosed from showing that nevertheless they did not intend to abandon the strike or to sever their relationship as employees of the company.

[10] See footnote 7, *supra*

[11] *Supra,* footnote 6, 351 F. 2d 798

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XI

Miscellaneous Litigation

Miscellaneous litigation during fiscal 1965 involved Board rulings in representation proceedings, questions concerning procedural regularity and the Board's authority to settle unfair labor practice proceedings, a court of appeals' power to stay a Board order upon the application of a private litigant, and the enforceability of a contract barring recourse to the Board.

A. Representation Proceedings

Petitions filed during the past year seeking to invoke the equity powers of a Federal district court to restrain Board action at various stages of representation proceedings were opposed by the Board primarily on the ground that the court was without jurisdiction to grant such. The plaintiffs' efforts were usually directed to establishing that the Board action was within the doctrine of *Leedom* v. *Kyne*,[1] pursuant to which the court may intervene when the Board has violated an express mandate of the Act. The extent to which "the *Kyne* exception is a narrow one" characterized by "painstakingly delineated procedural boundaries" [2] is illustrated by the following cases decided during the year.

In *Harco Aluminum*,[3] an incumbent union sought to enjoin the holding of a deauthorization election scheduled by the Board pursuant to section 9(c)(1) wherein the employees might vote on whether to rescind the union's authority to negotiate a union-shop provision in the contract. Under Board law, if there is an affirmative deauthorization vote, rescission of the union's authority in this respect would be immediately effective.[4] Plaintiff contended that section 9(c)(1) grants employees the right to revoke the union's authority *only* as to bargaining for future union-security provisions to be effective after the termination of the current contract and that the Board's interpretation of section 9(c)(1) was therefore erroneous and inconsistent with its contract-bar doctrine. It also asserted that the Board violated its

[1] 358 U.S. 184, discussed in Twenty-fourth Annual Report (1959), pp. 117–118

[2] *Boire* v. *The Greyhound Corp*, 376 U.S 473, 481.

[3] *Machinery, Scrap Iron, Metal & Steel etc. Local 714, IBT* (*Harco Aluminum, Inc.*) v. *Madden*, 343 F. 2d 497.

[4] *Monsanto Chemical*, 147 NLRB 49, Twenty-ninth Annual Report (1964), p. 63.

constitutional rights by denying it a formal hearing to establish that the employees had voted on and ratified the union-shop requirement at the time of execution of the contract.

Upon appeal from the district court dismissal of the complaint for failure to state a claim upon which relief could be granted, the Seventh Circuit Court of Appeals affirmed the district court holding that it lacked jurisdiction over the subject matter, since the Board's action contravened no clear statutory command or prohibition, nor any constitutional safeguards.

In two cases, district court jurisdiction was invoked to review Board actions relating to the eligibility of voters. In *Miami Herald*[5] the employer sought a district court order voiding an election on the grounds that the Board had permitted economic strikers not entitled to reinstatement to vote without having complied with an asserted statutory requirement of section 9(c)(3) that regulations be issued prescribing the circumstances, "consistent with the purpose and provisions of this Act,"[6] under which their vote would be permitted. The district court concluded that it had jurisdiction under *Kyne* and enjoined the counting of ballots. On the Board's appeal, however, the Fifth Circuit reversed and remanded the case to the district court with directions to dismiss the complaint on the ground that section 9(c)(3) of the Act and its legislative history do not conclusively indicate that the Board must promulgate regulations as a condition precedent to the voting eligibility of replaced economic strikers. The court concluded that it could not be said that the Board's violation of the statute, if any, was so manifest as to warrant court review prior to the issuance of a final order by the Board.

In another case,[7] an employee filed an action in the district court to set aside the regional director's determination that the employee was not eligible to vote in a representation election. Plaintiff, who was employed by his brother, contended that he was excluded from voting because of the sibling relationship and that this was in violation of the Act. The regional director contended that plaintiff was not excluded solely because he was related to the employer but because plaintiff by reason of the relationship and other circumstances, enjoyed a "special status," which precluded a community of interest with the other employees. The court, asserting jurisdiction over the subject matter, held that the regional director's determination was contrary to the plain terms of the statute since section 2(3) excluded from the defini-

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[5] *Boire* v. *Miami Herald Publishing Co.*, 343 F. 2d 17, reversing and remanding *Miami Herald Publishing Co* v. *Boire*, 54 LRRM 2415.

[6] NLRA, sec. 9(c)(3).

[7] *Yoshio Uyeda* v *Brooks, et al.*, 57 LRRM 2275. The Board has appealed the decision to the Sixth Circuit.

tion of "employee" only "any individual employed by his parent or spouse."

In a case[8] bearing marked similarities to the factual pattern in *Kyne*, a district court action for reinstatement of a decertification petition was brought by a group of professional employees in a mixed professional and nonprofessional unit certified by the Board in 1951. No objection was made at that time to the inclusion of the professionals without a prior self-determination election as contemplated by section 9(b)(1) of the statute and bargaining in that unit had continued to the present. The employees' petition to decertify the union as representative of the professional employees had been dismissed by the regional director because of a pending unfair labor practice complaint alleging the company's refusal to bargain for that unit, and the employees sought to have the district court direct its reinstatement and processing. At the same time, however, plaintiffs before the court declined an opportunity extended by the trial examiner in the hearing on the complaint to intervene as parties in that Board proceeding where the same issues concerning the validity of the certification were being litigated. In dismissing the complaint for lack of subject matter jurisdiction the court, noting that jurisdiction under *Kyne* was premised upon the lack of any clear and reliable opportunity for court review of Board actions except in the district court, distinguished that case in view of the availability to the plaintiffs of the Board proceeding which "would insure [them] . . . an adequate hearing of their complaints by a competent tribunal with power to grant the appropriate relief," subject to court review. Adverting to "plaintiffs' reluctance to appear before the Board and to put forth the merits of their case," the court concluded that "[m]ere preference of a District Court over an agency by a litigant is not a sufficient reason to invoke a concept of jurisdiction only applicable to very limited conditions."

The availability of an alternative forum before the Board was also the basis for rejection of district court jurisdiction in the *Lawrence Typographical Union* case.[9] The District of Columbia Circuit affirmed the district court dismissal of an injunction suit premised upon an asserted denial of an "appropriate hearing" under section 9(c)(1) because of the rejection of evidence offered by the union in a decertification proceeding tending to show that the employer had initiated and fostered the filing of the petition in violation of section 8(a)(2). Agreeing that the Board policy precluding litigation in representation proceedings of unfair labor practice issues related to employer insti-

[8] *LaPlant, et al.* v. *McCulloch, et al.*, 58 LRRM 2835.

[9] *Lawrence Typographical Union, et al.* v. *McCulloch, et al.*, 349 F. 2d 704, affirming 222 F. Supp. 154 (D.C.D.C.), Twenty-ninth Annual Report (1964), p. 144.

gation of a decertification petition [10] was not in violation of a statutory mandate within the meaning of *Kyne*, the court also found no violation of the due process requirement since decertification itself would not subject the union to Government sanctions which can be imposed only after a hearing. It noted that a full hearing on the instigation issue would be available if the union, should it lose the election and be decertified, pickets the employer within 1 year, thereby subjecting itself to charges of violation of section 8(b)(7)(B). Since proof of such charges "depend on the existence of a 'valid election,' and since a decertification election is not valid if the employer instigates it," the court concluded that the Board would hear the evidence on instigation at that time, prior to the imposition of sanctions.

B. Judicial Review of Board Proceedings

The Board's exercise of its broad authority to settle cases through stipulated agreements with respondents was challenged before the courts of appeals in two cases this year. In *Local 282, Teamsters*,[11] an order entered pursuant to such a settlement was enforced by the court over the objection of the nonconsenting charging party that it had been denied an evidentiary hearing to which it was entitled on its objections to the effect that the proposed settlement was improvident and remedially inadequate. The union's objections had been considered by the Board and the reasons for their rejection stated in the order. The Second Circuit held that neither the NLRA nor the Administrative Procedure Act required the Board to accord to the charging party a formal evidentiary-type hearing to show the "improvidence" of the settlement.

In *Retail Clerks Local 1059* [12] a union, not a party before the Board, sought review of a Board settlement order which required the respondent employer to cease and desist from rendering "unlawful assistance" to it. In finding the union could obtain review of the Board order, the court held that "standing to appeal an administrative order as a 'person aggrieved' . . . [under section 10(f) of the Act] . . . arises if there is an adverse effect in fact, and does not, as the Board seems to maintain, require an injury cognizable at law or equity." The court found such an adverse effect in that "[b]y specifically naming petitioner, the Board in effect branded it a 'sweetheart union,' thus impairing its organizational abilities." The court also held that the union, although not an indispensable party before the Board, was nevertheless entitled to be heard by the Board upon its

[10] See *Union Mfg. Co.*, 123 NLRB 1633, Twenty-fourth Annual Report (1959), p. 16.

[11] *Local 282, Teamsters (J. J. White Ready Mix Concrete Corp.)* v. *N.L.R.B.*, 339 F. 2d 795.

[12] *Retail Clerks Union 1059, Retail Clerks International Assn., AFL–CIO* v. *N.L.R.B.*, 348 F. 2d 369. (C.A.D.C.)

objections to being specifically named as a union the employer might not unlawfully assist.

C. Court Stay of Board Order

The seldom-noted section 10(g) of the Act, providing that the commencement of enforcement or review proceedings shall not operate to stay an order of the Board unless "specifically ordered by the court," was construed by the Fifth Circuit in one case [13] in which such a stay order was entered. In that case the charging party before the Board sought a stay of a Board order dismissing a complaint alleging violations of the secondary boycott provisions of the Act. The court held that it had the power to grant such a stay and that in the circumstances "there is sufficient merit to petitioner's position to justify preserving the *status quo* until the case is finally disposed of in this court." Adverting to the 10(l) injunction which was to run "pending the final disposition of the matters involved," [14] the court held that it "remains in full force and effect so long as our stay continues" since "our staying the Board's order effectually postpones its operative legal effect until enforced by this court." [15]

D. Enforceability of Contract Barring Recourse to Board

Local 743, IAM v. *United Aircraft Corp.*[16] was an action under section 301 of the Act in which the plaintiff unions sought enforcement of the provisions of a strike settlement agreement. Respondent company's counterclaim, asserting that the unions by filing an unfair practice charge concerning the same subject matter had violated a subsequent arbitration agreement which provided that the parties would abide by the arbitration award "without recourse . . . to any appeal or review under any State or federal laws," sought an injunction to compel the unions to withdraw the charges filed with the Board. The Board intervened in the proceeding to protect its jurisdiction, moving for dismissal of the counterclaim. The Second Circuit affirmed the district court's denial of injunctive relief against filing of the charges, pointing out that "the standard rule," judicially approved and in accord with the policy of our national labor laws and the express mandates of the National Labor Relations Act, "is that the right to resort to the Board for relief against unfair labor practices

[13] *Houston Insulation Contractors Assn.* v. *N.L.R.B.*, 339 F. 2d 868.

[14] The court viewed this as within the statutory limitation of the injunction "pending the final adjudication by the Board."

[15] Judge Rives, dissenting, viewed the "stay" as having the force and effect of an injunction which the court was powerless to grant at the request of the private litigant.

[16] 337 F 2d 5 (C.A. 2), affirming 220 F. Supp 19 (D C. Conn.).

cannot be foreclosed by private contract" or by resultant arbitration agreement or award. Also rejected was the company's contention that a waiver of the right to file unfair labor practice charges, contained in an arbitration agreement, should at least be enforced in those cases where it is the Board's declared policy to defer to prior arbitration awards. The court noted that that policy was adopted by the Board in its discretion to dispose of cases already before it, and should not be transmuted by the courts into a rule of law to "prevent unfair labor practice charges from ever reaching the Board."

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APPENDIX A

Statistical Tables for Fiscal Year 1965

New Features and Changes from Prior Year's Statistical Tables

Several changes have been made this year in the statistical tables in the Agency's annual report. These changes are designed to increase the usefulness of the tables. Existing tables have been expanded or revised in format, and new tables have been added to supply greater detail and to reflect changes in the Agency's work. Retention of compatibility with prior years' tables has been attempted with respect to each change.

For the first time, a subject index to the tables has been provided to facilitate reference to all tables concerned with a given subject. New entries have been made in the glossary to define terms used for the first time this year.

Although every effort has been made to explain the changes made in the tables, questions may arise. Readers are encouraged to communicate with the Agency as to such questions and to comment on the new tables and changes by writing to the Office of Statistical Reports and Evaluations, National Labor Relations Board, 1717 Pennsylvania Avenue NW., Washington, D.C., 20570.

Changes in General Applying to a Number of Tables:

By amendment to the Agency's Rules and Regulations effective November 30, 1964, the Board made provision for the filing of petitions for Amendment of Certifications (AC cases)* and for Clarification of Bargaining Units (UC cases)* under Section 9(b) of the National Labor Relations Act. Two new tables (3C and 10A) have been included, and new columns have been added to tables 1, 5, and 6 to provide statistical data on the receipt, processing, and disposition of the AC and UC cases. Data on AC and UC cases reflect the fact that such cases were received by the Agency only during the last 7 months of fiscal year 1965.

All column headings which were formerly captioned "AFL–CIO affiliates" and "Unaffiliated local unions" have been changed to read "AFL–CIO unions" and "Other local unions," respectively. This change in the column captions was made for clarity; the coverage of the captions has not been changed.

Table 1—Total Cases Received, Closed, and Pending.

Two sections have been added to this table containing data on amendment of certification and unit clarification cases. Figures in the first section—"All Cases"—are comparable to those in prior years' tables when data in the two newly added sections are subtracted.

Table 2—Types of Unfair Labor Practices Alleged.

The format of this table has been changed to allow presentation of the data and recapitulations in vertical order.

Table 3B—Formal Actions Taken in Representation and Union Deauthorization Cases.

For the first time, this table includes the total number of hearings completed, including hearings on objections and/or challenges. Figures in the second line, "initial hearings," are comparable to prior years.

*See Glossary for definition of terms.

Table 3C—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases.

This is a new table showing formal actions taken in AC and UC cases.

Table 4—Remedial Action Taken in Unfair Labor Practice Cases Closed.

The column which formerly included all remedial action taken pursuant to agreement of the parties has been divided to indicate whether such action was taken pursuant to an informal or a formal settlement. Likewise remedial actions taken pursuant to Board order are shown separately from those taken pursuant to court order; formerly all remedial actions taken pursuant to such orders were shown in one column.

Table 5—Industrial Distribution of Cases Received.

Table 6—Geographic Distribution of Cases Received.

AC and UC cases have been added to both tables. Figures in the first column—"All cases"—are comparable to those of the previous year when data in the "AC" and "UC" columns are subtracted.

Table 7—Analysis of Method of Disposition of Unfair Labor Practice Cases Closed.

Table 7A—Analysis of Method of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings.

These tables have been changed to group cases according to the method, rather than the stage, of disposition. As in the past, information on stage of disposition of unfair labor practice cases is summarized in table 8. In addition to the percent of total closings effected by each method, table 7 shows the percentage breakdown within each method for all cases.

Table 8—Disposition by Stage of Unfair Labor Practice Cases Closed.

Table 9—Disposition by Stage of Representation and Union Deauthorization Cases Closed.

The word "stage" has been added to the headings of these tables to distinguish them from tables 7 and 10 which analyze by method the disposition of unfair labor practice cases and representation and union deauthorization cases, respectively.

Table 10A—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases.

This is a new table added to show data on the methods of disposition of the new AC and UC types of cases.

Table 11C—Results of Rerun Elections Held in Representation Cases Closed.

The first three percent columns in this table have been changed to show percent by type of case, instead of the percent of all elections involved.

Table 11D—Objections Filed in Representation Cases Closed, by Party Filing.

All percent columns in this table have been changed to show percent by type of case, instead of the percent of all elections involved.

Table 15—Geographic Distribution of Representation Elections Held in Cases Closed.

Table 16—Industrial Distribution of Representation Elections Held in Cases Closed.

Two columns have been added to these tables, showing the total number of elections won by unions and the total valid votes cast for unions in all elections.

Table 17—Size of Units in Representation Elections Held in Cases Closed.

The number of intervals for unit sizes between 100 and 200 has been increased from 2 to 10 to provide more detailed information on the distribution of elections in units of between 100 and 200 employees. The column which formerly showed the percent of the total elections within each size class won by unions, according to category of affiliation, has been dropped. The remaining column shows, for each category of union affiliation, the percent of elections won according to size of unit.

Table 18—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishment.

As in table 17 the number of intervals between 100 and 200 has been increased. A column has been added giving the total number of situations within each size class. The columns formerly showing the percent, by case type, of situations within each size class have been replaced with columns showing the actual number of such situations.

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

The definitions of terms contained in this glossary are not intended for general application but are specifically directed toward increasing comprehension of the statistical tables that follow. Thus the definitions are keyed directly to the terms used in such tables.

Adjusted Cases

Cases are closed as "adjusted" when an informal settlement agreement is executed and compliance with its terms is secured. (See "Informal Agreement," this glossary.) In some instances, a written agreement is not secured but appropriate remedial action is taken so as to render further proceeding unnecessary. A central element in an "adjusted" case is the agreement of the parties to settle differences without recourse to litigation.

Advisory Opinion Cases

See "Other cases—AO" under "Types of Cases."

Agreement of Parties

See "Informal Agreement" and "Formal Agreement," this glossary. The term "agreement" includes both types.

Amendment of Certification Cases

See "Other Cases—AC" under "Types of Cases."

Backpay

Amounts of money paid or to be paid employees as reimbursement for wages lost because they were discriminatorily discharged or unlawfully denied employment. Also included is interest on such moneys, payment for bonuses, vacation, other fringe benefits, etc., lost because of the discriminatory acts. All moneys noted in table 4 have been reported as paid or owing in cases closed during the fiscal year. (Installment payments may protract some payments beyond this year and some payments may have actually been made at times considerably in advance of the date a case was opened, i.e., in a prior fiscal year.)

Backpay Hearing

A supplementary hearing to receive evidence and testimony as to the amounts of backpay due discriminatees under a prior Board order or court decree.

Backpay Specification

The formal document, a "pleading," which is served on the parties when the regional director and the respondent are unable to agree as to the amounts of backpay due discriminatees pursuant to a Board order or court

decree requiring payment of such backpay. It sets forth in detail the amounts held by the regional director to be owing each discriminatee and the method of computation employed. The specification is accompanied by a notice of hearing setting a date for a backpay hearing.

Case

A "case" is the general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case. See "Types of Cases."

Certification

A certification of the results of an election is issued by the regional director or the Board. If a union has been designated as the exclusive bargaining representative by a majority of the employees, a certification of representatives is issued. If no union has received a majority vote, a certification of results of election is issued.

Challenges

The parties to an NLRB election are entitled to challenge any voter. At the election site, the challenged ballots are segregated and not counted when the other ballots are tallied. Most frequently, the tally of unchallenged ballots determines the election and the challenged ballots are insufficient in number to affect the result of the election. The challenges in such a case are never resolved, and the certification is based upon the tally of (unchallenged) ballots.

When challenged ballots are determinative of the result, a determination as to whether or not they are to be counted rests with the regional director in the first instance, subject to possible appeal to the Board. Often, however, the "determinative" challenges are resolved informally by the parties by mutual agreement. No record is kept of nondeterminative challenges or determinative challenges which are resolved by agreement prior to issuance of the first tally of ballots.

Charge

A document filed by an employee, an employer, a union, or an individual alleging that an unfair labor practice has been committed. See "C Cases" under "Types of Cases."

Complaint

The document which initiates "formal" proceedings in an unfair labor practice case. It is issued by the regional director when he concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and an adjustment or settlement has not been achieved by the parties. The complaint sets forth all allegations and information necessary to bring a case to hearing before a trial examiner pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of hearing.

Compliance

The carrying out of remedial action as agreed upon by the parties in writing (see "Formal Agreement," "Informal Agreement") ; as recommended by the trial examiner in his decision; as ordered by the Board in its Decision and Order; or as decreed by the court.

Dismissed Cases

Cases may be dismissed at any stage. They are dismissed informally when, following investigation, the regional director concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for a variety of other reasons. Before the charge is dismissed, however, the charging party is given the opportunity to withdraw the charge voluntarily. (See also "Withdrawn Cases.") Cases may also be dismissed by the trial examiner, by the Board, or by the courts through their refusal to enforce orders of the Board.

Dues

See "Fees, Dues, and Fines."

Election, Consent

An election conducted by the regional director pursuant to an agreement signed by all parties concerned. The agreement provides for the waiving of a hearing, the establishment of the appropriate unit by mutual consent, and for the final determination of all postelection issues by the regional director.

Election, Directed

Board Directed

An election conducted by the regional director pursuant to a decision and direction of election by the Board. Postelection rulings are made by the regional director or by the Board.

Regional Director Directed

An election conducted by the regional director pursuant to a decision and direction of election issued by the regional director after a hearing. Postelection rulings are made by the regional director or by the Board.

Election, Expedited

An election conducted by the regional director pursuant to a petition filed within 30 days of the commencement of picketing in a situation in which a meritorious 8(b)(7)(C) charge has been filed. The election is conducted under priority conditions and without a hearing unless the regional director believes the proceeding raises questions which cannot be decided without a hearing.

Postelection rulings on objections and/or challenges are made by the regional director and are final and binding unless the Board grants an appeal on application by one of the parties.

Election, Rerun

An election held after an initial election has been set aside either by the regional director or by the Board.

Election, Runoff

An election conducted by the regional director after an initial election, having three or more choices on the ballot, has turned out to be inconclusive (none of the choices receiving a majority of the valid votes cast). The regional director conducts the runoff election between the choices on the original ballot which received the highest and the next highest number of votes.

Election, Stipulated

An election held by the regional director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

Eligible Voters

Employees within an appropriate bargaining unit who were employed as of a fixed date prior to an election, or are otherwise qualified to vote under the Board's eligibility rules.

Fees, Dues, and Fines

The collection by a union or an employer of dues, fines, and referral fees from employees may be found to be an unfair labor practice under section 8(b) (1)(A) or (2), or 8(a) (1) and (2) or (3), where, for instance, such moneys were collected pursuant to an illegal hiring-hall arrangement or an invalid or unlawfully applied union-security agreement, where dues were deducted from employees' pay without their authorization; or, in the case of fines, where such fines restrained or coerced employees in the exercise of their rights. The remedy for such unfair labor practices usually requires the reimbursement of such moneys to the employees.

Fines

See "Fees, Dues, and Fines."

Formal Action

Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions are, further, those in which the decision-making authority of the Board (the regional director in representation cases), as provided in sections 9 and 10 of the Act, must be exercised in order to achieve the disposition of a case or the resolution of any issue raised in a case. Thus, formal action takes place when a Board decision and consent order is issued pursuant to a stipulation, even though the stipulation constitutes a voluntary agreement.

Formal Agreement (in unfair labor practice cases)

A written agreement between the Board and the other parties to a case in which hearing is waived and the specific terms of a Board order agreed upon. The agreement may also provide for the entry of a consent court decree enforcing the Board order.

Informal Agreement (in unfair labor practice cases)

A written agreement entered into between the party charged with committing an unfair labor practice, the regional director, and (in most cases) the charging party requiring the charged party to take certain specific remedial action as a basis for the closing of the case. Cases closed in this manner are included in "adjusted" cases.

Injunction Petitions

Petitions filed by the Board with respective U.S. district courts for injunctive relief under section 10(j) or section 10(l) of the Act pending hearing and adjudication of unfair labor practice charges before the Board. Also, petitions filed with a U.C. court of appeals under section 10(e) of the Act.

Jurisdictional Disputes

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of section 8(b)(4)(D). They are initially processed under section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Thereafter, the failure of a party to comply with the Board's determination of dispute is the basis for the issuance of an unfair labor practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

Any party to an election may file objections alleging that either the conduct of the election or the conduct of a party to the election failed to meet the Board's standards. An election will be set aside if eligible employee-voters have not been given an adequate opportunity to cast their ballots, in secrecy and without hindrance from fear or other interference with the expression of their free choice.

Petition

See "Representation Case." Also see "Other cases—AC, UC, and UD" under "Types of Cases."

Proceeding

One or more cases included in a single litigated action. A "proceeding" may be a combination of C and R cases consolidated for the purposes of hearing.

Representation Case

This term applies to cases bearing the alphabetical designations RC, RM, or RD. (See "R Cases" under "Types of Cases," this glossary, for specific definitions of these terms.) All three types of cases are included in the term "representation" which deals generally with the problem of which union, if any, shall represent employees in negotiations with their employer. The cases are initiated by the filing of a petition by a union, an employer, or a group of employees.

Representation Election

An election by secret ballot conducted by the Board among the employees in an appropriate collective-bargaining unit to determine whether the employees wish to be represented by a particular labor organization for purposes of collective bargaining. The tables herein reflect only final elections which result in the issuance of a certification of representatives if a union is chosen, or a certification of results if the majority has voted for "no union."

Situation

One or more unfair labor practice cases involving the same factual situation. These cases are processed as a single unit of work. A situation may include one or more CA cases, a combination of CA and CB cases, or a combination of other types of C cases. It does not include representation cases.

Types of Cases

General: Letter designations are given to all cases depending upon the subsection of the Act allegedly violated or otherwise describing the general nature of each case. Each of the letter designations appearing below is descriptive of the case it is associated with.

C Cases (unfair labor practice cases)

A case number which contains the first letter designation C, in combination with another letter, i.e., CA, CB, etc., indicates that it involves a charge that an unfair labor practice has been committed in violation of one or more subsections of section 8.

CA: A charge that an employer has committed unfair labor practices in violation of section 8(a) (1), (2), (3), (4), or (5), or any combination thereof.

CB: A charge that a labor organization has committed unfair labor practices in violation of section 8(b) (1), (2), (3), (5), or (6), or any combination thereof.

CC: A charge that a labor organization has committed unfair labor practices under section 8(b)(4) (i) and/or (ii), (A), (B), or (C), or any combination thereof.

CD: A charge that a labor organization has committed an unfair labor practice in violation of section 8(b)(4) (i) or (ii)(D). Preliminary actions under section 10(k) for the determination of jurisdictional disputes are processed as CD cases. (See "Jurisdictional Disputes" in this glossary.)

CE: A charge that either a labor organization or an employer, or both jointly, have committed an unfair labor practice in violation of section 8(e).

CP: A charge that a labor organization has committed an unfair labor practice in violation of section 8(b)(7) (A), (B), or (C), or any combination thereof.

R Cases (representation cases)

A case number which contains the first letter designation R, in combination with another letter, i.e., RC, RD, RM, indicates that it is a petition for investigation and determination of a question concerning representation of employees, filed under section 9(c) of the Act.

RC: A petition by a labor organization or an employee alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

RM: A petition filed by an employer alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

RD: A petition filed by employees alleging that the union previously certified or currently recognized by the employer as their collective-bargaining representative no longer represents a majority of the employees in the appropriate unit and seeking an election to determine this.

Other Cases

AC: (Amendment of Certification cases) : A petition filed by a labor organization or an employer for amendment of an existing certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved.

AO: (Advisory Opinion cases) : As distinguished from the other types of cases described above, which are filed in and processed by regional offices of the Board, AO or "advisory opinion" cases are filed directly with the Board in Washington and seek a determination as to whether the Board would or would not assert jurisdiction in any given situation, on the basis of its current standards, over the party or parties to a proceeding pending before a State or territorial agency or a court. (See subpart H of the Board's Rules and Regulations, Series 8, as amended.)

UC: (Unit Clarification cases) : A petition filed by a labor organization or an employer seeking a determination as to whether certain classifications of employees should or should not be included within a presently existing bargaining unit.

UD: (Union Deauthorization cases) : A petition filed by employees pursuant to section 9(e)(1) requesting that the Board conduct a referendum to determine whether a union's authority to enter into a union-shop contract should be rescinded.

UD Cases

See "Other Cases—UD" under "Types of Cases."

Unfair Labor Practice Cases:

See "C Cases" under "Types of Cases."

Union Deauthorization Cases:

See "Other cases—UD" under "Types of Cases."

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its regional director, as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as "withdrawn" when the charging party or petitioner, for whatever reasons, requests withdrawal of the charge or the petition and such request is approved.

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Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1965 [1]

	Total	Identification of filing party					
		AFL-CIO unions	Team-sters	Other national unions	Other local unions	Individ-uals	Employ-ers
All cases							
Pending July 1, 1964	8,085	3,612	989	311	202	1,864	1,107
Received fiscal 1965	28,025	11,989	4,241	1,132	722	6,148	3,793
On docket fiscal 1965	36,110	15,601	5,230	1,443	924	8,012	4,900
Closed fiscal 1965	27,199	11,305	4,146	1,112	646	6,243	3,747
Pending June 30, 1965	8,911	4,296	1,084	331	278	1,769	1,153
Unfair labor practice cases [2]							
Pending July 1, 1964	5,731	2,332	488	177	120	1,737	877
Received fiscal 1965	15,800	5,607	1,401	447	282	5,446	2,617
On docket fiscal 1965	21,531	7,939	1,889	624	402	7,183	3,494
Closed fiscal 1965	15,219	5,026	1,334	426	281	5,545	2,607
Pending June 30, 1965	6,312	2,913	555	198	121	1,638	887
Representation cases [3]							
Pending July 1, 1964	2,334	1,280	501	134	82	107	230
Received fiscal 1965	11,989	6,302	2,832	683	435	596	1,141
On docket fiscal 1965	14,323	7,582	3,333	817	517	703	1,371
Closed fiscal 1965	11,797	6,225	2,807	685	361	603	1,116
Pending June 30, 1965	2,526	1,357	526	132	156	100	255
Union-shop deauthorization cases							
Pending July 1, 1964	20	----------	----------	----------	----------	20	----------
Received fiscal 1965	106	----------	----------	----------	----------	106	----------
On docket fiscal 1965	126	----------	----------	----------	----------	126	----------
Closed fiscal 1965	95	----------	----------	----------	----------	95	----------
Pending June 30, 1965	31	----------	----------	----------	----------	31	----------
Amendment of certification cases							
Pending July 1, 1964	----------	----------	----------	----------	----------	----------	----------
Received fiscal 1965	45	30	4	0	1	0	10
On docket fiscal 1965	45	30	4	0	1	0	10
Closed fiscal 1965	28	17	3	0	1	0	7
Pending June 30, 1965	17	13	1	0	0	0	3
Unit clarification cases							
Pending July 1, 1964	----------	----------	----------	----------	----------	----------	----------
Received fiscal 1965	85	50	4	2	4	0	25
On docket fiscal 1965	85	50	4	2	4	0	25
Closed fiscal 1965	60	37	2	1	3	0	17
Pending June 30, 1965	25	13	2	1	1	0	8

[1] See "Glossary" for definition of terms. Advisory opinion (AO) cases not included. See table 22.
[2] See table 1A for totals by types of cases.
[3] See table 1B for totals by types of cases.

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1965 [1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	CA cases						
Pending July 1, 1964	4,159	2,283	485	156	94	1,140	1
Received fiscal 1965	10,931	5,465	1,378	410	200	3,471	7
On docket fiscal 1965	15,090	7,748	1,863	566	294	4,611	8
Closed fiscal 1965	10,360	4,903	1,320	385	199	3,547	6
Pending June 30, 1965	4,730	2,845	543	181	95	1,064	2
	CB cases						
Pending July 1, 1964	796	31	2	7	14	569	173
Received fiscal 1965	2,703	79	20	10	38	1,929	627
On docket fiscal 1965	3,499	110	22	17	52	2,498	800
Closed fiscal 1965	2,659	62	12	12	44	1,944	585
Pending June 30, 1965	840	48	10	5	8	554	215
	CC cases						
Pending July 1, 1964	436	4	0	13	10	16	393
Received fiscal 1965	1,256	28	1	22	19	30	1,156
On docket fiscal 1965	1,692	32	1	35	29	46	1,549
Closed fiscal 1965	1,253	24	0	25	18	36	1,150
Pending June 30, 1965	439	8	1	10	11	10	399
	CD cases						
Pending July 1, 1964	158	6	0	0	1	8	143
Received fiscal 1965	461	28	1	3	7	8	414
On docket fiscal 1965	619	34	1	3	8	16	557
Closed fiscal 1965	465	25	1	3	5	11	420
Pending June 30, 1965	154	9	0	0	3	5	137
	CE cases						
Pending July 1, 1964	63	7	1	0	0	3	52
Received fiscal 1965	56	3	1	0	5	2	45
On docket fiscal 1965	119	10	2	0	5	5	97
Closed fiscal 1965	69	8	1	0	3	1	56
Pending June 30, 1965	50	2	1	0	2	4	41
	CP cases						
Pending July 1, 1964	119	1	0	1	1	1	115
Received fiscal 1965	393	4	0	2	13	6	368
On docket fiscal 1965	512	5	0	3	14	7	483
Closed fiscal 1965	413	4	0	1	12	6	390
Pending June 30, 1965	99	1	0	2	2	1	93

[1] See "Glossary" for definition of terms.

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1965 [1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	RC cases						
Pending July 1, 1964	1,997	1,277	501	134	81	4	----------
Received fiscal 1965	10,255	6,298	2,832	683	434	8	----------
On docket fiscal 1965	12,252	7,575	3,333	817	515	12	----------
Closed fiscal 1965	10,082	6,219	2,807	685	360	11	----------
Pending June 30, 1965	2,170	1,356	526	132	155	1	----------
	RM cases						
Pending July 1, 1964	230	----------	----------	----------	----------	----------	230
Received fiscal 1965	1,141	----------	----------	----------	----------	----------	1,141
On docket fiscal 1965	1,371	----------	----------	----------	----------	----------	1,371
Closed fiscal 1965	1,116	----------	----------	----------	----------	----------	1,116
Pending June 30, 1965	255	----------	----------	----------	----------	----------	255
	RD cases						
Pending July 1, 1964	107	3	0	0	1	103	----------
Received fiscal 1965	593	4	0	0	1	588	----------
On docket fiscal 1965	700	7	0	0	2	691	----------
Closed fiscal 1965	599	6	0	0	1	592	----------
Pending June 30, 1965	101	1	0	0	1	99	----------

[1] See "Glossary" for definition of terms.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1965

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

	Number of cases showing specific allegations	Percent of total cases
Subsections of Sec 8(a). Total cases	10,931	100 0
8(a)(1)	881	8.1
8(a)(1)(2)	224	2 0
8(a)(1)(3)	5,531	50 6
8(a)(1)(4)	39	.4
8(a)(1)(5)	2,338	21.4
8(a)(1)(2)(3)	227	2.1
8(a)(1)(2)(4)	1	.0
8(a)(1)(2)(5)	78	.7
8(a)(1)(3)(4)	198	1.8
8(a)(1)(3)(5)	1,246	11 4
8(a)(1)(4)(5)	3	0
8(a)(1)(2)(3)(4)	15	.1
8(a)(1)(2)(3)(5)	122	1.1
8(a)(1)(3)(4)(5)	26	.2
8(a)(1)(2)(3)(4)(5)	2	.0

RECAPITULATION [1]

	Number of cases showing specific allegations	Percent of total cases
8(a)(1) [2]	10,931	100.0
8(a)(2)	669	6 1
8(a)(3)	7,367	67 4
8(a)(4)	284	2 6
8(a)(5)	3,815	34 9

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

	Number of cases showing specific allegations	Percent of total cases
Subsections of Sec. 8(b) Total cases	4,813	100.0
8(b)(1)	808	16 8
8(b)(2)	131	2.7
8(b)(3)	238	4.9
8(b)(4)	1,717	35.7
8(b)(5)	3	.1
8(b)(6)	11	.2
8(b)(7)	393	8 2
8(b)(1)(2)	1,237	26.9
8(b)(1)(3)	123	2.6
8(b)(1)(6)	3	.1
8(b)(2)(3)	14	.3
8(b)(2)(6)	1	.0
8(b)(1)(2)(3)	59	1.2
8(b)(1)(2)(5)	6	.1
8(b)(1)(2)(6)	6	.1
8(b)(1)(3)(6)	2	.0
8(b)(1)(2)(3)(5)(6)	1	.0

RECAPITULATION [1]

	Number of cases showing specific allegations	Percent of total cases
8(b)(1)	3,305	47.9
8(b)(2)	1,515	31 5
8(b)(3)	437	9.1
8(b)(4)	1,717	35.7
8(b)(5)	10	.2
8(b)(6)	24	.5
8(b)(7)	393	8.2

B1. ANALYSIS OF 8(b)(4)

	Number of cases showing specific allegations	Percent of total cases
Total cases 8(b)(4)	1,717	100.0
8(b)(4)(A)	72	4.2
8(b)(4)(B)	1,015	59.1
8(b)(4)(C)	19	1.1
8(b)(4)(D)	461	26.8
8(b)(4)(A)(B)	137	8 0
8(b)(4)(A)(C)	10	.6
8(b)(4)(A)(B)(C)	3	.2

RECAPITULATION [1]

	Number of cases showing specific allegations	Percent of total cases
8(b)(4)(A)	212	12.3
8(b)(4)(B)	1,165	67.9
8(b)(4)(C)	32	1.9
8(b)(4)(D)	461	26.8

B2 ANALYSIS OF 8(b)(7)

	Number of cases showing specific allegations	Percent of total cases
Total cases 8(b)(7)	393	100.0
8(b)(7)(A)	113	28.8
8(b)(7)(B)	23	5 9
8(b)(7)(C)	248	63 1
8(b)(7)(A)(B)	3	0.8
8(b)(7)(A)(C)	4	1.0
8(b)(7)(B)(C)	1	.2
8(b)(7)(A)(B)(C)	1	.2

RECAPITULATION [1]

	Number of cases showing specific allegations	Percent of total cases
8(b)(7)(A)	121	30 8
8(b)(7)(B)	27	6 9
8(b)(7)(C)	254	64.6

C. CHARGES FILED UNDER SEC. 8(e)

	Number of cases showing specific allegations	Percent of total cases
Total cases 8(e)	56	100 0
Against unions alone	48	85 7
Against employers alone	0	----------
Against union and employers.	8	14 3

[1] A single case may include allegations of violation of more than one subsection of the act. Therefore, the total of the various allegations is greater than the total number of cases

[2] Subsec. 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 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1965 [1]

Type of formal action taken	Cases in which formal actions taken	Total formal actions taken	Formal actions taken by type of case: CA	CB	CC	CD: Jurisdictional disputes	CD: Unfair labor practices	CE	CP	CA Combined with CB	C Combined with representation cases	Other C combinations
10(k) notice of hearing issued	119	98				98						
Complaints issued	2,498	1,804	1,377	96	122		23	6	27	48	82	23
Backpay specifications issued	79	33	25	3	0		0	0	0	5	0	0
Hearings completed, total	1,491	1,006	724	54	39	58	5	5	11	33	60	17
Initial ULP hearings	1,400	975	702	52	39	58	5	3	11	30	58	17
Backpay hearings	53	21	17	1	0		0	0	0	3	0	0
Other hearings	38	10	5	1	0		0	2	0	0	2	0
Decisions by trial examiners, total	1,290	906	714	49	44		3	3	11	36	33	13
Initial ULP decisions	1,208	875	689	48	43		3	3	11	32	33	13
Backpay decisions	38	18	16	0	0		0	0	0	2	0	0
Supplemental decisions	44	13	9	1	1		0	0	0	2	0	0
Decisions and orders by the Board, total	1,374	1,000	688	60	76	69	6	6	13	43	24	15
Upon consent of the parties												
Initial decisions	147	104	63	8	20		1	0	4	4	0	4
Supplemental decisions	5	3	2	1	0		0	0	0	0	0	0
Adopting trial examiners decisions (no exceptions filed):												
Initial ULP decisions	155	127	102	5	10		0	0	1	5	3	1
Backpay decisions	9	6	3	1	0		0	0	0	2	0	0
Contested												
Initial ULP decisions	974	698	480	42	36	69	3	3	6	31	21	7
Decisions based upon stipulated record	33	26	7	2	8		2	2	2	0	0	3
Supplemental ULP decisions	11	11	7	1	2		0	1	0	0	0	0
Backpay decisions	40	25	24	0	0		0	0	0	1	0	0

[1] See "Glossary" for definition of terms

Table 3B.—Formal Action Taken in Representation and Union Deauthorization Cases, Fiscal Year 1965 [1]

Type of formal action taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken	RC	RM	RD	UD
Hearings completed, total	2,335	2,041	1,866	94	81	0
Initial hearings	2,246	1,952	1,780	92	80	0
Hearings on objections and/or challenges	89	89	86	2	1	0
Decisions issued, total	2,168	1,931	1,764	88	79	0
By regional director	1,865	1,749	1,605	74	70	0
Elections directed	1,698	1,605	1,483	68	54	0
Dismissals on record	167	144	122	6	16	0
By Board	303	182	159	14	9	0
After transfer by regional director for initial decision	242	123	106	11	6	0
Elections directed	137	73	66	7	0	0
Dismissals on record	105	50	40	4	6	0
After review of regional director's decision	61	59	53	3	3	0
Elections directed	49	49	44	2	3	0
Dismissals on record	12	10	9	1	0	0
Decisions on objections and/or challenges, total	803	776	737	27	12	0
By regional director	369	345	326	10	9	0
By Board	434	431	411	17	3	0
In stipulated elections	388	386	366	17	3	0
No exceptions to regional director's report	254	252	238	13	1	0
Exceptions to regional director's report	134	134	128	4	2	0
In directed elections (after transfer by regional director)	22	21	21	0	0	0
In directed elections after review of regional director's supplemental decision	24	24	24	0	0	0

[1] See "Glossary" for definition of terms.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1965 [1]

Type of formal action taken	AC	UC
Hearings completed	5	24
Decisions issued after hearing	5	16
By regional director	5	14
By Board	0	2

[1] See "Glossary" for definition of terms

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1965 [1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of trial examiner	Order of—			Agreement of parties		Recommendation of trial examiner	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A By number of cases involved	[2] 4,728												
Notice posted	2,688	2,041	1,243	104	134	294	266	647	402	55	48	76	66
Recognition or other assistance withdrawn	90	90	54	5	3	20	8						
Employer-dominated union disestablished	37	37	18	1	1	9	8						
Employees offered reinstatement	1,122	1,122	764	55	79	138	86						
Employees placed on preferential hiring list	152	152	115	9	11	9	8						
Hiring hall rights restored	33							33	29	0	1	3	0
Objections to employment withdrawn	108							108	61	7	17	16	7
Picketing ended	451							451	411	16	5	11	8
Work stoppage ended	184							184	176	3	0	4	1
Collective bargaining begun	1,175	1,022	811	32	41	79	59	153	147	0	3	1	2
Backpay distributed	1,467	1,347	911	67	82	180	107	120	70	10	3	19	18
Reimbursement of fees, dues, and fines	84	52	29	3	2	10	8	32	25	2	0	4	1
Other conditions of employment improved	271	158	156	0	1	1	0	113	112	0	0	1	0
Other remedies	158	86	82	0	1	0	3	72	72	0	0	0	0
B. By number of employees affected													
Employees offered reinstatement, total	5,875	5,875	4,387	355	225	463	445						
Accepted	5,081	5,081	3,980	275	170	312	344						
Declined	794	794	407	80	55	151	101						
Employees placed on preferential hiring list	644	644	526	65	9	33	11						
Hiring hall rights restored	38							38	34	0	1	3	0
Objections to employment withdrawn	490							490	233	21	16	208	12
Employees receiving backpay													
From either employer or union	4,591	4,477	2,689	277	211	593	707	114	79	5	7	10	13
From both employer and union	53	53	13	20	0	7	13	53	13	20	0	7	13
Employees reimbursed for fees, dues, and fines,													
From either employer or union	791	485	340	0	39	57	49	306	296	1	0	0	9
From both employer and union	260	260	43	42	0	175	0	260	43	42	0	175	
C By amounts of monetary recovery, total	$2,807,780	$2,711,250	$785,850	$105,010	$327,190	$624,890	$868,310	$96,530	$20,530	$7,200	$2,220	$19,980	$46,600
Backpay (includes all monetary payments except fees, dues, and fines)	2,782,360	2,699,360	780,910	104,560	327,010	622,550	864,330	83,000	12,250	6,720	2,220	16,350	45,460
Reimbursement of fees, dues, and fines	25,420	11,890	4,940	450	180	2,340	3,980	13,530	8,280	480	0	3,630	1,140

[1] See "Glossary" for definition of terms Data in this table are based upon unfair labor practice cases that were closed during fiscal year 1965 after the company and/or union had satisfied all remedial action requirements

[2] A single case usually results in more than one remedial action, therefore, the total number of actions exceeds the number of cases involved

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1965 [1]

Industrial group [2]	All cases	Unfair labor practice cases							Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD	AC	UC
Total, all industrial groups	28,025	15,800	10,931	2,703	1,256	461	56	393	11,989	10,255	1,141	593	106	45	85
Manufacturing	14,172	7,555	5,954	1,114	282	93	12	100	6,475	5,639	481	355	64	29	49
Ordnance and accessories	40	23	18	5	0	0	0	0	15	15	0	0	0	1	1
Food and kindred products	2,025	1,113	850	177	53	12	4	17	890	793	62	35	13	1	8
Tobacco manufacturers	21	14	8	6	0	0	0	0	7	6	0	1	0	0	0
Textile mill products	416	263	217	28	10	0	1	7	149	119	20	10	1	2	1
Apparel and other finished products made from fabric and similar materials	482	338	280	37	11	1	0	9	143	106	28	9	1	0	0
Lumber and wood products (except furniture)	488	224	183	23	8	4	0	6	255	230	19	6	5	3	1
Furniture and fixtures	548	294	253	29	6	1	0	5	245	209	26	10	4	2	3
Paper and allied products	657	285	209	61	11	3	0	1	369	342	12	15	0	0	3
Printing, publishing, and allied industries	815	389	309	46	11	21	0	2	419	345	49	25	1	4	2
Chemicals and allied products	718	313	242	36	20	8	0	7	399	352	25	22	2	2	2
Products of petroleum and coal	220	130	100	19	9	0	0	2	84	73	3	8	1	0	5
Rubber and plastic products	584	266	243	19	3	0	0	1	314	280	17	17	3	0	1
Leather and leather products	191	111	92	17	0	0	0	2	79	70	4	5	1	0	0
Stone, clay, and glass products	748	374	266	45	37	11	5	10	367	317	30	20	0	4	3
Primary metal industries	906	526	394	103	21	4	0	4	371	334	20	17	3	2	4
Fabricated metal products (except machinery and transportation equipment)	1,535	756	608	104	32	7	1	4	766	660	51	55	8	2	3
Machinery (except electrical)	1,150	520	418	78	8	10	0	6	615	528	48	39	8	1	6
Electrical machinery, equipment, and supplies	950	585	472	93	9	4	0	7	350	305	24	21	6	5	4
Aircraft and parts	237	169	134	32	1	1	1	0	65	59	1	5	1	0	2
Ship and boat building and repairing	127	92	62	16	8	5	0	1	35	33	1	1	0	0	0
Automotive and other transportation equipment	622	398	300	89	8	1	0	0	223	197	12	14	1	0	0
Professional, scientific, and controlling instruments	224	110	93	13	2	0	0	2	112	96	8	8	2	0	0
Miscellaneous manufacturing	468	262	203	38	14	0	0	7	203	170	21	12	3	0	0
Agriculture forestry, and fisheries	6	4	2	2	0	0	0	0	2	1	1	0	0	0	0

Mining	316	191	125	27	20	5	5	9	120	104	7	9	4	1	0
Metal mining	45	18	14	1	2	1	0	0	26	21	0	5	0	1	0
Coal mining	116	94	54	18	10	2	2	8	20	18	1	1	2	0	0
Crude petroleum and natural gas production	31	17	17	0	0	0	0	0	14	14	0	0	0	0	0
Nonmetallic mining and quarrying	124	62	40	8	8	2	3	1	60	51	6	3	2	0	0
Construction	2,827	2,414	737	638	631	282	16	110	406	359	43	4	3	1	3
Wholesale trade	2,307	962	721	82	68	11	12	68	1,333	1,092	175	66	7	3	2
Retail trade	3,103	1,535	1,241	171	64	8	3	48	1,535	1,259	217	59	15	4	14
Finance, insurance, and real estate	232	116	100	6	6	3	0	1	115	110	2	3	0	0	1
Transportation, communication, and other utilities	3,253	2,001	1,341	460	134	35	6	25	1,228	1,001	161	66	6	5	13
Local passenger transportation	419	265	230	29	4	0	0	2	147	94	44	9	4	1	2
Motor freight, warehousing, and transportation services	1,824	1,115	756	249	88	7	4	11	703	595	75	33	2	0	4
Water transportation	381	307	131	138	21	10	0	7	70	60	7	3	0	1	3
Other transportation	84	40	20	13	5	1	0	1	44	36	6	2	0	0	0
Communications	298	151	114	16	8	8	2	3	142	111	17	14	0	2	3
Heat, light, power, water, and sanitary services	247	123	90	15	8	9	0	1	122	105	12	5	0	1	1
Services	1,809	1,022	710	203	51	24	2	32	775	690	54	31	7	2	3
Hotel and other lodging places	358	241	173	49	8	4	0	7	116	104	7	5	1	0	0
Personal services	195	93	81	11	1	0	0	0	101	91	7	3	1	0	0
Automobile repairs, garages, and other miscellaneous repair services	386	151	115	25	3	4	0	4	234	206	13	15	1	0	0
Motion picture and other amusement and recreation services	234	161	87	60	9	1	0	4	70	66	1	3	0	1	2
Medical and other health services	28	13	11	0	1	1	0	0	15	13	2	0	0	0	0
Legal services	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0
Educational services	13	8	2	0	2	2	1	1	5	5	0	0	0	0	0
Museums, art galleries, botanical and zoological gardens	2	1	1	0	0	0	0	0	1	0	1	0	0	0	0
Nonprofit membership organizations	83	69	45	20	3	0	1	0	13	13	0	0	0	1	0
Miscellaneous services	509	284	194	38	24	12	0	16	220	192	23	5	4	0	1

[1] See "Glossary" for definition of terms

[2] Source Standard Industrial Classification, Division of Statistical Standards, U S. Bureau of the Budget, Washington, 1957.

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Table 6.—Geographic Distribution of Cases Received, Fiscal Year 1965 [1]

Division and State [2]	All cases	Unfair labor practice cases							Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CP	All R cases	RC	RM	RD	UD	AC	UC
Total, all States and areas	28,025	15,800	10,931	2,703	1,256	461	56	393	11,989	10,255	1,141	593	106	45	85
New England	1,277	614	445	90	41	15	5	18	651	585	46	20	2	0	10
Maine	133	45	28	8	5	0	2	2	85	81	1	3	0	0	3
New Hampshire	42	8	6	2	0	0	0	0	33	30	2	1	1	0	0
Vermont	34	16	14	1	0	0	0	1	18	17	1	0	0	0	0
Massachusetts	714	362	263	52	26	8	1	12	347	310	28	9	1	0	4
Rhode Island	76	46	36	6	1	2	0	1	29	28	1	0	0	0	1
Connecticut	278	137	98	21	9	5	2	2	139	119	13	7	0	0	2
Middle Atlantic	5,784	3,488	2,254	712	260	122	9	131	2,248	1,925	232	91	35	6	7
New York	3,007	1,901	1,261	358	122	58	5	97	1,079	882	154	43	21	3	3
New Jersey	1,305	771	469	185	67	32	3	15	524	457	40	27	6	1	3
Pennsylvania	1,472	816	524	169	71	32	1	19	645	586	38	21	8	2	1
East North Central	6,108	3,379	2,345	619	246	112	5	52	2,686	2,295	221	170	17	8	18
Ohio	1,617	864	600	168	63	25	1	7	747	630	69	48	0	2	4
Indiana	805	431	339	53	24	12	1	2	365	316	28	21	6	0	3
Illinois	1,700	1,070	690	218	90	44	1	27	615	540	48	27	7	3	5
Michigan	1,464	773	547	135	53	30	0	8	687	578	52	57	2	0	2
Wisconsin	522	241	169	45	16	1	2	8	272	231	24	17	2	3	4
West North Central	2,061	983	681	135	101	42	1	23	1,065	940	84	41	3	6	4
Iowa	337	111	87	9	10	4	0	1	225	207	12	6	0	0	1
Minnesota	334	130	91	16	12	7	0	4	202	176	19	7	1	1	0
Missouri	949	524	336	90	63	24	1	10	415	374	24	17	2	5	3
North Dakota	41	12	10	2	0	0	0	0	29	22	4	3	0	0	0
South Dakota	47	16	13	0	2	0	0	1	31	25	4	2	0	0	0
Nebraska	122	70	49	6	5	6	0	4	52	41	10	1	0	0	0
Kansas	231	120	95	12	9	1	0	3	111	95	11	5	0	0	0
South Atlantic	3,194	1,732	1,323	186	149	33	2	39	1,448	1,294	99	55	1	8	5
Delaware	60	25	17	4	2	1	0	1	35	34	0	1	0	0	0
Maryland	483	212	174	24	9	3	0	2	265	246	11	8	1	4	1

District of Columbia	171	65	32	14	13	2	0	4	106	91	5	10	0	0	0
Virginia	273	135	101	19	11	1	0	3	137	122	14	1	0	0	1
West Virginia	269	173	125	25	15	3	2	3	94	79	11	4	0	1	1
North Carolina	417	232	223	7	2	0	0	0	184	168	9	7	0	0	1
South Carolina	150	95	84	6	3	0	0	2	55	49	5	1	0	0	0
Georgia	504	240	191	21	21	1	0	6	263	239	20	4	0	0	1
Florida	867	555	376	66	73	22	0	18	309	266	24	19	0	3	0
East South Central	1,449	842	670	115	31	10	0	16	600	522	44	34	2	3	2
Kentucky	358	176	141	21	4	1	0	9	179	150	18	11	2	1	0
Tennessee	615	397	320	52	16	5	0	4	214	182	20	12	0	2	2
Alabama	342	182	143	28	8	2	0	1	160	146	5	9	0	0	0
Mississippi	134	87	66	14	3	2	0	2	47	44	1	2	0	0	0
West South Central	1,940	1,142	845	179	76	32	1	9	783	676	64	43	0	2	13
Arkansas	221	122	104	15	0	3	0	0	99	88	10	1	0	0	0
Louisiana	356	229	132	61	25	9	0	2	123	106	7	10	0	0	4
Oklahoma	249	124	106	10	7	1	0	0	123	101	11	11	0	0	2
Texas	1,114	667	503	93	44	19	1	7	438	381	36	21	0	2	7
Mountain	1,253	748	508	118	81	27	0	14	495	408	60	27	1	2	7
Montana	109	62	49	6	3	2	0	2	47	32	8	7	0	0	0
Idaho	92	55	37	6	8	1	0	3	36	35	1	0	1	0	0
Wyoming	40	28	19	6	0	3	0	0	11	10	0	1	0	1	0
Colorado	440	278	188	46	30	11	0	3	160	125	27	8	0	0	2
New Mexico	155	96	67	23	3	1	0	2	57	49	7	1	0	0	2
Arizona	166	99	51	16	24	4	0	4	65	52	10	3	0	0	2
Utah	72	36	24	5	7	0	0	0	34	29	4	1	0	1	1
Nevada	179	94	73	10	6	5	0	0	85	76	3	6	0	0	0
Pacific	4,467	2,621	1,665	506	261	68	33	88	1,790	1,403	282	105	32	9	15
Washington	445	261	159	51	28	13	0	10	180	130	32	18	1	1	2
Oregon	288	139	90	24	20	1	1	3	137	104	21	12	10	0	2
California	3,500	2,138	1,355	422	204	53	32	72	1,331	1,040	216	75	18	6	7
Alaska	57	31	16	7	6	1	0	1	24	22	2	0	0	2	0
Hawaii	177	52	45	2	3	0	0	2	118	107	11	0	3	0	4
Outlying areas	492	251	195	43	10	0	0	3	223	207	9	7	13	1	4
Puerto Rico	467	239	190	38	8	0	0	3	210	196	7	7	13	1	4
Virgin Islands	25	12	5	5	2	0	0	0	13	11	2	0	0	0	0

[1] See "Glossary" for definitions of terms.
[2] The States are grouped according to the method used by the Bureau of the Census, U S. Department of Commerce

Table 7.—Analysis of Method of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1965 [1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	15,219	100 0	-------	10,360	100 0	2,659	100 0	1,253	100 0	465	100 0	69	100 0	413	100 0
Agreement of the parties	3,629	23.8	100 0	2,600	25 1	416	15 6	472	37 7	4	.9	23	33 2	114	27 6
Informal settlement	3,474	22 8	95.7	2,500	24 1	398	15.0	442	35 3	3	7	22	31 8	109	26 4
Before issuance of complaint	2,808	18.4	77.4	1,960	18 9	354	13 3	381	30 4	(2)	-------	17	24 6	96	23 2
After issuance of complaint, before opening of hearing	588	3 9	16 2	478	4 6	34	1 3	59	4 7	3	.7	1	1 4	13	3 2
After hearing opened, before issuance of trial examiner's decision	78	.5	2 1	62	6	10	.4	2	2	0	-------	4	5 8	0	-------
Formal settlement	155	1.0	4 3	100	1 0	18	.6	30	2 4	1	2	1	1 4	5	1 2
After issuance of complaint; before opening of hearing	125	8	3 5	76	.8	16	6	28	2 2	0	-------	0	-------	5	1 2
Stipulated decision	10	.1	.3	7	.1	1	0	1	.1	0	-------	0	-------	1	2
Consent decree	115	.7	3 2	69	.7	15	.6	27	2 1	0	-------	0	-------	4	1 0
After hearing opened	30	.2	8	24	.2	2	0	2	.2	1	2	1	1 4	0	-------
Stipulated decision	1	.0	.0	0	-------	1	0	0	-------	0	-------	0	-------	0	-------
Consent decree	29	2	.8	24	.2	1	0	2	.2	1	2	1	1.4	0	-------
Compliance with	898	5 9	100 0	705	6 8	95	3 6	72	5 7	10	2 2	6	8 8	10	2 4
Trial examiner decision	182	1 2	20 3	135	1 3	26	1 0	18	1 4	0	-------	0	-------	3	7
Board decision	378	2 5	42 1	298	2 9	38	1 4	34	2 7	6	1 4	0	-------	2	5
Adopting trial examiner's decision (no exceptions filed)	36	.2	4 0	31	.3	1	0	4	.3	0	-------	0	-------	0	-------
Contested	342	2 3	38 1	267	2 6	37	1 4	30	2.4	6	1 4	0	-------	2	.5
Circuit court of appeals decree	296	1 9	33 0	243	2 3	27	1 0	18	1 4	3	.6	4	5 8	1	.2
Supreme Court action	42	3	4.6	29	.3	4	.2	2	.2	1	.2	2	3 0	4	1 0
Withdrawal	5,660	37 2	100 0	3,899	37 6	1,128	42.4	446	35 6	1	2	19	27 5	167	40 5

Before issuance of complaint	5,541	36 4	97 9	3,802	36 7	1,115	41 9	438	35 0	(2)	--------	19	27.5	167	40 5
After issuance of complaint, before opening of hearing	98	.7	1 7	81	.8	9	.3	8	6	0	--------	0	--------	0	--------
After hearing opened, before trial examiner's decision	16	1	.3	12	.1	4	.2	0	--------	0	--------	0	--------	0	--------
After T.X D, before Board decision	3	.0	.1	2	.0	0	--------	0	--------	1	2	0	--------	0	--------
After Board or court decision	2	.0	.0	2	.0	0	--------	0	--------	0	--------	0	--------	0	--------
Dismissal	4,573	30.1	100.0	3,145	30.4	1,020	38.4	263	21 0	2	.4	21	30.5	122	29 5
Before issuance of complaint	4,216	27.7	92 2	2,866	27.7	979	36 8	245	19.6	(2)	--------	14	20.3	112	27 1
After issuance of complaint, before opening of hearing	18	.1	4	13	1	3	2	0	--------	2	.4	0	--------	0	--------
After hearing opened, before trial examiner's decision	1	.0	0	1	0	0	--------	0	--------	0	--------	0	--------	0	--------
By trial examiner's decision	7	.0	2	7	.1	0	--------	0	--------	0	--------	0	--------	0	--------
By Board decision	261	1 8	5 7	203	2 0	32	1 2	17	1 4	0	--------	4	5.8	5	1 2
Adopting trial examiner's decision (no exceptions filed)	69	5	1 5	60	.6	4	2	5	4	0	--------	0	--------	0	--------
Contested	192	1 3	4 2	143	1 4	28	1 0	12	1 0	0	--------	4	5 8	5	1 2
By circuit court of appeals decree	60	4	1.3	45	.4	6	2	1	0	0	--------	3	4 4	5	1 2
By Supreme Court action	10	.1	.2	10	.1	0	--------	0	--------	0	--------	0	--------	0	--------
10(k) Actions (see table 7A for details of dispositions	448	2 9	--------	--------	--------	--------	--------	--------	--------	448	96 3	--------	--------	--------	--------
Otherwise (compliance with order of trial examiner or Board not achieved—firms went out of business)	11	.1	--------	11	.1	0	--------	0	--------	0	--------	0	--------	0	--------

[1] Format changed from prior years table. Note analysis of method instead of stage. See table 8 for summary of disposition by stage. See "Glossary" for definition of terms
[2] CD cases closed in this stage are processed as jurisdictional disputes under sec. 10(k) of the Act. See table 7 A.

Table 7A.—Analysis of Method of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1965 [1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	448	100 0
Agreement of the parties—Informal settlement	152	33 9
Before 10(k) notice	139	31 0
After 10(k) notice, before opening of 10(k) hearing	12	2 7
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	2
Compliance with Board decision and determination of dispute	43	9 6
Withdrawal	170	38 0
Before 10(k) notice	155	34 6
After 10(k) notice, before opening of 10(k) hearing	11	2 5
After Board decision and determination of dispute	4	9
Dismissal	83	18 5
Before 10(k) notice	63	14 1
After 10(k) notice, before opening of 10(k) hearing	1	2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	2
By Board decision and determination of dispute	18	4 0

[1] Format changed from prior year's table Note analysis of method instead of stage See "Glossary" for definition of terms

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1965 [1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CP cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	15,219	100.0	10,360	100.0	2,659	100.0	1,253	100.0	465	100.0	69	100.0	413	100.0
Before issuance of complaint	13,013	85.5	8,628	83.3	2,448	92.1	1,064	84.9	448	96.3	50	72.5	375	90.8
After issuance of complaint, before opening of hearing	829	5.5	648	6.3	62	2.3	95	7.6	5	1.1	1	1.5	18	4.4
After hearing opened, before issuance of trial examiner's decision	122	.8	97	.9	15	.6	4	.3	1	.2	5	7.2	0	-------
After trial examiner's decision, before issuance of Board decision	196	1.3	147	1.4	27	1.0	18	1.4	1	.2	0	-------	3	.7
After Board order adopting trial examiner's decision in absence of exceptions	108	.7	94	.9	5	.2	9	.7	0	-------	0	-------	0	-------
After Board decision, before circuit court decree	540	3.5	416	4.0	65	2.4	42	3.4	6	1.3	4	5.8	7	1.7
After circuit court decree, before Supreme Court action	359	2.4	291	2.8	33	1.2	19	1.5	3	.7	7	10.1	6	1.4
After Supreme Court action	52	.3	39	.4	4	.2	2	.2	1	.2	2	2.9	4	1.0

[1] See "Glossary" for definition of terms

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1965 [1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	11,797	100.0	10,082	100.0	1,116	100.0	599	100.0	95	100.0
Before issuance of notice of hearing	6,047	51.2	4,876	48.4	778	69.7	393	65.6	94	98.9
After issuance of notice of hearing, before close of hearing	3,582	30.4	3,253	32.3	210	18.8	119	19.9	0	----------
After hearing closed, before issuance of decision	107	.9	95	.9	9	.8	3	.5	0	----------
After issuance of regional director's decision	1,885	16.0	1,710	16.9	97	8.7	78	13.0	0	----------
After issuance of Board decision	176	1.5	148	1.5	22	2.0	6	1.0	1	1.1

[1] See "Glossary" for definition of terms

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1965 [1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	11,797	100 0	10,082	100 0	1,116	100 0	599	100 0	95	100 0
Certification issued, total	7,905	67 0	7,212	71 5	487	43 6	206	34 4	49	51 6
After.										
Consent election	3,414	28.9	3,116	30 9	198	17 7	100	16 7	10	10 5
Before notice of hearing	2,232	18 9	2,012	20 0	156	14 0	64	10 7	10	10 5
After notice of hearing, before hearing closed	1,159	9.8	1,081	10 7	42	3.7	36	6 0	0	----------
After hearing closed, before decision	23	2	23	.2	0	----------	0	----------	0	----------
Stipulated election	2,848	24 2	2,604	25 8	188	16 8	56	9 3	7	7 4
Before notice of hearing	1,439	12 2	1,283	12.7	127	11 4	29	4 8	7	7 4
After notice of hearing, before hearing closed	1,387	11 8	1,302	12 9	58	5 2	27	4 5	0	----------
After hearing closed, before decision	22	2	19	.2	3	.2	0	----------	0	----------
Expedited election	34	.3	16	2	18	1 6	0	----------	----------	----------
Regional director-directed election	1,521	12 9	1,405	13.9	67	6 0	49	8 2	31	32 6
Board-directed election	88	7	71	.7	16	1.5	1	.2	1	1 1
By withdrawal, total	2,933	24.9	2,262	22 5	453	40 6	218	36.4	31	32 6
Before notice of hearing	1,768	15 0	1,249	12 4	350	31 4	169	28 2	31	32 6
After notice of hearing, before hearing closed	941	8 0	808	8.0	91	8 2	42	7.0	0	----------
After hearing closed, before decision	42	3	37	.4	3	.2	2	.3	0	----------
After regional director decision and direction of election	160	1.4	146	1 5	9	.8	5	.9	0	----------
After Board decision and direction of election	22	2	22	.2	0	----------	0	----------	0	----------
By dismissal, total	959	8 1	608	6 0	176	15.8	175	29.2	15	15.8
Before notice of hearing	584	4 9	325	3 2	128	11.5	131	21.9	15	15 8
After notice of hearing, before hearing closed	86	7	54	.5	18	1.6	14	2 3	0	----------
After hearing closed, before decision	19	2	15	2	3	.2	1	.2	0	----------
By regional director decision	204	1 7	159	1.6	21	1.9	24	4.0	0	----------
By Board decision	66	.6	55	.5	6	.6	5	.8	0	----------

[1] See "Glossary" for definition of terms.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1965

	AC	UC
Total, all	28	60
Certification amended or unit clarified:	12	12
Before hearing:	9	6
By regional director decision	8	5
By Board decision	1	1
After hearing	3	6
By regional director decision	3	5
By Board decision	0	1
Dismissed	1	19
Before hearing	0	11
By regional director decision	0	11
By Board decision	0	0
After hearing	1	8
By regional director decision	1	7
By Board decision	0	1
Withdrawn:	15	29
Before hearing	15	27
After hearing	0	2

Table 11.—Types of Elections Conducted in Cases Closed, Fiscal Year 1965 [1]

Type of case	Total	Type of election				
		Consent	Stipulated	Board directed	Regional director directed	Expedited elections under 8(b)(7)(c)
All types, total:						
Elections	7,824	3,358	2,835	86	1,524	21
Eligible voters	548,511	149,057	237,531	6,672	154,790	461
Valid votes	494,879	133,761	216,340	5,704	138,637	437
RC cases:						
Elections	7,176	3,073	2,635	71	1,394	3
Eligible voters	512,159	139,191	221,766	5,816	145,301	85
Valid votes	462,526	124,845	202,258	5,024	130,318	81
RM cases:						
Elections	400	176	142	14	50	18
Eligible voters	19,812	5,423	10,444	338	3,231	376
Valid votes	17,754	4,892	9,404	308	2,794	356
RD cases:						
Elections	200	99	54	0	47	0
Eligible voters	12,565	4,141	5,118	0	3,306	0
Valid votes	11,173	3,758	4,495	0	2,920	0
UD cases:						
Elections	48	10	4	1	33	----------
Eligible voters	3,975	302	203	518	2,952	----------
Valid votes	3,426	266	183	372	2,605	----------

[1] See "Glossary" for definition of terms.

Table 11A.—Elections in Which Certification Issued After Objections to Election Were Filed and/or in Which Determination of Challenges Was Required, Fiscal Year 1965 [1]

Type of election	All R cases			RC cases			RM cases			RD cases			UD cases		
	Total representation elections	Objections and/or challenges		Total RC elections	Objections and/or challenges		Total RM elections	Objections and/or challenges		Total RD elections	Objections and/or challenges		Total union deauthorization elections	Objections and/or challenges	
		Number elections involved	Percent of total R elections		Number elections involved	Percent of total RC elections		Number elections involved	Percent of total RM elections		Number elections involved	Percent of total RD elections		Number elections involved	Percent of total UD elections
All types, total	7,776	1,178	15.1	7,176	1,094	15.2	400	62	15.5	200	22	11.0	48	6	12.5
Objections alone or with challenges		866			800			47			19			4	
Challenges only		312			294			15			3			2	
In consent elections, total	3,348	377	11.3	3,073	347	11.3	176	20	11.4	99	10	10.1	10	1	10.0
Objections alone or with challenges		264			242			14			8			0	
Challenges only		113			105			6			2			1	
In stipulated elections, total	2,831	441	15.6	2,635	414	15.7	142	21	14.8	54	6	11.1	4	1	25.0
Objections alone or with challenges		323			301			17			5			1	
Challenges only		118			113			4			1			0	
In expedited elections, total	21	3	14.3	3	1	33.3	18	2	11.1	0	0				
Objections alone or with challenges		2			0			2			0				
Challenges only		1			1			0			0				
In regional director-directed elections, total	1,491	322	21.6	1,394	308	22.1	50	8	16.0	47	6	12.8	33	4	12.1
Objections alone or with challenges		253			241			6			6			3	
Challenges only		69			67			2			0			1	
In Board-directed elections, total	85	35	41.2	71	24	33.8	14	11	78.6	0	0		1	0	
Objections alone or with challenges		24			16			8			0			0	
Challenges only		11			8			3			0			0	

[1] See "Glossary" for definition of terms

Table 11B.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1965 [1]

Type of case	Objections filed	Objections withdrawn	Objections ruled upon	Disposition of objections ruled upon: Overruled: Number	Overruled: Percent of total ruled upon	Sustained [2]: Number	Sustained [2]: Percent of total ruled upon
All elections	1,027	231	796	543	68 2	253	31 8
RC elections	959	211	748	507	67 8	241	32 2
RM elections	46	16	30	23	76 7	7	23 3
RD elections	22	4	18	13	72 2	5	27 8

[1] See "Glossary" for definition of terms

[2] See table 11C for rerun elections held after objections were sustained In 63 elections in which objections were sustained, the cases were subsequently withdrawn, therefore no rerun election was conducted

Table 11C.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1965 [1]

Type of case	Total rerun elections: Number	Total rerun elections: Percent by type	Union certified: Number	Union certified: Percent by type	Union lost: Number	Union lost: Percent by type	Outcome of original election reversed: Number	Outcome of original election reversed: Percent of total rerun elections
All elections	190	100 0	82	43 2	108	56 8	80	42 1
RC elections	182	100 0	78	42 9	104	57 1	76	40 0
RM elections	6	100 0	4	66 7	2	33 3	4	2 1
RD elections	2	100 0	0	----------	2	100 0	0	----------

[1] See "Glossary" for definition of terms

Table 11D.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1965 [1]

Type of case	Total: Number	Total: Percent by type	By employer: Number	By employer: Percent by type	By union: Number	By union: Percent by type	By both parties [2]: Number	By both parties [2]: Percent by type
All elections	1,027	100 0	265	25 8	669	65 1	93	9 1
RC cases	959	100 0	254	26 5	647	67 5	58	6 0
RM cases	46	100 0	7	15 2	19	41 3	20	43 5
RD cases	22	100 0	4	18 2	3	13 6	15	68 2

[1] See "Glossary" for definition of terms

[2] Objections filed by more than one party in the same case are counted as one

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1965

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)[1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	48	35	72 9	13	27 1	3, 975	2, 759	69 4	1, 216	30 6	3, 426	86 2	2, 196	55. 2
AFL-CIO unions	37	26	70 3	11	29 7	3, 608	2, 459	68 2	1, 149	31 8	3, 113	86 3	1, 978	54 8
Teamsters	4	4	100 0	0	----------	134	134	100 0	0	----------	120	89 6	94	70 1
Other national unions	4	3	75 0	1	25 0	203	153	75 4	50	24 6	166	81 8	110	54 2
Other local unions	3	2	66 7	1	33 3	30	13	43 3	17	56 7	27	90 0	14	46. 7

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

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1965 [1]

Participating unions	Total elections [2]	Elections won by unions: Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions	Elections in which no representative chosen	Employees eligible to vote: Total	In elections won	In units won by: AFL-CIO unions	Teamsters	Other national unions	Other local unions	In elections where no representative chosen
A ALL REPRESENTATION ELECTIONS															
Total representation elections	7,776	60.2	4,680	3,017	1,179	309	175	3,096	544,536	333,545	223,414	35,829	41,744	32,558	210,991
1-union elections	6,903	57.2	3,948	2,617	1,030	222	79	2,955	372,627	177,712	146,466	20,923	7,403	2,920	194,915
AFL-CIO	4,548	57.5	2,617	2,617	------	------	------	1,931	304,364	146,466	146,466	------	------	------	157,898
Teamsters	1,878	54.8	1,030	------	1,030	------	------	848	48,270	20,923	------	20,923	------	------	27,347
Other national unions	369	60.2	222	------	------	222	------	147	15,414	7,403	------	------	7,403	------	8,011
Other local unions	108	73.1	79	------	------	------	79	29	4,579	2,920	------	------	------	2,920	1,659
2-union elections	827	83.3	689	378	143	82	86	138	139,935	124,263	63,782	13,531	32,861	14,089	15,672
AFL-CIO v AFL-CIO	202	66.3	134	134	------	------	------	68	19,800	14,041	14,041	------	------	------	5,759
AFL-CIO v Teamsters	232	87.1	202	94	108	------	------	30	24,108	21,337	11,777	9,560	------	------	2,771
AFL-CIO v. Natl	169	83.3	140	82	------	59	------	28	56,305	50,848	20,268	------	30,580	------	5,457
AFL-CIO v. Local	134	96.3	130	68	------	------	61	5	31,012	29,471	17,696	------	------	11,775	1,541
Teamsters v. Teamsters	7	85.7	6	------	6	------	------	1	470	457	------	457	------	------	13
Teamsters v. Natl	31	87.1	27	------	11	16	------	4	2,194	2,077	------	796	1,281	------	117
Teamsters v. Local	31	96.8	30	------	18	------	12	1	3,756	3,749	------	2,718	------	1,031	7
Natl v. Natl	4	100.0	4	------	------	4	------	0	97	97	------	------	97	------	0
Natl v Local	9	88.9	8	------	------	3	5	1	1,540	1,533	------	------	903	630	7
Local v. Local	8	100.0	8	------	------	------	8	0	653	653	------	------	------	653	0
3 (or more)-union elections	46	93.5	43	22	6	5	10	3	31,974	31,570	13,166	1,375	1,480	15,549	404
AFL-CIO v. AFL-CIO v AFL-CIO	4	100.0	4	4	------	------	------	0	238	238	238	------	------	------	0
AFL-CIO v. AFL-CIO v Teamsters	13	92.3	12	6	6	------	------	1	3,470	3,337	1,962	1,375	------	------	133
AFL-CIO v. AFL-CIO v. Natl	3	66.7	2	1	------	1	------	1	277	160	38	------	122	------	117
AFL-CIO v. AFL-CIO v. Local	6	100.0	6	2	------	------	4	0	5,780	5,780	2,450	------	------	3,330	0
AFL-CIO v Teamsters v. Natl	4	100.0	4	2	0	2	------	0	6,667	6,667	5,661	0	1,006	------	0
AFL-CIO v. Teamsters v Local	2	50.0	1	1	0	------	0	1	189	35	35	0	------	0	154
AFL-CIO v. Natl. v. Natl	2	100.0	2	1	------	1	------	0	569	569	230	------	339	------	0
AFL-CIO v. Natl v. Local	3	100.0	3	1	------	1	1	0	2,420	2,420	2,220	------	13	187	0
AFL-CIO v. Local v. Local	4	100.0	4	0	------	------	4	0	12,030	12,030	0	------	------	12,030	0
AFL-CIO v. AFL-CIO v. Teamsters v. Local	3	100.0	3	2	0	------	1	0	183	183	181	0	------	2	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. Natl	1	100.0	1	1	------	0	------	0	73	73	73	------	0	------	0
AFL-CIO v AFL-CIO v. Natl v. Local	1	100.0	1	1	------	0	0	0	78	78	78	------	0	0	0

See footnotes at end of table.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1965 [1]—Con.

Participating unions	Total elections	Elections won by unions: Percent won	Total won	AFL-CIO unions	Teamsters	Other national unions	Other local unions	Elections in which no representative chosen	Employees eligible to vote: Total	In elections won	In units won by: AFL-CIO unions	Teamsters	Other national unions	Other local unions	In elections where no representative chosen
B. ELECTIONS IN RC CASES															
Total RC elections	7,176	61.8	4,435	2,861	1,111	294	169	2,741	512,159	316,075	210,453	33,738	40,805	31,079	196,084
1-union elections	6,340	58.9	3,735	2,476	972	211	76	2,605	347,715	167,238	137,783	19,914	6,675	2,866	180,477
AFL-CIO	4,182	59.2	2,476	2,476	-------	-------	-------	1,706	284,169	137,783	137,783	-------	-------	-------	146,386
Teamsters	1,713	56.7	972	-------	972	-------	-------	741	44,934	19,914	-------	19,914	-------	-------	25,020
Other national unions	345	61.2	211	-------	-------	211	-------	134	14,165	6,675	-------	-------	6,675	-------	7,490
Other local unions	100	76.0	76	-------	-------	-------	76	24	4,447	2,866	-------	-------	-------	2,866	1,581
2-union elections	794	83.2	661	363	134	79	85	133	134,707	119,504	59,504	13,199	32,772	14,029	15,203
AFL-CIO v. AFL-CIO	194	66.5	129	129	-------	-------	-------	65	19,275	13,657	13,657	-------	-------	-------	5,618
AFL-CIO v. Teamsters	220	87.3	192	91	101	-------	-------	28	22,602	20,159	10,788	9,371	-------	-------	2,443
AFL-CIO v. Natl	163	82.7	135	78	-------	57	-------	28	54,150	48,693	18,196	-------	30,497	-------	5,457
AFL-CIO v. Local	130	96.2	125	65	-------	-------	60	5	30,119	28,578	16,863	-------	-------	11,715	1,541
Teamsters v. Teamsters	7	85.7	6	-------	6	-------	-------	1	470	457	-------	457	-------	-------	13
Teamsters v. Natl	29	86.2	25	-------	10	15	-------	4	2,150	2,033	-------	758	1,275	-------	117
Teamsters v. Local	30	96.7	29	-------	17	-------	12	1	3,651	3,644	-------	2,613	-------	1,031	7
Natl v. Natl	4	100.0	4	-------	-------	4	-------	0	97	97	-------	-------	97	-------	0
Natl v. Local	9	88.9	8	-------	-------	3	5	1	1,540	1,533	-------	-------	903	630	7
Local v. Local	8	100.0	8	-------	-------	-------	8	0	653	653	-------	-------	-------	653	0
3 (or more)-union elections	42	92.9	39	22	5	4	8	3	29,737	29,333	13,166	625	1,358	14,184	404
AFL-CIO v. AFL-CIO v. AFL-CIO	4	100.0	4	4	-------	-------	-------	0	238	238	238	-------	-------	-------	0
AFL-CIO v. AFL-CIO v. Teamsters	12	91.7	11	6	5	-------	-------	1	2,720	2,587	1,962	625	-------	-------	133
AFL-CIO v. AFL-CIO v. Natl	2	50.0	1	1	-------	0	-------	1	155	38	38	-------	0	-------	117
AFL-CIO v. AFL-CIO v. Local	4	100.0	4	2	-------	-------	2	0	4,415	4,415	2,450	-------	-------	1,965	0
AFL-CIO v. Teamsters v. Natl	4	100.0	4	2	0	2	-------	0	6,667	6,667	5,661	0	1,006	-------	0
AFL-CIO v. Teamsters v. Local	2	50.0	1	1	0	-------	0	1	189	35	35	0	-------	0	154
AFL-CIO v. Natl v. Natl	2	100.0	2	1	-------	1	-------	0	569	569	230	-------	339	-------	0
AFL-CIO v. Natl v. Local	3	100.0	3	1	-------	1	1	0	2,420	2,420	2,220	-------	13	187	0
AFL-CIO v. Local v. Local	4	100.0	4	0	-------	-------	4	0	12,030	12,030	0	-------	-------	12,030	0
AFL-CIO v. AFL-CIO v. Teamsters v. Local	3	100.0	3	2	0	-------	1	0	183	183	181	0	-------	2	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. Natl	1	100.0	1	1	-------	0	-------	0	73	73	73	-------	0	-------	0
AFL-CIO v. AFL-CIO v. Natl v. Local	1	100.0	1	1	-------	0	0	0	78	78	78	-------	0	0	0

C. ELECTIONS IN RM CASES

Total RM elections	400	43 3	173	109	49	9	6	227	19,812	9,623	7,263	649,	232	1,479	10,189
1-union elections	378	41.3	156	100	46	7	3	222	15,941	6,221	5,494	491	182	54	9,720
AFL-CIO	242	41 3	100	100				142	13,278	5,494	5,494				7,784
Teamsters	117	39 3	46		46			71	2,152	491		491			1,661
Other national unions	13	53 8	7			7		6	398	182			182		216
Other local unions	6	50 0	3				3	3	113	54				54	59
2-union elections	20	75 0	15	9	3	2	1	5	2,506	2,037	1,769	158	50	60	469
AFL-CIO v AFL-CIO	8	62 5	5	5				3	525	384	384				141
AFL-CIO v Teamsters	4	50 0	2	1	1			2	940	612	597	15			328
AFL-CIO v. Natl	2	100 0	2	1		1		0	48	48	4		44		0
AFL-CIO v Local	3	100 0	3	2			1	0	844	844	784			60	0
Teamsters v Natl	2	100 0	2		1	1		0	44	44		38	6		0
Teamsters v Local	1	100 0	1		1			0	105	105		105			0
3 (or more)-union elections	2	100 0	2	0	0	'0	2	0	1,365	1,365	0	0	0	1,365	0
AFL-CIO v AFL-CIO v Local	2	100 0	2	0			2	0	1,365	1,365	0			1,365	0

D. ELECTIONS IN RD CASES

Total RD elections	200	36 0	72	47	19	6	0	128	12,565	7,847	5,698	1,442	707	0	4,718
1-union elections	185	30 8	57	41	12	4	0	128	8,971	4,253	3,189	578	546	0	4,718
AFL-CIO	124	33 1	41	41				83	6,917	3,189	3,189				3,728
Teamsters	48	25 0	12		12			36	1,184	518		518			666
Other national unions	11	36 4	4			4		7	851	546			546		305
Other local unions	2	0 0	0				0	2	19	0				0	19
2-union elections	13	100 0	13	6	6	1	0	0	2,722	2,722	2,509	174	39	0	0
AFL-CIO v Teamsters	8	100.0	8	2	6			0	566	566	392	174			0
AFL-CIO v Natl	4	100 0	4	3		1		0	2,107	2,107	2,068		39		0
AFL-CIO v Local	1	100 0	1	1				0	49	49	49				0
3 (or more)-union elections	2	100 0	2	0	1	1	0	0	872	872	0	750	122	0	0
AFL-CIO v AFL-CIO v Teamsters	1	100 0	1	0	1			0	750	750	0	750			0
AFL-CIO v AFL-CIO v Natl	1	100 0	1	0		1		0	122	122	0		122		0

[1] See "Glossary" for definition of terms.
[2] Includes each unit in which a choice as to collective-bargaining agent was made, for example, there may have been more than one election in a single case, or several cases may have been involved in one election unit.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1965 [1]

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
A ALL REPRESENTATION ELECTIONS													
In all representation elections	491,453	240,072	154,593	28,303	29,475	27,701	57,992	66,627	53,662	8,580	3,427	958	126,762
1-union elections	338,790	109,939	89,363	13,670	4,731	2,175	50,278	61,526	50,355	8,256	2,398	517	117,047
AFL-CIO	276,467	89,363	89,363				42,491	50,355	50,355				94,258
Teamsters	44,295	13,670		13,670			5,396	8,256		8,256			16,973
Other national unions	13,985	4,731			4,731		2,006	2,398			2,398		4,850
Other local unions	4,043	2,175				2,175	385	517				517	966
2-union elections	124,601	103,669	53,771	11,980	23,224	14,694	6,464	5,004	3,233	310	1,023	438	9,464
AFL-CIO v. AFL-CIO	17,320	8,433	8,433				3,569	1,639	1,639				3,679
AFL-CIO v. Teamsters	21,548	18,144	9,442	8,702			887	886	612	274			1,631
AFL-CIO v. Natl	49,932	44,008	22,474		21,534		868	1,839	825		1,014		3,217
AFL-CIO v. Local	28,031	25,767	13,422			12,345	828	594	157			437	842
Teamsters v. Teamsters	413	400		400			0	6		6			7
Teamsters v. Natl	2,020	1,879		891	988		27	36		30	6		78
Teamsters v Local	3,396	3,356		1,987		1,369	33	1				1	6
Natl. v. Natl	92	92			92		0	0			0		0
Natl v. Local	1,322	1,075			610	465	240	3			3	0	4
Local v. Local	527	515				515	12	0				0	0
3 (or more)-union elections	28,062	26,464	11,459	2,653	1,520	10,832	1,250	97	74	14	6	3	251
AFL-CIO v. AFL-CIO v. AFL-CIO	223	181	181				42	0	0				0
AFL-CIO v. AFL-CIO v. Teamsters	3,189	2,629	1,662	967			438	41	37	4			81
AFL-CIO v. AFL-CIO v. Natl	257	139	30		109		5	41	35		6		72
AFL-CIO v. AFL-CIO v. Local	5,000	4,700	2,435			2,265	300	0	0			0	0
AFL-CIO v Teamsters v. Natl	5,306	5,049	2,799	1,682	568		257	0	0	0	0		0
AFL-CIO v. Teamsters v. Local	146	31	30	0		1	2	15	2	10		3	98
AFL-CIO v. Natl v. Natl	507	474	224		250		33	0	0		0		0
AFL-CIO v. Natl v. Local	1,945	1,933	1,043		564	326	12	0	0		0	0	0

AFL-CIO v. Local v. Local	11,187	11,073	2,848			8,225	114	0	0			0	0
AFL-CIO v. AFL-CIO v. Teamsters v. Local	167	124	107	4		13	43	0	0			0	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. Natl	66	62	43		19		4	0	0		0		0
AFL-CIO v. AFL-CIO v. Natl v. Local	69	69	57		10	2	0	0	0		0	0	0

B. ELECTIONS IN RC CASES

Total RC elections	462,526	228,126	146,499	26,692	28,235	26,700	54,430	62,910	50,652	8,000	3,310	948	117,060
1-union elections	316,284	103,483	84,067	13,039	4,252	2,125	47,221	57,960	47,474	7,698	2,281	507	107,620
AFL-CIO	258,270	84,067	84,067				39,906	47,474	47,474				86,823
Teamsters	41,242	13,039		13,039			5,113	7,698		7,698			15,392
Other national unions	12,848	4,252			4,252		1,819	2,281			2,281		4,496
Other local unions	3,924	2,125				2,125	383	507				507	909
2-union elections	120,111	99,850	51,400	11,441	22,565	14,444	6,219	4,853	3,104	288	1,023	438	9,189
AFL-CIO v AFL-CIO	16,836	8,180	8,180				3,469	1,579	1,579				3,608
AFL-CIO v. Teamsters	20,239	17,203	8,918	8,285			814	795	543	252			1,427
AFL-CIO v Natl	48,164	42,286	21,406		20,880		822	1,839	825		1,014		3,217
AFL-CIO v Local	27,247	25,009	12,896			12,113	802	594	157			437	842
Teamsters v. Teamsters	413	400		400			0	6		6			7
Teamsters v. Natl	1,976	1,835		852	983		27	36		30	6		78
Teamsters v Local	3,295	3,255		1,904		1,351	33	1				1	6
Natl v. Natl	92	92			92		0	0			0		0
Natl v. Local	1,322	1,075			610	465	240	3			3	0	4
Local v. Local	527	515					12	0				0	0
3 (or more)-union elections	26,131	24,793	11,032	2,212	1,418	10,131	990	97	74	14	6	3	251
AFL-CIO v AFL-CIO v. AFL-CIO	223	181	181				42	0	0				0
AFL-CIO v. AFL-CIO v. Teamsters	2,537	1,980	1,454	526			435	41	37	4			81
AFL-CIO v. AFL-CIO v. Natl	149	36	29		7		0	41	35		6		72
AFL-CIO v. AFL-CIO v. Local	3,829	3,781	2,217			1,564	48	0	0			0	0
AFL-CIO v. Teamsters v. Natl	5,306	5,049	2,799	1,682	568		257	0	0	0	0		0
AFL-CIO v. Teamsters v Local	146	31	30	0		1	2	15	2	10		3	98
AFL-CIO v. Natl v. Natl	507	474	224		250		33	0	0		0		0
AFL-CIO v. Natl v Local	1,945	1,933	1,043		564	326	12	0	0		0	0	0
AFL-CIO v. Local v. Local	11,187	11,073	2,848			8,225	114	0	0			0	0
AFL-CIO v. AFL-CIO v. Teamsters v Local	167	124	107	4		13	43	0	0			0	0
AFL-CIO v AFL-CIO v. AFL-CIO v. Natl	66	62	43		19		4	0	0		0		0
AFL-CIO v. AFL-CIO v Natl v. Local	69	69	57		10	2	0	0	0		0	0	0

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Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1965 [1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Team-sters	Other national unions	Other local unions		Total	AFL-CIO unions	Team-sters	Other national unions	Other local unions	
C. ELECTIONS IN RM CASES													
Total R elections	17,754	6,480	4,626	706	158	990	2,021	2,628	2,148	414	58	8	6,625
1-union elections	14,359	3,890	3,379	331	130	50	1,642	2,477	2,019	392	58	8	6,350
AFL-CIO	11,910	3,379	3,379				1,490	2,019	2,019				5,022
Teamsters	1,998	331		331			128	392		392			1,147
Other national unions	346	130			130		22	58			58		136
Other local unions	105	50				50	2	8				8	45
2-union elections	2,224	1,671	1,029	375	28	239	127	151	129	22	0	0	275
AFL-CIO v AFL-CIO	487	253	253				103	60	60				71
AFL-CIO v. Teamsters	801	505	252	353			1	91	69	22			204
AFL-CIO v. Natl	40	40	17		23		0	0	0		0		0
AFL-CIO v. Local	751	728	507			221	23	0	0			0	0
Teamsters v Natl	44	44		39	5		0	0		0	0		0
Teamsters v. Local	101	101		83		18	0	0		0		0	0
3 (or more)-union elections	1,171	919	218	0	0	701	252	0	0	0	0	0	0
AFL-CIO v. AFL-CIO v. Local	1,171	919	218			701	252	0	0			0	0

D. ELECTIONS IN RD CASES

Total RD elections	11,173	5,466	3,468	905	1,082	11	1,541	1,089	862	166	59	2	3,077
1-union elections	8,147	2,566	1,917	300	349	0	1,415	1,089	862	166	59	2	3,077
AFL-CIO	6,287	1,917	1,917				1,095	862	862				2,413
Teamsters	1,055	300		300			155	166		166			434
Other national unions	791	349			349		165	59			59		218
Other local unions	14	0				0	0	2				2	12
2-union elections	2,266	2,148	1,342	164	631	11	118	0	0	0	0	0	0
AFL-CIO v Teamsters	508	436	272	164			72	0	0	0			0
AFL-CIO v. Natl	1,728	1,682	1,051		631		46	0	0		0		0
AFL-CIO v. Local	30	30	19			11	0	0	0			0	0
3 (or more)-union elections	760	752	209	441	102	0	8	0	0	0	0	0	0
AFL-CIO v. AFL-CIO v Teamsters	652	649	208	441			3	0	0	0			0
AFL-CIO v. AFL-CIO v. Natl	108	103	1		102		5	0	0		0		0

[1] See "Glossary" for definition of terms

Table 15.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1965

Division and State [1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employee in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Total, All States and areas	7,776	4,680	3,017	1,179	309	175	3,096	544,536	491,453	306,699	208,255	36,883	32,902	28,659	184,754	333,545
New England	461	260	151	87	11	11	201	35,384	32,149	17,970	13,821	2,055	1,310	784	14,179	17,643
Maine	64	38	31	7	0	0	26	4,941	4,234	2,948	2,003	54	620	271	1,286	3,135
New Hampshire	18	7	4	1	0	2	11	2,234	2,134	909	816	25	30	38	1,225	272
Vermont	17	11	10	1	0	0	6	623	569	360	289	71	0	0	209	454
Massachusetts	249	143	76	49	0	8	106	20,728	18,938	10,609	8,507	1,127	539	436	8,329	10,782
Rhode Island	16	6	4	2	0	0	10	496	454	180	128	46	6	0	274	122
Connecticut	97	55	26	27	1	1	42	6,362	5,820	2,964	2,078	732	115	39	2,856	2,878
Middle Atlantic	1,282	778	451	210	66	51	504	74,748	68.699	42,603	25,686	7,625	4,042	5,250	26,096	41,077
New York	504	296	164	82	27	23	208	27,481	25,181	15,364	8,329	2,461	1,476	3,098	9,817	14,359
New Jersey	302	177	102	57	11	7	125	18,265	16,516	10,208	5,648	3,273	475	812	6,308	9,634
Pennsylvania	476	305	185	71	28	21	171	29,002	27,002	17,031	11,709	1,891	2,091	1,340	9,971	17,084
East North Central	1,833	1,116	765	254	62	35	717	138,698	125,788	82,043	54,898	9,485	4,802	12,858	43,745	90,469
Ohio	503	329	226	74	17	12	174	42,886	39,534	28,756	15,599	2,403	1,568	9,186	10,778	31,642
Indiana	233	134	84	39	7	4	99	20,870	19,213	11,876	8,592	1,461	740	1,083	7,337	12,711
Illinois	387	231	164	43	15	9	156	36,032	31,883	19,976	14,716	2,842	973	1,445	11,907	21,045
Michigan	505	306	210	67	21	8	199	28,971	26,140	15,793	11,698	2,041	1,163	891	10,347	18,349
Wisconsin	205	116	81	31	2	2	89	9,939	9,018	5,642	4,293	738	358	253	3,376	6,722
West North Central	777	495	327	137	19	12	282	37,185	33,725	20,466	13,468	2,994	2,660	1,344	13,259	23,451
Iowa	155	86	55	20	6	5	69	7,519	6,793	3,873	2,906	451	125	391	2,920	4,349
Minnesota	176	121	78	39	3	1	55	7,798	7,419	4,141	3,164	665	62	250	3,278	5,125
Missouri	296	210	142	59	4	5	86	11,695	10,661	6,782	4,556	1,205	353	668	3,879	7,544
North Dakota	17	10	6	4	0	0	7	485	443	237	145	92	0	0	206	290
South Dakota	19	10	8	2	0	0	9	840	666	361	300	61	0	0	305	501
Nebraska	43	23	14	7	1	1	20	1,462	1,298	742	486	191	36	29	556	663
Kansas	71	35	24	6	5	0	36	7,386	6,445	4,330	1,911	329	2,084	6	2,115	4,979

South Atlantic	952	535	370	128	32	5	417	73, 256	65, 833	35, 592	27, 639	4, 292	2, 243	1, 418	30, 241	38, 616
Delaware	21	12	8	3	1	0	9	1, 231	1, 055	676	571	70	35	0	379	843
Maryland	222	114	73	35	6	0	108	16, 814	15, 351	8, 022	6, 031	1, 094	689	208	7, 329	6, 567
District of Columbia	70	48	35	10	3	0	22	2, 511	1, 948	1, 115	974	110	31	0	833	1, 751
Virginia	101	58	46	9	3	0	43	7, 577	6, 708	3, 869	3, 411	287	171	0	2, 839	5, 154
West Virginia	49	32	18	6	6	2	17	5, 782	5, 465	3, 103	2, 400	180	232	291	2, 362	4, 243
North Carolina	143	76	66	10	0	0	67	15, 709	14, 212	7, 158	6, 653	364	0	141	7, 054	7, 419
South Carolina	37	16	10	5	1	0	21	4, 349	4, 108	2, 021	1, 557	180	280	4	2, 087	1, 533
Georgia	133	77	53	16	8	0	56	9, 706	8, 737	4, 466	3, 181	690	595	0	4, 271	4, 483
Florida	176	102	61	34	4	3	74	9, 580	8, 249	5, 162	2, 861	1, 317	210	774	3, 087	6, 623
East South Central	424	255	179	57	17	2	169	37, 085	33, 955	20, 084	15, 304	2, 128	1, 530	1, 122	13, 871	21, 882
Kentucky	111	70	37	22	10	1	41	7, 668	7, 192	4, 472	2, 656	1, 060	539	217	2, 720	4, 964
Tennessee	168	99	71	22	6	0	69	18, 542	16, 788	9, 134	7, 334	777	857	166	7, 654	9, 227
Alabama	113	64	53	10	1	0	49	8, 148	7, 580	5, 049	4, 208	249	134	458	2, 531	5, 776
Mississippi	32	22	18	3	0	1	10	2, 727	2, 395	1, 429	1, 106	42	0	281	966	1, 915
West South Central	546	335	248	72	11	4	211	44, 283	40, 230	24, 576	19, 424	1, 960	1, 515	1, 677	15, 654	31, 144
Arkansas	68	42	33	8	1	0	26	5, 956	5, 498	3, 043	2, 814	136	93	0	2, 455	3, 635
Louisiana	94	59	36	19	1	3	35	8, 672	7, 810	5, 409	3, 278	431	1, 001	699	2, 401	5, 885
Oklahoma	95	46	35	9	2	0	49	4, 490	4, 158	2, 142	1, 863	263	16	0	2, 016	2, 535
Texas	289	188	144	36	7	1	101	25, 165	22, 764	13, 982	11, 469	1, 130	405	978	8, 782	19, 089
Mountain	312	201	122	65	9	5	111	15, 597	13, 600	9, 419	6, 468	1, 503	1, 355	93	4, 181	10, 002
Montana	29	19	11	7	1	0	10	1, 828	1, 424	1, 217	694	74	449	0	207	1, 572
Idaho	23	15	8	6	0	1	8	414	360	204	108	76	0	20	156	207
Wyoming	7	6	2	4	0	0	1	186	164	107	33	74	0	0	57	178
Colorado	117	75	47	23	4	1	42	5, 491	5, 002	3, 363	2, 498	339	496	30	1, 639	3, 255
New Mexico	39	22	15	5	1	1	17	2, 264	1, 902	1, 024	853	102	60	9	878	812
Arizona	42	25	18	7	0	0	17	2, 029	1, 796	1, 222	981	119	121	1	574	1, 455
Utah	32	21	14	4	3	0	11	2, 086	1, 783	1, 374	608	537	229	0	409	1, 469
Nevada	23	18	7	9	0	2	5	1, 299	1, 169	908	693	182	0	33	261	1, 054
Pacific	1, 041	600	347	152	81	20	441	71, 379	63, 364	44, 313	26, 731	3, 689	13, 063	830	19, 051	47, 846
Washington	97	57	34	13	8	2	40	1, 894	1, 711	967	715	182	45	25	744	860
Oregon	97	51	34	14	3	0	46	25, 621	22, 724	20, 570	9, 609	229	10, 729	3	2, 154	22, 508
California	754	437	261	118	41	17	317	41, 122	36, 362	21, 334	15, 916	3, 100	1, 770	548	15, 028	23, 109
Alaska	12	8	5	2	0	1	4	533	495	415	79	82	0	254	80	508
Hawaii	81	47	13	5	29	0	34	2, 209	2, 072	1, 027	412	96	519	0	1, 045	861
Outlying areas	148	105	57	17	1	30	43	16, 921	14, 110	9, 633	4, 816	1, 152	382	3, 283	4, 477	11, 415
Puerto Rico	140	99	51	17	1	30	41	16, 341	13, 686	9, 329	4, 512	1, 152	382	3, 283	4, 357	11, 012
Virgin Islands	8	6	6	0	0	0	2	580	424	304	304	0	0	0	120	403

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1965

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Employees in unit choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Total, all industrial groups	7,776	4,680	3,017	1,179	309	175	3,096	544,536	491,453	306,699	208,255	36,883	32,902	28,659	184,754	333,545
Manufacturing	4,546	2,771	1,935	504	220	112	1,775	433,023	394,055	249,385	171,284	23,307	29,414	25,380	144,670	268,247
Ordnance and accessories	10	7	4	0	3	0	3	2,232	2,175	1,206	1,145	0	61	0	969	2,052
Food and kindred products	657	418	222	141	44	11	239	42,528	38,301	24,259	14,519	5,370	2,945	1,425	14,042	28,590
Tobacco manufacturers	5	2	2	0	0	0	3	2,504	2,245	1,285	1,285	0	0	0	960	1,636
Textile mill products	77	44	33	4	3	4	33	9,314	8,474	4,577	3,786	351	167	273	3,897	5,121
Apparel and other finished products, made from fabrics and similar materials	88	51	39	6	3	3	37	10,330	9,433	4,780	3,902	273	118	487	4,653	4,846
Lumber and wood products (except furniture)	170	87	67	13	5	2	83	10,100	9,167	4,628	4,037	321	195	75	4,539	4,373
Furniture and fixtures	162	96	76	14	0	6	66	14,372	12,887	7,734	6,669	403	413	249	5,153	8,409
Paper and allied products	210	134	94	21	12	7	76	43,142	38,717	32,443	17,214	1,639	11,793	1,797	6,274	34,682
Printing, publishing, and allied industries	259	156	128	14	14	0	103	12,154	10,891	6,135	5,056	508	342	229	4,756	6,071
Chemicals and allied products	271	169	104	38	22	5	102	20,208	18,408	10,294	6,914	1,455	1,425	500	8,114	10,686
Products of petroleum and coal	60	42	23	8	3	8	18	6,911	6,201	5,640	2,281	1,147	452	1,760	561	6,441
Rubber products	228	144	103	25	11	5	84	17,813	16,329	8,798	6,887	939	806	166	7,531	9,830
Leather and leather products	61	31	28	1	1	1	30	12,465	11,317	5,771	5,257	100	204	210	5,546	5,702
Stone, clay, and glass products	250	149	87	42	12	8	101	17,391	15,824	9,358	6,266	1,305	1,164	623	6,466	9,633
Primary metal industries	295	207	152	36	14	5	88	32,682	29,416	20,304	15,185	1,728	3,089	302	9,112	24,651
Fabricated metal products (except machinery and transportation equipment)	562	353	268	51	24	10	209	35,849	32,676	18,803	14,837	2,125	1,027	814	13,873	20,392
Machinery (except electrical)	459	273	211	26	15	21	186	54,237	50,436	36,452	21,404	1,678	1,504	11,866	13,984	39,294
Electrical machinery, equipment, and supplies	267	134	90	25	13	6	133	45,449	41,435	23,147	16,495	2,023	2,023	2,606	18,288	20,775
Aircraft	42	19	16	1	1	1	23	6,564	6,209	3,183	2,381	47	497	258	3,026	2,759
Ship and boat building and repairing	28	20	13	2	4	1	8	7,588	6,791	5,886	4,576	65	189	1,056	905	6,553
Automotive and other transportation equipment	176	107	84	13	7	3	69	12,835	11,852	6,713	5,283	641	632	157	5,139	7,041
Professional, scientific, and controlling instruments	85	54	43	7	2	2	31	6,493	5,954	3,239	2,243	562	110	324	2,715	3,039

Industry																
Miscellaneous manufacturing industries	124	74	48	16	7	3	50	9,862	8,917	4,750	3,662	627	258	203	4,167	5,671
Mining	78	49	31	6	11	1	29	5,809	5,027	3,709	2,350	324	808	227	1,318	4,379
Metal mining	20	11	7	1	3	0	9	2,394	1,934	1,480	1,051	36	393	0	454	1,802
Coal mining	9	7	1	0	5	1	2	704	650	488	5	0	266	217	162	608
Crude petroleum and natural gas production	6	3	2	1	0	0	3	327	261	138	133	5	0	0	123	217
Nonmetallic mining and quarrying	43	28	21	4	3	0	15	2,384	2,182	1,603	1,161	283	149	10	579	1,752
Construction	211	142	119	10	4	9	69	10,112	8,147	4,939	3,703	187	160	889	3,208	6,634
Wholesale trade	852	484	170	289	15	10	368	17,793	16,402	8,944	3,754	4,339	223	628	7,458	8,959
Retail trade	959	527	374	115	22	16	432	32,097	28,169	14,932	11,535	2,596	330	471	13,237	16,820
Finance, insurance, and real estate	71	50	49	0	1	0	21	2,303	2,175	1,329	1,318	6	5	0	846	1,767
Transportation, communication, and other public utilities	649	417	190	202	18	7	232	24,869	21,372	14,819	8,709	4,847	716	547	6,553	17,212
Local passenger transportation	51	33	26	6	1	0	18	8,348	6,675	5,818	3,803	1,866	20	129	857	7,158
Motor freight, warehousing, and transportation services	365	225	38	176	6	5	140	7,916	6,927	4,141	939	2,600	300	302	2,286	4,402
Water transportation	30	23	16	3	4	0	7	769	647	448	352	59	37	0	199	469
Other transportation	27	17	7	9	1	0	10	1,326	1,187	656	450	204	2	0	531	803
Communication	93	63	60	0	1	2	30	2,360	2,183	1,279	1,101	10	52	116	904	1,456
Heat, light, power, water, and sanitary services	83	56	43	8	5	0	27	4,150	3,753	2,477	2,064	108	305	0	1,276	2,924
Services	410	240	149	53	18	20	170	18,530	16,106	8,642	5,602	1,277	1,246	517	7,464	9,527
Hotel and other lodging places	62	35	24	3	2	6	27	4,625	3,997	2,127	1,535	223	202	167	1,870	2,416
Personal services	65	41	18	11	9	3	24	4,408	3,950	2,189	1,207	339	521	122	1,761	2,422
Automobile repair, garage, and other misc repair services	127	79	47	29	1	2	48	2,154	2,003	1,092	627	421	18	26	911	2,154
Motion pictures and other amusement and other health services	31	20	14	1	0	5	11	959	836	473	321	34	0	118	363	401
Nonprofit membership organizations	7	5	5	0	0	0	2	449	417	143	143	0	0	0	274	106
Miscellaneous services	118	60	41	9	6	4	58	5,935	4,903	2,618	1,769	260	505	84	2,285	3,023

[1] Source Standard Industrial Classification, Division of Statistical Standards, U S. Bureau of the Budget, Washington 1957.

Table 17.—Size of Units in Representation Election Cases Closed, Fiscal Year 1965 [1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by: AFL-CIO unions — Number	AFL-CIO unions — Percent by size class	Teamsters — Number	Teamsters — Percent by size class	Other national unions — Number	Other national unions — Percent by size class	Other local unions — Number	Other local unions — Percent by size class	Elections in which no representative was chosen — Number	Elections in which no representative was chosen — Percent by size class
A. CERTIFICATION ELECTIONS (RC & RM)														
Total RC & RM elections	531,971	7,576	100 0	----------	2,970	100 0	1,160	100 0	304	100 0	174	100.0	2,968	100 0
Under 10	10,731	1,854	24 5	24 5	677	22 8	473	40.8	66	21 7	28	16.1	610	20.6
10–19	23,528	1,676	22 1	46.6	646	21.8	302	26 0	80	26 3	23	13.2	625	21 1
20–29	20,968	872	11 5	58 1	365	12 3	138	11 9	34	11 2	22	12 7	313	10 5
30–39	20,879	614	8 1	66 2	234	7 9	77	6 6	26	8 6	12	6.9	265	8.9
40–49	17,165	368	4.9	71.1	146	4.9	34	2 9	15	4 9	7	4 0	166	5 6
50–59	18,137	318	4 2	75 3	134	4 5	18	1 6	10	3 3	11	6.3	145	4.9
60–69	15,633	244	3 2	78 5	102	3 4	11	.9	12	4 0	8	4.6	111	3 7
70–79	13,911	187	2 5	81 0	82	2.8	15	1 3	5	1.7	5	2 9	80	2 7
80–89	12,042	143	1 9	82 9	59	2.0	10	9	3	1.0	5	2 9	66	2 2
90–99	12,361	132	1 8	84 7	51	1.7	10	.9	3	1.0	2	1 1	66	2 2
100–109	12,099	116	1.5	86 2	43	1 5	14	1 2	8	2.6	1	.6	50	1 7
110–119	12,597	110	1 5	87 7	43	1 5	8	.7	3	1.0	5	2 9	51	1 7
120–129	9,286	75	1.0	88 7	34	1 2	4	.3	3	1 0	2	1 1	32	1 1
130–139	10,163	76	1.0	89 7	22	.7	6	.5	2	.7	4	2.3	42	1 4
140–149	7,891	55	.7	90.4	22	.7	2	.2	0	----------	1	.6	30	1.0
150–159	8,966	58	.8	91 2	22	.7	4	3	6	2 0	2	1 1	24	.8
160–169	7,739	47	6	91 8	20	.7	3	3	4	1.3	1	.6	19	7
170–179	7,698	44	6	92 4	22	7	3	3	0	----------	1	.6	18	.6
180–189	7,551	41	.5	92 9	16	5	4	3	5	1 6	1	6	15	5
190–199	7,450	39	5	93 4	14	5	2	.2	1	.3	4	2 3	18	.6
200–299	50,211	208	2 7	96 1	89	3.0	8	7	4	1 3	11	6 3	96	3 2
300–399	40,390	117	1 5	97 6	48	1 6	4	.3	3	1.0	7	4.0	55	1.9
400–499	20,288	46	.6	98 2	16	.5	6	.5	1	.3	1	.6	22	.7
500–599	14,284	26	3	98 5	10	.3	1	.1	1	.3	1	.6	13	4
600–799	33,138	48	.6	99 1	21	.7	2	2	4	1.3	3	1 7	18	.6
800–999	19,673	22	3	99.4	8	.3	0	----------	3	1.0	3	1.7	8	.3
1000–1999	37,729	27	4	99.8	15	.5	1	.1	1	.3	2	1.1	8	3
2000–2999	26,265	11	.2	100.0	9	.3	0	----------	0	----------	0	----------	2	.1
3000–9999	0	0	----------	100 0	0	----------	0	----------	0	----------	0	----------	0	----------
10,000 and over	33,198	2	0	100.0	0	----------	0	----------	1	.3	1	.6	0	----------

B. DECERTIFICATION ELECTIONS (RD)

Total RD elections	12,565	200	100.0		47	100.0	19	100.0	6	100.0	0		128	100.0
Under 10	312	55	27.5	27.5	4	8.5	2	10.5	0		0		49	38.3
10-19	536	38	19.0	46.5	7	14.9	5	26.3	1	16.7	0		25	19.5
20-29	538	21	10.5	57.0	6	12.8	2	10.5	0		0		13	10.1
30-39	606	18	9.0	66.0	6	12.8	3	15.7	1	16.7	0		8	6.2
40-49	483	11	5.5	71.5	2	4.3	1	5.3	1	16.7	0		7	5.5
50-59	491	9	4.5	76.0	5	10.6	3	15.8	0		0		1	.8
60-69	256	4	2.0	78.0	2	4.3	0		0		0		2	1.6
70-79	362	5	2.5	80.5	0		0		1	16.7	0		4	3.1
80-89	245	3	1.5	82.0	1	2.1	0		0		0		2	1.6
90-99	91	1	.5	82.5	0		0		0		0		1	.8
100-109	776	8	4.0	86.5	2	4.3	1	5.3	0		0		5	3.9
110-119	119	1	.5	87.0	1	2.1	0		0		0		0	
120-129	622	5	2.5	89.5	0		0		1	16.6	0		4	3.1
130-139	276	2	1.0	90.5	0		0		0		0		2	1.6
140-149	147	1	.5	91.0	1	2.1	0		0		0		0	
150-159	309	2	1.0	92.0	1	2.1	1	5.3	0		0		0	
160-169	326	2	1.0	93.0	1	2.1	0		0		0		1	.8
170-199	0	0		93.0	0		0		0		0		0	
200-299	1,134	5	2.5	95.5	2	4.3	0		0		0		3	2.3
300-399	1,403	4	2.0	97.5	4	8.5	0		0		0		0	
400-499	824	2	1.0	98.5	0		0		1	16.6	0		1	.8
500-599	0	0		98.5	0		0		0		0		0	
600-799	1,350	2	1.0	99.5	1	2.1	1	5.3	0		0		0	
800-999	0	0		99.5	0		0		0		0		0	
1,000-1,999	1,359	1	.5	100.0	1	2.1	0		0		0		0	
2,000 and over	0	0		100.0	0		0		0		0		0	

[1] See "Glossary" for definition of terms

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishment, Fiscal Year 1965[1]

Size of establishment (number of employees)	Total Number of situations	Total		Type of situations															
				CA		CB		CC		CD		CE		CP		CA-CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
	[2]13,424	100.0	--------	9,216	100.0	1,624	100.0	963	100.0	337	100.0	34	100.0	332	100.0	746	100.0	172	100.0
Under 10	2,667	19.8	19.8	1,677	18.2	346	21.3	311	32.3	68	20.1	17	50.0	108	32.6	98	13.1	42	24.4
10-19	1,656	12.3	32.1	1,167	12.7	149	9.2	148	15.4	31	9.2	3	8.9	65	19.6	66	8.9	27	15.7
20-29	1,178	8.8	40.9	867	9.4	105	6.5	90	9.4	23	6.8	2	5.9	30	9.1	42	5.6	19	11.0
30-39	874	6.5	47.4	650	7.1	76	4.7	54	5.6	30	8.9	1	2.9	21	6.3	29	3.9	13	7.6
40-49	522	3.9	51.3	403	4.4	42	2.6	28	2.9	7	2.0	1	2.9	18	5.4	20	2.7	3	1.7
50-59	683	5.1	56.4	450	4.9	72	4.4	64	6.7	23	6.8	2	5.9	16	4.8	41	5.5	15	8.7
60-69	391	2.9	59.3	291	3.2	39	2.4	19	2.0	17	5.0	0	--------	8	2.4	15	2.0	2	1.2
70-79	323	2.4	61.7	239	2.6	33	2.0	13	1.4	4	1.2	0	--------	2	.6	29	3.9	3	1.7

80-89	268	2 0	63 7	203	2 2	21	1 3	14	1 5	6	1 8	0	--------	7	2 1	15	2 0	2	1 2
90-99	162	1 2	64 9	135	1 5	11	7	3	.3	1	3	0	--------	2	6	10	1 4	0	--------
100-109	563	4 2	69 1	348	3 8	89	5 5	36	3 7	22	6 5	2	5 9	6	1 8	47	6 3	13	7 6
110-119	116	9	70 0	86	9	12	7	4	4	2	6	0	--------	7	2 1	4	5	1	.6
120-129	224	1 7	71 7	162	1 8	30	1 9	15	1 6	4	1 2	0	--------	7	2 1	6	8	0	--------
130-139	74	6	72 3	55	6	3	2	5	5	2	6	0	--------	4	1 2	4	5	1	6
140-149	62	5	72 8	45	5	6	4	2	2	1	3	0	--------	2	6	5	7	1	6
150-159	304	2 3	75 1	196	2 1	49	3 0	19	2 0	7	2 1	0	--------	4	1 2	25	3 4	4	2 3
160-169	76	6	75 7	55	6	12	.7	3	3	3	9	0	--------	0	--------	2	3	1	6
170-179	94	7	76 4	65	7	13	8	3	3	5	1 5	0	--------	0	--------	8	1 1	0	--------
180-189	71	.5	76 9	58	.6	6	4	4	4	2	6	0	--------	0	--------	1	1	0	--------
190-199	38	3	77 2	32	.3	2	1	0	--------	0	--------	0	--------	2	6	1	1	1	6
200-299	758	5 6	82 8	539	5 8	91	5 6	34	3 6	19	5 6	1	2 9	6	1 8	63	8 5	5	2 9
300-399	453	3 4	86 2	326	3 5	71	4 4	11	1 1	9	2 7	0	--------	4	1 2	27	3 6	5	2 9
400-499	261	1 9	88 1	188	2 0	31	1 9	13	1 3	9	2 7	1	2 9	4	1 2	15	2 0	0	--------
500-599	218	1 6	89 7	147	1 6	39	2 4	12	1 2	3	9	0	--------	1	3	13	1 8	3	1 7
600-799	242	1 8	91 5	163	1 8	42	2 6	8	8	9	2 7	0	--------	2	.6	17	2 3	1	6
800-999	127	9	92 4	91	1 0	21	1 3	4	4	0	--------	1	2 9	0	--------	10	1 3	0	--------
1,000-1,999	453	3 4	95 8	265	2 9	83	5 1	23	2 4	13	3 9	3	8 9	3	9	60	8 1	3	1 7
2,000-2,999	191	1 4	97 2	95	1 0	52	3 2	9	9	7	2.1	0	--------	2	6	24	3 2	2	1 2
3,000-3,999	160	1 2	98 4	105	1 1	23	1 4	6	6	3	.9	0	--------	0	--------	22	2 9	1	6
4,000-4,999	68	5	98 9	35	4	17	1 0	1	1	1	3	0	--------	1	3	10	1 3	3	1 7
5,000-9,999	145	1 1	100 0	77	8	38	2 3	7	7	6	1 8	0	--------	0	--------	16	2 1	1	.6
10,000 and over	2	0	100 0	1	0	0	--------	0	--------	0	--------	0	--------	0	--------	1	.1	0	--------

[1] See "Glossary" for definition of terms.
[2] Based on revised situation count which absorbs companion cases, cross-filings, and multiple filings as compared to situations shown in charts 1 and 1A, of chapter I which are based on single and multiple filings of same type of case.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1965; and Cumulative Totals, Fiscal Years 1936–65

	Fiscal year 1965									July 5, 1935–June 30, 1965	
	Number of proceedings [1]					Percentages					
	Total	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissal [2]	Vs. employers only	Vs unions only	Vs both employers and unions	Board dismissal	Number	Percent
Proceedings decided by U.S. courts of appeals	222	171	30	6	15	----	----	----	----	----	----
On petitions for review and/or enforcement	212	162	29	6	15	100 0	100 0	100 0	100 0	2,931	100 0
Board orders affirmed in full	122	87	24	1	10	53 7	82 8	16 7	66 7	1,681	57 4
Board orders affirmed with modification	47	42	1	2	2	25.9	3 4	33 3	13 3	593	20 2
Remanded to Board	7	3	2	0	2	1.9	6 9	----	13 3	111	3 8
Board orders partially affirmed and partially remanded	0	0	0	0	0	----	----	----	----	33	1 1
Board orders set aside	36	30	2	3	1	18 5	6 9	50 0	6 7	513	17 5
On petitions for contempt	10	9	1	0	----	100 0	100 0	----	----	----	----
Compliance after filing of petition, before court order	7	7	0	0	----	77 8	----	----	----	----	----
Court orders holding respondent in contempt	2	1	1	0	----	11.1	100 0	----	----	----	----
Court orders denying petition	1	1	0	0	----	11 1	----	----	----	----	----
Proceedings decided by U.S. Supreme Court	7	7	0	0	0	100 0	----	----	----	159	100 0
Board orders affirmed in full	2	2	0	0	0	28 6	----	----	----	98	61 7
Board orders affirmed with modification	0	0	0	0	0	----	----	----	----	13	8 2
Board orders set aside	2	2	0	0	0	28.6	----	----	----	28	17.6
Remanded to Board	3	3	0	0	0	42 8	----	----	----	6	3 8
Remanded to court of appeals	0	0	0	0	0	----	----	----	----	11	6.9
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	----	----	----	----	1	6
Contempt case remanded to court of appeals	0	0	0	0	----	----	----	----	----	1	.6
Contempt cases enforced	0	0	0	0	----	----	----	----	----	1	6

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal year 1964. A single proceeding often includes more than one case. See "Glossary" for definition of terms.

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the court of appeals.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1965 Compared With 5-Year Cumulative Totals, Fiscal Years 1960 Through 1964 [1]

Circuit courts of appeals (headquarters)	Total fiscal year 1965	Total fiscal years 1960–64	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1965		Cumulative fiscal years 1960–64		Fiscal year 1965		Cumulative fiscal years 1960–64		Fiscal year 1965		Cumulative fiscal years 1960–64		Fiscal year 1965		Cumulative fiscal years 1960–64		Fiscal year 1965		Cumulative fiscal years 1960–64	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	212	863	122	57.5	452	52 4	47	22 2	182	21 1	7	3 3	56	6 4	0	------	17	2 0	36	17 0	156	18 1
1. Boston, Mass	10	51	8	80 0	21	41.2	0	------	8	15 6	1	10 0	6	11 8	0	------	5	9 8	1	10.0	11	21 6
2. New York, N.Y	37	102	23	62 2	63	61 8	6	16 2	21	20 6	2	5 4	9	8 8	0	------	2	2 0	6	16 2	7	6 8
3. Philadelphia, Pa	8	75	6	75 0	49	65 3	0	------	12	16 0	0	------	3	4 0	0	------	0	------	2	25 0	11	14 7
4. Richmond, Va	21	47	10	47 6	23	48 9	5	23.8	7	14 9	1	4 8	2	4 3	0	------	0	------	5	23 8	15	31 9
5. New Orleans, La	36	148	21	58 3	79	53 4	13	36 1	39	26 4	0	------	3	2 0	0	------	3	2 0	2	5 6	24	16.2
6 Cincinnati, Ohio	27	100	15	55.6	54	54.0	5	18 5	19	19 0	0	------	2	2 0	0	------	1	1 0	7	25 9	24	24 0
7. Chicago, Ill	17	87	10	58 8	37	42 5	5	29 4	19	21.8	0	------	3	3 5	0	------	0	------	2	11 8	28	32 2
8 St. Louis, Mo	12	41	3	25 0	21	51.2	6	50 0	14	34 1	0	------	0	------	0	------	1	2 4	3	25 0	5	12.2
9. San Francisco, Calif	25	90	12	48 0	39	43 4	5	20 0	20	22.2	2	8 0	10	11.1	0	------	1	1 1	6	24 0	20	22 2
10 Denver, Colo	8	37	6	75 0	26	70 3	0	------	5	13 5	0	------	2	5 4	0	------	0	------	2	25 0	4	10 8
Washington, D.C	11	85	8	72 7	40	47 1	2	18 2	18	21 2	1	9 1	16	18 8	0	------	4	4 7	0	------	7	8 2

[1] Percentages are computed horizontally by current fiscal year and total fiscal years.

Table 20.—Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 1965

	Total Proceedings	Injunction proceedings		Total dispositions	Disposition of Injunctions						Pending in District court June 30, 1965
		Pending in district court July 1, 1964	Filed in district court fiscal year 1965		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under sec 10(e), total	0	0	0	0	0	0	0	0	0	0	0
Under sec 10(j), total	22	4	18	21	10	3	4	3	1	0	1
8(a)(1)(2), 8(b)(1)(A)(2)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(2)(3), 8(b)(1)(A)(2)	2	0	2	2	0	0	1	1	0	0	0
8(a)(1)(2)(5), 8(b)(1)(A)(2)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(3)	4	2	2	3	1	1	0	0	1	0	1
8(a)(1)(3)(4)	1	1	0	1	0	1	0	0	0	0	0
8(a)(1)(5)	7	1	6	7	2	1	2	2	0	0	0
8(b)(1)(A)	1	0	1	1	1	0	0	0	0	0	0
8(b)(1)(A)(3)	1	0	1	1	1	0	0	0	0	0	0
8(b)(3)	4	0	4	4	3	0	1	0	0	0	0
Under sec 10(l), total	240	12	227	231	80	6	73	16	8	48	9
8(b)(4)(A)	2	0	2	2	1	0	0	0	0	1	0
8(b)(4)(A)(B)	7	0	7	7	2	1	1	0	0	3	0
8(b)(4)(A)(B), 8(e)	4	0	4	3	3	0	0	0	0	0	1
8(b)(4)(A)(C)	2	0	2	2	0	0	1	0	0	1	0
8(b)(4)(B)	120	8	112	115	38	2	32	10	5	28	5
8(b)(4)(B)(C), (D)	1	0	1	1	0	0	0	1	0	0	0
8(b)(4)(B)(D)	21	2	19	21	8	0	10	1	1	1	0
8(b)(4)(B), 8(e)	1	0	1	1	0	0	0	1	0	0	0
8(b)(4)(C)	3	0	3	3	1	0	0	0	0	2	0
8(b)(4)(D)	44	2	42	42	14	1	18	3	2	4	2
8(b)(7)(A)	9	1	8	8	3	1	2	0	0	2	1
8(b)(7)(B)	7	0	7	7	2	1	2	0	0	2	0
8(b)(7)(C)	14	0	14	14	7	0	5	0	0	2	0
8(e)	5	0	5	5	1	0	2	0	0	2	0

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1965

Type of litigation	Number of proceedings								
	Total—all courts			In courts of appeals			In district courts		
	Number decided	Court determination		Number decided	Court determination		Number decided	Court determination	
		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position
Totals—all types	42	40	2	15	15	0	27	25	2
NLRB-Initiated actions	4	4	0	4	4	0	0	0	0
To enforce subpena	1	1	0	1	1	0	0	0	0
To restrain dissipation of assets by respondent	1	1	0	1	1	0	0	0	0
To defend Board's jurisdiction	0	0	0	0	0	0	0	0	0
Other	2	2	0	2	2	0	0	0	0
Actions by other parties	38	36	2	11	11	0	27	25	2
To restrain NLRB from	26	24	2	8	8	0	18	16	2
Proceeding in R-case	24	22	2	7	7	0	17	15	2
Proceeding in unfair labor practice case	2	2	0	1	1	0	1	1	0
Proceeding in backpay case	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0
To compel NLRB to	12	12	0	3	3	0	9	9	0
Issue complaint	6	6	0	3	3	0	3	3	0
Seek injunction	0	0	0	0	0	0	0	0	0
Take action in R-case	5	5	0	0	0	0	5	5	0
Other	1	1	0	0	0	0	1	1	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1965 [1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending July 1, 1964	4	2	1		1
Received fiscal 1965	8	4	4		
On docket fiscal 1965	12	6	5		1
Closed fiscal 1965	12	6	5		1
Pending June 30, 1965	0				

[1] See "Glossary" for definition of terms.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1965 [1]

Action taken	Total cases closed
	12
Board would assert jurisdiction	4
Board would not assert jurisdiction	2
Unresolved because of insufficient evidence submitted	2
Dismissed	2
Withdrawn	2

[1] See "Glossary" for definition of terms.

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